



**U.S. Department of the Interior
Bureau of Land Management**

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**O&C Logging Road Right-of-Way Handbook
H-2812-1**

Guidelines for the Administration of the O&C Logging Road
Right-of-Way Regulations in Western Oregon

BLM Oregon State Office



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I. INTRODUCTION AND HISTORY

A. Purpose

This handbook is designed to aid in interpreting and using the regulations found in 43 Code of Federal Regulations (CFR) Subpart 2812. These regulations cover rights-of-way for tramroads and logging roads over the Revested Oregon and California Railroad Lands (O&C), the Reconveyed Coos Bay Wagon Road Grant Lands (CBWR), and Public Domain Lands located in and west of Range 8 E., Willamette Meridian, Oregon (referred to collectively and hereafter as the O & C lands (43 CFR §2812.0-5(e)). The handbook provides guidance for the processing of applications and issuance of authorizations under the 43 CFR 2812 regulations.

The intent of the handbook is to promote consistency in the administration of the 43 CFR 2812 regulations and the resulting reciprocal right-of-way agreements and unilateral permits within the O & C lands. The handbook includes in-depth discussion on a variety of administrative actions encountered in day-to-day management of the program, including examples, standard templates, guidelines, illustrations, flow charts, and tables. The information was obtained from a variety of sources including: 1) law (FLPMA), 2) regulations (primarily 43 CFR 2812), 3) previous BLM manual handbook releases, 4) agency policy guidance, 5) legal opinions from the Office of the Regional Solicitor, Pacific Northwest Region, and 6) input from BLM program specialists operating in western Oregon.

The examples and guidelines contained in this handbook are applicable to the majority of reciprocal right-of-way agreements in existence in western Oregon today. However, it is important that the user of this information understand that each individual reciprocal right-of-way agreement is an instrument negotiated between the U.S. and the right-of-way applicant or permittee and should be administered in a manner consistent with the terms and conditions contained in that specific reciprocal right-of-way agreement.

B. Consistent Terminology Used Throughout Handbook

The following terminology is important to highlight here, as these terms are used consistently throughout the handbook to refer to the various types of documents and entities associated with the O&C right-of-way regulations (43 CFR 2812).

When the term “reciprocal right-of-way agreement” is used, it refers to the combined document which is composed of two parts: 1) the Road Use and Right-of-Way Agreement, which contains the rights of the United States (hereafter referred to as the U.S.) over private lands, roads and rights-of-way, and 2) the O&C Logging Road

Right of-Way Permit, which contains the rights of a permittee over U.S. lands, roads, and rights-of-way.

When the term “Agreement” [capitalization emphasized] is used, it refers to only the Road Use and Right-of-Way Agreement side of the reciprocal right-of-way agreement (where the U.S. rights over permittee lands are found).

When the term “Permit” [capitalization emphasized] is used, it refers to only the O&C Logging Road Right-of-Way Permit side of the reciprocal right-of-way agreement (where the rights of the permittee over U.S. lands are found).

When the term “unilateral permit” is used, it refers to a one-sided document issued to a permittee and there is no reciprocal Agreement granting rights to the U.S.

When the term “permittee” is used, it refers to the party who holds the rights in either the [reciprocal] Permit or unilateral permit.

When the term “O&C permit” or ‘permit’ [lower case “p”] is used, it refers to the generic use of the term permit and can mean either a reciprocal or unilateral permit.

If any of the above terms were included as quoted material (from regulations, standard provisions, etc., the capitalization or lack thereof was left as found in the quoted material.)

C. Superseded Handbook

This handbook replaces and supersedes all previous releases of Oregon/Washington BLM Handbook H-2812-1.

D. History and Background Information

The history of the O&C and CBWR lands and origin of the O&C access policy are important in understanding the O&C right-of-way regulations for western Oregon and the development of reciprocal right-of-way agreements. It also provides the reader with a sense of priority and frustration which was experienced by the Department of the Interior and the BLM in efforts to manage the O&C lands in perpetuity and on a sustained-yield basis.

1. The Oregon and California Railroad Grant Lands

a. O&C Railroad Grant Act

In the 19th Century, Congress provided subsidies in the form of land grants from the public domain to the states for the purpose of subsidizing the cost of the construction of rail and wagon roads and to encourage westward expansion.

Congress passed the O&C Railroad Grant Act on July 16, 1866 (14 Stat. 239) which granted specific lands to the State of Oregon for the construction of a railroad from Portland, Oregon, to the California border. This Act gave the State authority to designate which railroad company would receive the grant and construct the railroad. The grant was to include all odd-numbered sections of public domain, non-mineral in character, in a 40-mile-wide strip, 20 miles on each side of the proposed railroad line. The total acreage of all the odd-numbered sections in this strip was 4,220,000 acres. Since a great deal of Oregon land had already been claimed by homesteaders and others, the railroad company also had the right to select land in a 10-mile indemnity strip on each side and adjacent to the original grant to replace the land within the primary 40-mile-wide strip which was unavailable.

Certain terms of the Act had to be met before a railroad could receive the grant, including meeting a filing deadline. Congress amended the O&C Railroad Grant Act on April 10, 1869 (16 Stat. 47). By this time, so much land had already gone into private ownership that the grant actually included only 3,728,000 acres.

The amended legislation placed three conditions for land disposition on the construction company:

- the land had to be sold to bona fide settlers,
- no more than 160 acres could be sold to any one person, and
- the land could not be sold for more than \$2.50 per acre.

Construction of the railway was begun by the Oregon and California Railroad (O&C Railroad) and completed by the Southern Pacific Railroad Company (SP Railroad) which acquired the O&C Railroad in 1887.

Although construction of the railroad was completed, all three land disposition rules were violated by the two companies. These actions went uncontested until the SP Railroad decided to cease further sales of the grant land in 1903, in order to retain ownership of the increasingly valuable timber.

The Oregon legislature believed the cessation of land sales by the SP Railroad would curtail further development in the state. They asked for help from the federal government, which responded on April 30, 1908, when Congress passed a Joint Resolution (35 Stat. 571) directing the U.S. Attorney to lay claim through court action to all unsold O&C grant lands.

Seven years of litigation followed, culminating in a decision handed down by the U.S. Supreme Court in 1915, issuing an injunction forbidding the SP Railroad from making further sales and also stating that actual disposition of the unsold O&C land was a legislative and not a judicial function (238 U.S. 411).

b. Revestment of Unsold Lands

Congress passed the O&C Revestment Act (O&C Act)--also called the Chamberlain-Ferris Act--on June 9, 1916 (39 Stat. 218), returning 2.4 million acres of unsold O&C grant lands to federal ownership under the jurisdiction of the Department of the Interior. In this legislation, Congress returned to the original purpose of the Grant Act--the development of the State of Oregon. The SP Railroad had ceased paying taxes to the counties in 1913 because of the injunction and lengthy litigation. The revestment to the federal government of 2.4 million acres of taxable land (21% of the total 11.6 million acres of taxable land in Oregon at the time) would deprive the counties of revenue. Therefore, Congress appropriated \$1,571,000 to the O&C counties for the taxes left unpaid from 1913-1915. Congress also directed the Secretary of the Interior to classify the revested land as either: (1) power site to be retained by the federal government, (2) timberlands (equal to or greater than 300 MBF per 40 acres) from which the timber would be sold and the land reclassified for homesteading or, (3) agriculture land (less than 300 MBF per 40 acres) open to homesteading at \$2.50 per acre.

The income from sales was to be used, by priority, to:

- pay the SP Railroad \$4,102,215 for the remainder of its equity,
- reimburse the U.S. Treasury for the \$1,571,000 tax appropriation to the counties, and
- provide future revenue to O&C counties (25%), the State of Oregon (25%), the Reclamation Fund (40%), and the U.S. Treasury (10%).

During World War I and the early post-war period, sales of these revested lands dropped to a low level. By 1926, receipts to the O&C fund had paid only the \$4.1 million due the railroad and a small part due the U.S. Treasury for the 1913-1915 tax payments. Meanwhile, the estimated value of the O&C lands had grown to \$22.5 million. Since the counties had not received any tax payment after 1915, lost taxes were estimated to be at least \$500,000 annually.

Still seeking a remedy to the situation, Congress passed the Stanfield Act on July 13, 1926 (44 Stat. 915), which provided payment of \$7,135,000 to the O&C counties in lieu of taxes that would have been paid from 1916 to 1926 (if the lands had been privately owned and taxable). The Act provided for reimbursement of this payment to the Treasury from anticipated income from land and timber sales. The Act also provided for continuous payments to the counties in lieu of taxes, but assumed that future sales would meet these requirements.

By 1937, although the O&C lands contributed nearly \$4 million to offset tax claims from 1927 to 1933, the U.S. government had become delinquent in its payments of county tax claims by more than \$2 million.

c. Retention and Management of the O&C lands

During the 1930s, there was a growing concern for conservation of the Nation's natural resources. This concern coincided with the realization that the O&C lands were better suited for timber production than for homesteading. Various groups championed the need for forest conservation and improved logging practices. Public opinion began to support government ownership, particularly sustained yield management.

Thus, on August 29, 1937, Congress passed the McNary Oregon and California Act (44 Stat. 915), which called for sustained yield management for those O&C lands classified by the Secretary of the Interior as timberlands, including lease of land for grazing when compatible with other uses. Although the intent was retention and management by a government agency, those lands classified for agriculture were open to homestead entry or sale under the terms of the Taylor Grazing Act of 1934. All receipts from the use or sale of O&C lands were to be deposited in the U.S. Treasury in the "Oregon and California Land-Grant Fund," to be distributed as follows:

- Fifty percent of the gross receipts were to go to the counties to be used as other county funds, and was to be paid back to each county in the proportion that the total assessed value of the O&C lands in each of the counties in 1915 bore to the total assessed value of all O&C lands in Oregon that year.
- Twenty-five percent of the gross receipts were to go to the counties to make up for the \$2,200,000 tax equivalent obligations under the 1926 Act, for the tax years 1934 through 1937. After this obligation was paid off, the 25% was to go to the U.S. Treasury (Treasury) to reimburse the \$7,135,000 paid to the counties for taxes in the years 1916 through 1926, and also for the balance owed on the 1913 through 1915 tax advances. After the Treasury had been fully reimbursed, this 25% was to go to the counties, i.e., it was anticipated that eventually the counties would receive 75% of the gross receipts which was held to be roughly equal to a tax equivalent.
- The final 25% was to go to the General Fund of the Treasury.

Although the money received by the 18 affected counties dipped sharply in the first five years after passage of the 1937 O&C Act, from then on the income of the O&C lands increased as the price of timber began to rise. By 1952, the Dept. of Treasury had been completely reimbursed, and for the first time, the counties received the full 75% allotment.

The disposition of the funds was not settled; however, as Congress wanted the cost of timber access roads to be paid out of the counties' share of the O&C receipts. The 1953 Interior Appropriations Bill altered Title II of the 1937 Act by providing that

the Treasury be reimbursed (from the 25% share of receipts which would otherwise have gone to the counties after payment of the obligations to the U.S. Treasury) for \$2,750,000 appropriated for construction of access roads to harvest O&C timber and reforestation. Similar language appeared in the annual appropriations bills until 1960 when the sum was fixed at the full 25%. This 25% share is commonly called the “plowback” fund, because the funds are “plowed back” into management of O&C lands.

Diversified use of the “plowback” fund by the BLM was evident in the 1960s, while in 1952 this money was used only for construction of timber access roads. This money is now used for a variety of activities including road construction, operations and maintenance, reforestation, seed orchards, recreation, protection, and management.

2. The O&C Logging Road Right-of-Way Regulations

There are approximately two and one-half million acres of forest lands in western Oregon that are under the jurisdiction of the BLM. These lands consist of about two million acres of Revested O&C Grant Lands and about one-half million acres of Reconveyed Coos Bay Wagon Road Grant Lands and Public Domain lands. Most of these lands are in a checkerboard pattern, with the government owning the odd-numbered sections and private timber companies owning the even-numbered sections. It is estimated that there are more than 5,000 separate tracts of BLM lands in western Oregon, most with access problems.

Many special problems confronted the forest managers of the O&C lands because of the checkerboard pattern of land ownership. In the early days of the O&C administration, much of the private forestland in western Oregon had already been developed and sales of government timber were made at the request of private timber companies. The first roads were built into the area by private lumber companies seeking to log their own properties. Roads were built across government land with and without permission and to whatever standard the road builder chose. There was little or no long-range planning and roads were constructed with little or no engineering or provisions for maintenance.

Prior to June 1948, federal timber was sold without first obtaining legal access for timber purchasers to the sale area. This resulted in approximately 85 percent of the parcels being sold at the appraised price, usually to the landowner who controlled the access to the sale area. The access monopolies created a situation where there was only limited bidding on federal timber because those companies with access could always underbid all other prospective purchasers since the access was controlled by a few. There were few people willing to buy a parcel of government timber which did not have legal access available, because it meant that they would have to agree to the landowner's terms and conditions in order to obtain access.

In June 1948, the Secretary of the Interior issued a policy statement to the effect that the BLM would no longer sell O&C timber without first obtaining access to the sale

area for prospective purchasers. Subsequently, this policy was incorporated in a new set of O&C timber sale regulations. The new regulations stated that "No competitive sales shall be offered . . . unless there is access to the sale area which is available to anyone who is qualified to bid."

This policy gave rise to a new access program. Various methods had to be devised to obtain the needed access. One method employed was for BLM to refuse to offer timber up for sale until the landowner who had the sale area blocked granted the necessary access rights. This method worked where the landowner was anxious to bid on the government timber; however, where the landowner had no need for the government timber, there was no incentive to grant an authorization for a right-of-way. Usually, when the landowner did grant an authorization for a right-of-way, it would be for merely one sale, which made long-range planning problematic.

Another method of obtaining access was to purchase or condemn easements. However, this method was constrained by very limited funding. It was not until after 1950 that funds became available to purchase easements and on August 25, 1953, the first condemnation suit was filed. Since then, the BLM in western Oregon has acquired more than 2,000 easements from willing landowners by negotiation and has condemned more than 200. Procedures for acquisition of easements are included in a separate BLM Acquisition Manual and Handbook (H-2100-1).

New right-of-way regulations provided a third method of obtaining access to the checkerboard lands in western Oregon. The O&C Logging Road Right-of-Way regulations were originally codified on April 5, 1950 as 43 CFR §115.154-115.179. In 1970 the regulations were renumbered 43 CFR §2234.2-3 (b), and in 1975 they were given their present designation as 43 CFR 2812. The current 43 CFR 2812 regulations are included as Illustration I-1. A re-designation table showing the re-codification of these regulations is included as Illustration I-2. These regulations are unique in that they are limited to tramroads and logging roads and to a specific area of public lands in western Oregon.

a. Policy Statement in Current Regulations (Need for Reciprocity Identified)

The policy statement in the current regulations is found at 43 CFR §2812.0-6. This section discusses the need for the United States to exchange reciprocal rights with private owners of timber lands:

(b) It is well established that the value of standing timber is determined in significant part by the cost of transporting the logs to the mill. Where there is an existing road which is adequate or can readily be made adequate for the removal of timber in the area, the failure to make such road available for access to all the mature and over-mature timber it could tap leads to economic waste. Blocks of timber which are insufficient in volume or value to support the construction of a

duplicating road may be left in the woods for lack of access over the existing road. Moreover, the duplication of an existing road reduces the value of the federal and other timber which is tapped by the existing road.

(c) It is also clear that the Department of the Interior, which is responsible for the conservation of the resources of the O. and C. lands and is charged specifically with operating the timber lands on a sustained-yield basis, must have access to these lands for the purpose of managing them and their resources. In addition, where the public interest requires the disposition of Federal timber by competitive bidding, prospective bidders must have an opportunity to reach the timber to be sold. Likewise, where other timber is committed by cooperative agreement to coordinated administration with timber of the United States, there must be access to both.

The concept of the regulations was that the U.S. would trade right-of-ways with the owners of intermingled private lands. The basic approach was that the U.S. would not grant a permit to the owner of the intermingled land unless the landowner would in turn grant an easement for a right-of-way to the U.S. This trade of access rights took the form of a reciprocal right-of-way agreement. The strategy worked well in western Oregon where the land ownership pattern blocked access to both parties. However, the owner of the intermingled land had to first apply for a right-of-way across the O&C lands.

An important aspect of the rights received by the U.S. under these regulations is the duration of the grant. Whereas it had been customary in the past for the owner of the intermingled private land to grant a short-term authorization for only one timber sale, the new regulations required that the duration of the grant to the U.S. be of sufficient duration so that all of the merchantable federal timber that was tributary to the right-of-way could be removed during the term of the grant. This meant that the grant term might vary from 5 to 100 years, depending on the harvest rotation schedule. Very few grants could be accepted for short terms, as had been the case in the past, because the currently merchantable timber could not be removed in that time period.

Since these regulations were put into effect, BLM has issued more than 5,000 permits to cross BLM lands (approximately 700 are still in effect). BLM has received more than 1,000 grants from the owners of intermingled lands (more than 500 are still in effect). The BLM has issued more permits than it has received grants because, in many instances, the applicant for a permit to cross O&C lands does not own any intermingled lands and, therefore, it was not necessary for the BLM to obtain a reciprocal grant. The continuing effort of the BLM to obtain equal opportunity of access for its timber purchasers has played an important role in increasing competition for the sale of federal timber.

The creation and proper administration of reciprocal right-of-way agreements is essential to the management of the O&C lands.

Private timber owners continue to receive authorizations to use U.S. roads or cross O&C lands to reach their timber under the right-of-way regulations found in 43 CFR 2812. Most of the lands in western Oregon are now covered by one or more reciprocal right-of-way agreements. There have been changes and additions to the 43 CFR 2812 regulations since 1950, but the basic concept remains the same. When securing access where the right-of-way regulations do not apply; the BLM must use other means, such as acquiring easements.

b. Reserved

3. Types of Reciprocal Right-of-Way Agreements

a. Arbitration Agreements

The first type of reciprocal right-of-way agreement developed was called an “arbitration agreement.” As in all reciprocal right-of-way agreements, arbitration agreements guaranteed that BLM timber sale purchasers had access over existing roads of the permittee, and/or the right to construct roads over the permittee’s land. However, all specific use conditions (fees, bonding, insurance, etc.) were subject to negotiation between the BLM timber sale purchaser and the permittee. If these parties did not reach agreement, the matter would be sent to arbitration in accordance with the regulations.

While the arbitration agreement appeared to provide access to all bidders, onerous conditions of use and excessive fees discouraged competitive bidding. Though these obstacles could be resolved through arbitration, the process was expensive and the outcome unknown until after the timber sale contract was sold. A study of timber sales within an arbitration agreement area over a five year period showed that, though access to the sales was open to all, the successful bidder was usually the permittee to the reciprocal right-of-way agreement. It also showed that over 90% of the sales sold for appraised price, while sales in less restrictive access areas offered during the same period sold for considerably more than the appraised price.

The last arbitration agreement was signed in 1957, and a few remain in western Oregon today. With the release of the 1959 O&C Logging Road Right-of-Way Handbook, a policy was adopted that “no arbitration agreements will be executed in the future.”

In addition, arbitration agreements generally are not in conformance with the current regulations (43 CFR 2812) and a policy statement in Chapter 11 indicates that arbitration agreements cannot be assigned without bringing them current with 2812 regulations.

b. Detailed Agreements

With the demise of the arbitration agreement, the BLM developed the “detailed agreement”. This type of agreement sought to foresee all problems relating to road use and construction. This proved unworkable and this type of agreement eventually was also prohibited from use as “not in the interest of the United States.”

c. Semi-Detailed Agreements

Beginning around 1956, a third type of reciprocal right-of-way agreement was developed--the “semi-detailed agreement.” Essentially, it is an amalgamation of the best qualities of both the arbitration and detailed agreements. Semi-detailed agreements accomplish three things: (1) creates a document that which has been foreseen and agreed upon, (2) allows for change through negotiation and amendment, and (3) provides the mechanics for solving unforeseen problems and changes in practice through arbitration and/or specific third party determination. The semi-detailed agreement finally achieved the Secretary’s 1948 goals of: (a) providing access for all qualified bidders and (b) open and competitive bidding on federal timber sales. These agreements have worked well for both the federal government and the timber industry. The acceptance of the semi-detailed agreement is almost universal, opening access to large areas of intermingled ownership and foregoing the need for the federal government to acquire hundreds of individual easements and the granting an even greater number of right-of-way permits.

It should be noted that the U.S. Government has obtained access for the management of its timberlands and the removal of timber and other forest products under these agreements; however, the right to obtain access for the recreational public cannot be exercised until regulations are promulgated for this use.

E. Authority

1. Tramroad Act of 1895

Authority to issue permits over lands of the U.S. was contained in the Act of January 21, 1895 (28 Stat. 635; 43 U.S.C. 956) which provides that:

The Secretary of the Interior is authorized and empowered, under general regulations to be fixed by him, to permit the use of rights-of-way through the public lands of the U.S., not within the limits of any national forest, park, military or Indian reservation, for tramroads, canals, or reservoirs to the extent of the ground occupied by the water of the canals and reservoirs and fifty feet on each side of the marginal limits thereof, or fifty feet on each side of the center line of the tramroad, by any citizen or any association of citizens of the U.S. engaged in the business of mining or quarrying or of cutting timber and

manufacturing lumber or for the purposes of furnishing water for domestic, public, and other beneficial uses.

This act was repealed by the Federal Land Policy and Management Act of 1976 (FLPMA).

2. O&C Act of 1937

Early reciprocal right-of-way agreements were obtained under the authority of the Act of January 21, 1895. That Act was superseded by the Federal Land Policy and Management Act (FLPMA) on October 21, 1976; however, FLPMA did not void any pre-existing rights. Those authorizations are further supplemented by the O&C Sustained Yield Act of August 28, 1937, (50 Stat. 874) which provides that the Revested Oregon and California Railroad Grant Lands and the Reconveyed Coos Bay Wagon Road Grant Lands that are classified as timber lands shall be managed:

. . . for permanent forest production and the timber thereon shall be sold, cut, and removed in conformity with the principle of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries and providing recreational facilities. (43 U.S.C. 1181a).

3. Timber Access Road Act of 1955

Additional authorization for the Secretary of the Interior to acquire rights-of-way across privately-owned land is found in the Act of July 26, 1955 (69 Stat. 374), which states:

The Secretary of the Interior may acquire rights-of-way and existing connecting roads adjacent to public lands whenever he determines that such acquisition is needed to provide a suitable and adequate system of timber access roads to public lands under his jurisdiction. For the purpose of this Act, the term 'public lands' includes the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands in Oregon.

4. Public Land Order 5490

Public Land Order 5490, dated February 12, 1975, directed that the public domain lands located in and west of Range 8 East of the Willamette Meridian, Oregon, be reserved for multiple use management, including sustained yield of forest resources in connection with intermingled Revested Oregon and California Railroad Grant Lands and Reconveyed Coos Bay Wagon Road Lands.

5. Federal Land Policy and Management Act of 1976 (FLPMA)

The most current legal authority provided the Secretary of the Interior to administer and manage public lands in western Oregon is FLPMA, October 21, 1976 (90 Stat. 2743, 43 U.S.C. 1701), Sections 303 and 310. The authority for managing rights-of-way is contained in Title V of FLPMA. Unilateral permits and reciprocal right-of-way agreements approved prior to FLPMA usually cite the authority of the Act of January 21, 1895. Although this Act was repealed by FLPMA, all authorizations approved under its authority remain valid. Any amendments to such authorizations, however, must be made under the FLPMA authority and the regulations at 43 CFR 2812.

F. O&C Access Policy

The access policy for the O&C lands is described in the O&C Logging Road Right-of-Way regulations at 43 CFR §2812.0-6. The policy is based on three criteria:

- Intermingled federal and private land ownership requires cooperation between the parties, particularly with respect to timber access roads.
- Timber value is determined in part by the cost of transporting logs to the mill. The lack of access for forest management and timber removal leads to economic waste.
- Sustained-yield management and the sale of federal timber by advertised bidding requires guaranteed access for all prospective bidders.

To this end, when the U.S. grants a right-of-way over the O&C lands to a private party, that party will be required to grant a right-of-way to the U.S. if it “appears necessary” for forest management access or timber removal. This is best accomplished through mutually acceptable reciprocal right-of-way agreements with private landowners or through federal ownership and control of roads. Reciprocal right-of-way agreements should identify conditions of use that are equitable and nondiscriminatory and are to facilitate, not hinder, land management activities.

G. Policy on Environmental Compliance

In accordance with the November 20, 1981 instructions from the BLM Director, the existing O&C Logging Road Right-of-Way regulations are to remain in use until such time as new regulations implementing Section 502 of FLPMA have been prepared. These new regulations have not been written to date. Until such time, the BLM shall make every effort to adhere to the mandates of Congress to implement various environmental, cultural, land management and protective species acts, including:

- Endangered Species Act of 1973, Section 7,
- National Environmental Policy Act of 1969,

- Bald and Golden Eagles Act of June 8, 1940,
- Migratory Bird Treaty Act of 1918,
- Antiquities Act of 1906,
- Archaeological Protection Act of 1979,
- National Historic Preservation Act of 1966, and
- Federal Water Pollution Control Act.

All new permits issued under 43 CFR 2812 regulations shall meet requirements of the above acts. In addition, every effort should be made to amend existing reciprocal right-of-way agreements to add provisions which would provide the BLM with sufficient authority/discretion to exercise the authority of the various acts listed above.

H. Delegation of Authority

Pertinent delegations of authority and program responsibility include:

1. Secretarial Order 2583

This order, as amended, authorizes the Director to take all action in accordance with 43 CFR 115, on all forestry matters involving the Revested O&C Railroad and Reconveyed Coos Bay Wagon Road Grant Lands in Oregon.

2. Bureau Order 541

This order, dated April 21, 1954, as amended, provides for re-delegation of authority to act on specified matters, including O&C rights-of-way, to subordinate officials including the O&C District Foresters.

3. BLM Manual 1203- Delegation of Authority

a. Subject Function 2810 - Rights-of-Way and Road Use Agreements (Timber Management Only, 43 CFR 2812)

State Director, Oregon State Office: Responsible for overall administration and management of the O&C Logging Road Right-of-Way program, including monitoring and evaluation of actions or activities which have been specifically delegated to subordinates.

b. Subject Function 2100 – Acquisitions

State Director, Oregon State Office: Approve acquisitions, including donations, purchases, exchanges, and eminent domain/declarations of taking. Approve negotiated settlements in excess of \$2,000 above the appraised price.

4. Oregon State Office Supplement to BLM Manual 1203 - Delegation of Authority**a. Subject function 2810 - Rights-of-Way and Road Use Agreements (Timber Management only, 43 CFR 2812)**

Deputy State Director for Resource Planning, Use, and Protection, Oregon State Office: Approval of blanket road use bonds involving more than one BLM District.

Chief, Branch of Lands and Minerals, Oregon State Office: Responsible for monitoring program performance and preparation of instructional guidelines for field use in administering the program.

District Managers: Approve Inter-district unilateral permits and reciprocal right-of-way agreements (both District Managers sign--special delegation from State Director only). Approve intra-district unilateral permits and reciprocal right-of-way that cross Resource Area boundaries within one district.

Field Managers: Approve unilateral permits and reciprocal right-of-way agreements within the field manager's jurisdiction for the construction and use of roads on lands owned or controlled by the parties involved and the sharing of construction costs. Take actions under the terms of unilateral permits and reciprocal right-of-way agreements approving site specific proposals under the terms of each unilateral permit or reciprocal right-of-way agreement. Allow the release (deletion) of lands from a reciprocal right-of-way agreement based on mutual consent of both parties.

b. Subject Function 2100 – Acquisitions

District Manager: Approve acquisitions, including donations, purchases, exchanges, and eminent domain/declaration of taking. Approve negotiated settlements up to \$2,000 above the appraised price.

Field Manager: Approve (technical approval): 1) easement surveys and plats, and 2) legal descriptions for acquisitions.

c. Subject Function 1530 - Disposal of Real Property

Deputy State Director for Management Services, Oregon State Office: Authorize the disposal of unneeded easements when the continued use, occupancy, or control of the property is not needed for the administration (management) of public lands.

5. Operating Personnel

Day-to-day administration of the O&C logging road right-of-way program is usually undertaken by various BLM field staff. Depending on the field office organization, operating personnel may include one or more of the following staff:

District Program Leader: Interpret and implement formal instructional guidance, provide necessary training to program staff personnel, and conduct operational aspects of individual unilateral permits or reciprocal right-of-way agreements to ensure consistency and compliance with regulations and this Handbook.

Field Office or District Office Realty Specialists, Engineers, Roads and Right-of-Way Specialists, Road Managers, Land Law Examiners, Accounting Technicians: Administer assigned responsibilities relating to individual unilateral permits or reciprocal right-of-way agreements.

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AUTHORITY: 43 U.S.C. 1181a, 1181b, 1732 1733, and 1740.

Subpart 2812-Over O. and C. and Coos Bay Revested Lands

SOURCE: 35 FR 9638, June 13, 1970, unless otherwise noted.

§ 2812.0-3 Authority.

Sections 303 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1740) and the Act of August 28, 1937 (4 U.S.C. 1181a and 1181b), provide for the conservation and management of the Oregon and California Railroad lands and the Coos Bay Wagon Road lands and authorize the Secretary of the Interior to issue regulations providing for the use, occupancy, and development of the public lands through permits and rights-of-way.

[54 FR 25855, June 20, 1989]

§ 2812.0-5 Definitions.

Except as the context may otherwise indicate, as the terms are used in this paragraph:

- (a) *Bureau* means Bureau of Land Management.
- (b) *Timber of the United States or federal timber* means timber owned by the United States or managed by any agency thereof, including timber on allotted and tribal Indian lands in the O. and C. area.
- (c) *State Director* means the State Director, Bureau of Land Management, or his authorized representative.
- (d) *Authorized Officer* means an employee of the Bureau of Land Management to whom has been delegated the authority to take action.
- (e) *O. and C. lands* means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands, other lands administered by the Bureau under the provisions of the act approved August 28, 1937, and the public lands administered by the Bureau of Land Management which are in Oregon and in and west of Range 8 E., Willamette Meridian, Oregon.
- (f) *Tramroads* include tramways, and wagon or motor-truck roads to be used in connection with logging, and the manufacturing of lumber; it also includes railroads to be used principally for the transportation, in connection with such activities, of the property of the owner of such railroad.
- (g) *Management* means police protection, fire presuppression and suppression, inspection, cruising, reforestation, thinning, stand improvement, inventorying, surveying,

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construction and maintenance of improvements, disposal of land, the eradication of forest insects, pests and disease, and other activities of a similar nature.

(h) *Licensee of the United States* is, with respect to any road or right-of-way, any person who is authorized to remove timber or forest products from lands of the United States, or to remove timber or forest products from other lands committed by a cooperative agreement to coordinated administration with the timber of the United States over such road or right-of-way while it is covered by an outstanding permit, or while a former permittee is entitled to receive compensation for such use under the provisions of these regulations. A licensee is not an agent of the United States.

(i) *Direct control* of a road, right-of-way, or land, by an applicant for permit hereunder means that such applicant has authority to permit the United States and its licensees to use such road, right-of-way of land in accordance with this paragraph.

(j) *Indirect control* of a road, right-of-way, or land, by an applicant hereunder means that such road, right-f-way, or land, is not directly controlled by him but is subject to use by him or by:

- (1) A principal, disclosed or undisclosed, of the applicant; or
- (2) A beneficiary of any trust or estate administered or established by the applicant; or
- (3) Any person having or exercising the right to designate the immediate destination of the timber to be transported over the right-of-way for which application is made; or
- (4) Any person who at any time has owned, or controlled the disposition of the timber to be transported over the right-of-way applied for, and during the 24 months preceding the filing of the application has disposed of such ownership or control to the applicant or his predecessor, under an agreement reserving or conferring upon the grantor the right to share directly or indirectly in the proceeds realized upon the grantee's disposal to third persons of the timber or products derived therefrom or the right to reacquire ownership or control of all or any part of the timber prior to the time when it undergoes its first mechanical alteration from the form of logs; or
- (5) Any person who stands in such relation to the applicant that there is liable to be absence of arm's length bargaining in transactions between them relating to such road, rights-of-way, or lands.

§ 2812.0-6 Statement of policy.

(a) The intermingled character of the O. and C. lands presents peculiar problems of management which require for their solution the cooperation between the Federal Government and the owners of the intermingled lands, particularly with respect to timber roads.

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(b) It is well established that the value of standing timber is determined in significant part by the cost of transporting the logs to the mill. Where there is an existing road which is adequate or can readily be made adequate for the removal of timber in the area, the failure to make such road available for access to all the mature and overmature timber it could tap leads to economic waste. Blocks of timber which are insufficient in volume or value to support the construction of a duplicating road may be left in the woods for lack of access over the existing road. Moreover, the duplication of an existing road reduces the value of the federal and other timber which is tapped by the existing road.

(c) It is also clear that the Department of the Interior, which is responsible for the conservation of the resources of the O. and C. lands and is charged specifically with operating the timber lands on a sustained-yield basis, must have access to these lands for the purpose of managing them and their resources. In addition, where the public interest requires the disposition of Federal timber by competitive bidding, prospective bidders must have an opportunity to reach the timber to be sold. Likewise, where other timber is committed by cooperative agreement to coordinated administration with timber of the United States, there must be access to both.

(d) Accordingly, to the extent that in the judgment of the authorized officer it appears necessary to accomplish these purposes, when the United States, acting through the Bureau of Land Management, grants a right-of-way across O. and C. lands to a private operator, the private operator will be required to grant to the United States for use by it and its licensees:

- (1) Rights-of-way across lands controlled directly or indirectly by him;
- (2) The right to use, to the extent indicated in §§ 2812.3-5 and 2812.3-6, any portions of the road system or rights-of-way controlled directly or indirectly by the private operator which is adequate or can economically be made adequate to accommodate the probable normal requirements of both the operator and of the United States and its licensees, and which form an integral part of or may be added to the road system with which the requested right-of-way will connect;
- (3) The right to extend such road system across the operator's lands to reach federal roads or timber; and
- (4) In addition, in the limited circumstances set forth in § 2812.3-2 of this subpart the right to use certain other roads and rights-of-way. The permit will describe by legal subdivisions the lands of the operator as to which the United States receives rights. In addition, the extent and duration of the rights received by the United States will be specifically stated in the permit and ordinarily will embrace only those portions of such road system, rights-of-way and lands as may be actually needed for the management and removal of federal timber, or other timber committed by a cooperative agreement to coordinated administration with timber of the United States.

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(e) When the United States or a licensee of the United States uses any portion of a permittee's road system for the removal of forest products, the permittee will be entitled to receive just compensation, including a fair share of the maintenance and amortization charges attributable to such road, and to prescribe reasonable road operating rules, in accordance with §§ 2812.3-7 to 2812.4-4.

(f) As some examples of how this policy would be applied in particular instances, the United States may issue a permit under subpart 2812 without requesting any rights with respect to roads, rights-of-way or lands which the authorized officer finds will not be required for management of or access to Federal timber, or timber included in a cooperative agreement. Where, however, the authorized officer finds that there is a road controlled directly or indirectly by the applicant, which will be needed for such purposes and which he finds either has capacity to accommodate the probable normal requirements both of the applicant and of the Government and its licensees, or such additional capacity can be most economically provided by an investment in such road system by the Government rather than by the construction of a duplicate road, he may require, for the period of time during which the United States and its licensees will have need for the road, the rights to use the road for the marketing and management of its timber and of timber included in a cooperative agreement in return for the granting of right-of-way across O. and C. lands, and an agreement that the road builder will be paid a fair share of the cost of the road and its maintenance. Where it appears to the authorized officer that such a road will not be adequate or cannot economically be enlarged to handle the probable normal requirements both of the private operator and of the United States and its licensees, or even where the authorized officer has reasonable doubt as to such capacity, he will not request rights over such a road. Instead, the Bureau will make provision for its own road system either by providing in its timber sale contracts that in return for the road cost allowance made in fixing the appraised value of the timber, timber purchasers will construct or extend a different road system, or by expending for such construction or by extension monies appropriated for such purposes by the Congress, or, where feasible, by using an existing duplicating road over which the Government has obtained road rights. In such circumstances, however, road cost and maintenance allowances made in the stumpage price of O. and C. timber will be required to be applied to the road which the Bureau has the right to use, and thereafter will not in any circumstances be available for amortization or maintenance costs of the applicant's road.

(g) When a right-of-way permit is issued for a road or road system over which the United States obtains rights of use for itself and its licensees, the authorized officer will seek to agree with the applicant respecting such matters as the time, route, and specifications for the future development of the road system involved; the portion of the capital and maintenance costs of the road system to be borne by the timber to be transported over the road system by the United States and its licensees; a formula for determining the proportion of the capacity of the road

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system which is to be available to the United States and its licensees for the transportation of forest products; and other similar matters respecting the use of the road by the United States and its licensees and the compensation payable therefor. To the extent that any such matter is not embraced in such an agreement, it will be settled by negotiation between the permittee and the individual licensees of the United States who use the road, and, in the event of their disagreement, by private arbitration between them in accordance with the laws of the State of Oregon.

(h) The authorized officer may in his discretion, issue short term right-of-way permits for periods not exceeding three years, subject to one-year extensions in his discretion. Such permits shall specify the volume of timber which may be carried over the right-of-way and the area from which such timber may be logged. The permits shall be revocable by the authorized officer, the State Director, or the Secretary for violation of their terms and conditions or of these regulations or if hazardous conditions result from the construction, maintenance or use of the rights-of-way by the permittees or those acting under their authority. As a condition for the granting of such permits, the applicant must comply with §§ 2812.3-1 and 2812.3-3 of this subpart to the extent that rights-of-way and road use rights are needed to remove government timber offered for sale in the same general area during the period for which the short term right-of-way is granted.

(i) The authorized officer may, in his discretion, issue to private operators right-of-way across O. and C. lands, needed for the conduct of salvage operations, for a period not to exceed five years. A salvage operation as used in this paragraph means the removal of trees injured or killed by windstorms, insect infestation, disease, or fire, together with any adjacent green timber needed to make an economic logging show. As a condition of the granting of such rights-of-way, the operator will be required, when the authorized officer deems it necessary, to grant to the United States and its licensees for the conduct of salvage operations on O. and C. lands for a period not to exceed five years, rights-of-way across lands controlled directly or indirectly by him and to grant the right to use to the extent indicated in §§ 2812.3-5 and 2812.3-6 any portions of the road system controlled directly or indirectly by the private operator which is adequate or can economically be made adequate to accommodate the requirements of both the operator and of the United States and its licensees.

[35 FR 9637, June 13, 1970, as amended at 41 FR 21642, May 27, 1976]

§ 2812.0-7 Cross reference.

For disposal of timber or material to a trespasser, see § 9239.0-9 of this chapter.

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§ 2812.0-9 Information collection.

The information collection requirements contained in part 2810 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0102 and 1004-0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit. [60 FR 57072, Nov. 13, 1995]

§ 2812.1 Application procedures.

§ 2812.1-1 Filing.

(a) An application for a permit for a right-of-way over the O. and C. lands must be submitted in duplicate on a form prescribed by the Director and filed in the appropriate district office. Application forms will be furnished upon request.

(b) Any application filed hereunder, including each agreement submitted by the applicant as a part thereof or as a condition precedent to the issuance of a permit, may be withdrawn by the applicant by written notice delivered to the authorized officer prior to the time the permit applied for has been issued to, and accepted by, the applicant.

[35 FR 9637, June 13, 1970, as amended at 41 FR 21642, May 27, 1976]

§ 2812.1-2 Contents.

(a) An individual applicant and each member of any unincorporated association which is an applicant must state in the application whether he is a native born or a naturalized citizen of the United States. Naturalized citizens will be required to furnish evidence of naturalization pursuant to the provisions of § 2802.1-4.

(b) An application by a private corporation must be accompanied by two copies of its articles of incorporation, one of which must be certified by the proper official of the company under its corporate seal, or by the secretary of the State where organized. A corporation organized in a State other than Oregon must submit a certificate issued by the State of Oregon attesting that the corporation is authorized to transact business within that State. The requirements of this paragraph shall be deemed satisfied if the corporation, having once filed the required documents, makes specific reference to the date and case number of such previous applications, states what changes, if any, have been made since the prior filings, and includes a statement that the right of the company to do business in the State of Oregon has not lapsed or terminated.

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(c) Where the application is for a right-of-way on any portion of which the applicant proposes to construct a road, it must be accompanied by two copies of a map prepared on a scale of 4 inches or 8 inches to the mile. Showing the survey of the right-of-way so that it may be accurately located on the ground. The map should comply with the following requirements, except as the authorized officer may waive in any particular instance all or any of such requirements:

Courses and distances of the center line of the right-of-way should be given; the courses referred to the true meridian and the distance in feet and decimals thereof. The initial and terminal points of the survey must be accurately connected by course and distance to the nearest readily identifiable corner of the public land surveys, or, if there be no such corner within two miles, then connected to two permanent and prominent monuments or natural objects. All subdivisions of the public lands surveys, any part of which is within the limits of the survey, should be shown in their entirety, based upon the official subsisting plat with subdivisions, section, township, and range clearly marked. The width of the right-of-way should be given; and if not of uniform width, the locations and amount of change must be definitely shown. There shall also be a statement on the face of or appended to the map indicating the grade and usable width of the road to be constructed, the type of material which will be used for the surface, the type and extent of the drainage facilities, and the type of construction and estimated capacity of any bridges. The map should bear upon its face the statement of the person who made the survey, if any, and the certificate of the applicant; such statement and certificate should be as set out in Forms as approved by the Director.

(d) Where the application is for the use of an existing road, a map adequate to show the location thereof will be required, together with a statement of the specific nature and location of any proposed improvements to such road. A blank map suitable for most cases may be procured from the appropriate district forester.

(e) Every application for a right-of-way must also be accompanied by a diagram indicating the roads and rights-of-way which form an integral part of the road system with which the requested right-of-way will connect, the portions of such road system which the applicant directly controls within the meaning of § 2812.0-5(i), the portions thereof which the applicant indirectly controls within the meaning of § 2812.0-5(j), and the portions thereof as to which the applicant has no control within the meaning of such sections. As to the portions over which the applicant has no control, he must furnish a statement showing for the two years preceding the date of the filing of the application, all periods of time that he had direct or indirect control thereof, and the date and nature of any changes in such control. The diagram shall also contain the name of the person whom the

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applicant believes directly controls any portion of such road system which the applicant does not directly control. Where a right-of-way for a railroad is involved, the applicant must indicate which portions of the right-of-way will be available for use as truck roads upon the removal of the rails and ties and the probable date of such removal. Blank diagram forms, suitable for most cases, may be obtained from the appropriate district forester.

§ 2812.1-3 Unauthorized use, occupancy, or development.

Any use, occupancy, or development of the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (O & C) lands (as is defined in 43 CFR 2812.0-5(e)), for tramroads without an authorization pursuant to this subpart, or which is beyond the scope and specific limitations of such an authorization, or that cause unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in § 2808.10 of this title. Anyone determined by the authorized officer to be in violation of this section shall be notified of such trespass in writing and shall be liable to the United States for all costs and payments determined in the same manner as set forth in subpart 2808 of this title. [70 FR 21078, April 22, 2005]

§ 2812.2 Nature of permit.**§ 2812.2-1 Nonexclusive license.**

Permits for rights-of-way for tramroads, do not constitute easements, and do not confer any rights on the permittee to any material for construction or other purposes except, in accordance with the provisions of §§ 2812.6-2 and 2812.8-3, such materials as may have been placed on such lands by a permittee. The permits are merely nonexclusive licenses to transport forest products owned by the permittee. Such permits may be canceled pursuant to § 2812.8.

§ 2812.2-2 Right of permittee to authorize use by third parties.

A permittee may not authorize other persons to use the right-of-way for the transportation of forest products which are not owned by the permittee. Any person, other than the permittee or a licensee of the United States who desires to use the right-of-way for such purposes, is required to make application therefor and to comply with all the provisions of these regulations relating to applications and applicants: *Provided, however,* That upon the request of a permittee the authorized officer may, with respect to an independent contractor who desires to use such right-of-way for the transportation of forest products owned by such independent contractor and derived from timber or logs acquired by him from such permittee, waive the requirements of this sentence. Where the right-of-way

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involved has been substantially improved by the holder of an outstanding permit, any subsequent permit issued for the same right-of-way will be conditioned upon the subsequent permittees agreement while the prior permit is outstanding, to be bound by the road rules of and to pay fair compensation to, the prior permittee, such rules and compensation to be agreed upon by the prior and subsequent permittee in accordance with the procedures and standards established by the regulations in §§ 2812.4-1, 2812.4-3, and 2812.4-4 of this subpart.

§ 2812.2-3 Construction in advance of permit.

The authorized officer may grant an applicant authority to construct improvements on a proposed right-of-way prior to a determination whether the permit should issue. Such advance authority shall not be construed as any representation or commitment that a permit will issue. Upon demand by the authorized officer, the applicant will fully and promptly comply with all the requirements imposed under and by this paragraph. Advance construction will not be authorized unless and until applicant has complied with §§ 2812.1-1, 2812.1-2, 2812.3-1 and 2812.5-1.

§ 2812.3 Right-of-way and road use agreement.**§ 2812.3-1 Rights over lands controlled by applicant.**

Where, in the judgment of the authorized officer, it appears necessary in order to carry out the policy set forth in § 2812.0-6, he may require the applicant, as a condition precedent to the issuance of the permit:

(a) To grant to the United States, for use by it and its licensees and permittees, rights-of-way across lands in the O. and C. area directly controlled by the applicant; and as to lands in such area which are indirectly controlled by him, either to obtain such rights for the United States or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and to waive as to the United States, its licensees and permittees any exclusive or restricted right he may have to such lands as are indirectly controlled by him.

(b) In addition, to agree to permit the United States and its licensees, upon the payment of fair compensation as hereinafter provided, to use under the terms and conditions of this paragraph such portion as the applicant directly controls of the road system and rights-of-way which are an integral part of or may be added to the road system with which the right-of-way applied for will connect, and as to the portions of such road system or rights-of-way as the applicant indirectly controls, either to obtain such rights for the United States and its licensees or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and, in such latter circumstance, to waive as to the United States and its licensees any exclusive or restricted right he may have in such portion of the road system and rights-of-way.

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§ 2812.3-2 Other roads and rights-of-way controlled by applicant.

In addition to the private road systems and rights-of-way described in § 2812.3-1 in the event the applicant controls directly or indirectly other roads or rights-of-way in any O. and C. area where the authorized officer of the Bureau finds that, as of the time of filing or during the pendency of the application, the United States is unreasonably denied access to its timber for management purposes or where, as of such time, competitive bidding by all prospective purchasers of timber managed by the Bureau in the O. and C. area, or of other Federal timber intermingled with or adjacent to such timber, is substantially precluded by reason of the applicant's control, direct or indirect, of such roads or rights-of-way, the authorized officer may require the applicant to negotiate an agreement granting to the United States and its licensees the right to use, in accordance with the terms and conditions of this paragraph such portion of such roads or rights-of-way as may be necessary to accommodate such management or competitive bidding.

§ 2812.3-3 Form of grant to the United States, recordation.

Any grant of rights to the United States under this section shall be executed on a form prescribed by the Director which shall constitute and form a part of any permit issued upon the application involved. The applicant shall record such agreement in the office of land records of the county or counties in which the roads, rights-of-way, or lands, subject to the agreement are located, and submit evidence of such recordation to the appropriate district manager.

§ 2812.3-4 Where no road use agreement is required.

Where, in the judgment of the authorized officer, it is consistent with the policy set forth in subpart 2811 he may issue a permit without requesting the applicant to grant any rights to the United States under this paragraph.

§ 2812.3-5 Use by the United States and its licensees of rights received from a permittee.

The use by the United States and its licensees of any of the rights received from a permittee hereunder shall be limited to that which is necessary for management purposes, or to reach, by the most reasonably direct route, involving the shortest practicable use of the permittee's road system, a road or highway which is suitable for the transportation of forest products in the type and size of vehicle customarily used for such purposes and which is legally available for public use for ingress to and the removal of forest products from

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Government lands or from other lands during such periods of time as the timber thereon may be committed by a cooperative agreement to coordinated administration with timber of the United States. However, the type and size of vehicle which may be used by the licensee on the permittee's road shall be governed by §§ 2812.3-7 and 2812.4-3.

§ 2812.3-6 Duration and location of rights granted or received by the United States.

The rights-of-way granted by the United States under any permit issued under § 2812.6, subject to the provisions of § 2812.7, will be for a stated term or terms which may vary for each portion of the right-of-way granted; such term or terms will normally be coincident with the probable period of use for the removal of forest products by the permittee and any successor in interest of the various portions of the right-of-way requested. In the same manner the permit will also state the duration of the rights of the United States to use and to permit its licensees to use, and the location by legal subdivisions of, each of the various portions, if any, of the roads, rights-of-way, and lands which a permittee hereunder authorizes the United States and its licensees to use; and, similarly, the duration of such rights received by the United States will normally be coincident with the probable period of use for the removal of forest products, by the United States and its existing and prospective licensees, of such roads, rights-of-way, and lands.

§ 2812.3-7 Permittee's agreement with United States respecting compensation and adjustment of road use.

(a) Where the United States receives rights over any road, right-of-way, or lands, controlled directly or indirectly by a permittee, the authorized officer will seek to arrive at an advance agreement with the permittee respecting any or all of such matters as the time, route, and specifications for the development of the road system in the area; the total volume of timber to be moved over such road system, and the proportion of such timber which belongs to the United States or is embraced in a cooperative agreement for coordinated management with timber of the United States managed by the Bureau; the consequent proportion of the capital costs of the road system to be borne by such timber of the United States or embraced in such cooperative agreement; the period of time over, or rate at which, the United States or its licensees shall be required to amortise such capital cost; provisions for road maintenance; the use in addition to the uses set forth in § 2812.3-5 which the United States and its licensees may make of the road system involved, a formula for determining the proportionate capacity of the road system or portions thereof which shall be available to the United States and its licensees for the transportation of forest products; the amount and type of insurance to be

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carried, and the type of security to be furnished by licensees of the United States who use such road; and such other similar matters as the authorized officer may deem appropriate. To the extent necessary to fulfill the obligations of the United States under any such advance agreement, subsequent contracts for the sale of timber managed by the Bureau and tapped by such road system, and subsequent cooperative agreements for the coordinated management of such timber with other timber, will contain such provisions as may be necessary or appropriate to require such licensees to comply with the terms of the advance agreement. Where such an advance agreement between the United States and the permittee includes provisions relating to the route and specifications for extensions of the road system involved, the authorized officer may agree that upon the filing of proper applications in the future the applicant or his successor in interest shall receive the necessary permits for such road extensions as may cross lands managed by the Bureau: *Provided, however,* That the applicant shall have substantially complied with the terms of such advance agreement and of the outstanding permits theretofore issued to him.

(b) The provisions of § 2812.4 shall not be applicable to any matters embraced in an agreement made pursuant to this section.

§ 2812.4 Arbitration and agreements.

§ 2812.4-1 Agreements and arbitration between permittee and licensee respecting compensation payable by licensee to permittee for use of road.

(a) In the event the United States exercises the rights received from a permittee hereunder to license a person to remove forest products over any road, right-of-way, or lands of the permittee or of his successor in interest, to the extent that such matters are not covered by an agreement under § 2812.3-7 of this subpart, such licensee will be required to pay the permittee or his successor in interest such compensation and to furnish him such security, and to carry such liability insurance as the permittee or his successor in interest and the licensee may agree upon. If the parties do not agree, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 2812.4-4. During the pendency of such arbitration proceedings the licensee shall be entitled to use the road, right-of-way, or lands involved upon payment, or tender thereof validly maintained, to the permittee of an amount to be determined by the authorized officer and upon the furnishing to the permittee of a corporate surety bond in an amount equal to the difference between the amount fixed by the authorized officer and the amount sought by the permittee. The licensee shall also, as a condition of use in such circumstances, maintain such liability insurance in such amounts covering any additional hazard and risk which might accrue by reason of the licensee's use of the road, as the authorized officer may prescribe.

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(b) The arbitrators shall base their award as to the compensation to be paid by the licensee to the permittee or his successor in interest upon the amortization of the replacement costs for a road of the type involved, including in such replacement costs an extraordinary cost peculiar to the construction of the particular road involved and subtracting therefrom any capital investment made by the United States or its licensees in the particular road involved or in improvements thereto used by and useful to the permittee or his successor in interest plus a reasonable interest allowance on the resulting cost figure, taking into account the risk involved, plus costs of maintenance if furnished by the permittee or his successor, including costs of gates and gateman. In arriving at the amortization item, the arbitrators shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved and the volume of timber currently merchantable, which probably will be moved from all sources over such road. The arbitrators shall also take into account the extent to which the use which the licensee might otherwise economically make of the road system is limited by § 2812.3-5. In addition, the arbitrators may fix the rate at which payments shall be made by the licensee during his use of the road. The arbitrators shall require the licensee to provide adequate bond, cash deposit, or other security to indemnify the permittee or his successor in interest against failure of the licensee to comply with the terms of the award and against damage to the road not incident to normal usage and for any other reasonable purpose, and also to carry appropriate liability insurance covering any additional hazard and risks which may accrue by reason of the licensee's use of the road.

(c) Where improvements or additions are required to enable a licensee to use a road or right-of-way to remove timber or forest products, the cost of such improvements will be allowable to the licensee.

(d) The full value at current stumpage prices will be allocable against a licensee for all timber to be cut, removed, or destroyed by the licensee on a permittee's land in the construction or improvement of the road involved.

§ 2812.4-2 Compensation payable by United States to permittee for use of road.

In the event the United States itself removes forest products over any road or right-of-way of the permittee or his successor in interest, the United States, if there has been no agreement under § 2812.3-7 covering the matter, shall pay to the permittee or his successor in interest reasonable compensation as determined by the State Director, who shall base his determination upon the same standards established by this paragraph for arbitrators in the determination of the compensation to be paid by a licensee to a permittee: *Provided, however*, That no bond or other security or liability insurance is to be required of the United States. When the United States constructs or improves a road on a permittee's land or

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right-of-way it shall pay to the permittee the full value at current stumpage prices of all timber of the permittee cut, removed, or destroyed in the construction or maintenance of such road or road improvements. Current stumpage prices shall be determined by the application of the standard appraisal formula, used in appraising O. and C. timber for sale, to the volume and grade of timber. Such volume and grade shall be determined by a cruise made by the permittee or, at his request, by the authorized officer. If either the permittee or the authorized officer does not accept the cruise made by the other, the volume and grade shall be determined by a person or persons acceptable both to the permittee and the State Director.

§ 2812.4-3 Agreements and arbitration between permittee and licensee respecting adjustment of road use.

(a) When the United States exercises the right received under this paragraph to use or to license any person to use a road of a permittee, the permittee or his successor in interest shall not unreasonably obstruct the United States or such licensee in such use. If there has been no agreement under § 2812.3-7 covering such matters, the permittee shall have the right to prescribe reasonable operating regulations, to apply uniformly as between the permittee and such licensee, covering the use of such road for such matters as speed and load limits, scheduling of hauls during period of use by more than one timber operator, coordination of peak periods of use, and such other matters as are reasonably related to safe operations and protection of the road; if the capacity of such road should be inadequate to accommodate the use thereof which such licensee and permittee desire to make concurrently, they shall endeavor to adjust their respective uses by agreement.

(b) If the permittee and such licensee are unable to agree as to the reasonableness of such operating regulations or on the adjustment of their respective uses where the capacity of the road is inadequate to accommodate their concurrent use, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 2812.4-4.

(c) The arbitrators may make such disposition of a dispute involving the reasonableness of such operating regulations as appears equitable to them, taking into account the capacity and the construction of the road and the volume of use to which it will be subjected. In the determination of a dispute arising out of the inadequacy of the capacity of a road to accommodate the concurrent use by a permittee and a licensee, the arbitrators may make such disposition thereof as appears equitable to them, taking into account, among other pertinent facts, the commitments of the permittee and the licensee with respect to the cutting and removal of the timber involved and the disposition of the products derived

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therefrom; the extent to which each of the parties may practicably satisfy any of the aforesaid commitments from other timber currently controlled by him; the past normal use of such road by the permittee; the extent to which federal timber has contributed to the amortization of the capital costs of such road; and the extent to which the United States or its licensees have enlarged the road capacity.

§ 2812.4-4 Arbitration procedure.

(a) Within 10 days after the delivery of a written request for arbitration under § 2812.4-1 or § 2812.4-3 of this subpart each of the parties to the disagreement shall appoint an arbitrator and the two arbitrators thus appointed shall select a third arbitrator. If either party fails to appoint an arbitrator as provided herein, the other party may apply to a court of record of the State of Oregon for the appointment of such an arbitrator, as provided by the laws of such State. If within ten days of the appointment of the second of them, the original two arbitrators are unable to agree upon a third arbitrator who will accept the appointment, either party may petition such a court of record of the State of Oregon for the appointment of a third arbitrator. Should any vacancy occur by reason of the resignation, death or inability of one or more of the arbitrators to serve, the vacancy shall be filled according to the procedures applicable to the appointment of the arbitrator whose death, disability, or other inability to serve, created the vacancy.

(b) By mutual agreement, the parties may submit to a single arbitration proceeding controversies arising under both §§ 2812.4-1 and 2812.4-3.

(c) The arbitrators shall hear and determine the controversy and make, file, and serve their award in accordance with the substantive standards prescribed in §§ 2812.4-1 and 2812.4-3, for the type of controversy involved and in accordance with the procedures established by the laws of the State of Oregon pertaining to arbitration proceedings. A copy of the award shall also be served at the same time upon the authorized officer or the State Director, either personally or by registered mail.

(d) Costs of the arbitration proceedings shall be assessed by the arbitrators against either or both of the parties, as may appear equitable to the arbitrators, taking into account the original contentions of the parties, the ultimate decision of the arbitrators and such other matter as may appear relevant to the arbitrators.

(35 FR 9638, June 13, 1970, as amended at 41 FR 21642, May 27, 1976]

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§ 2812.5 Payment to the United States, bond.

§ 2812.5-1 Payment required for O. and C. timber.

An applicant will be required to pay to the Bureau of Land Management, in advance of the issuance of the permit, the full stumpage value as determined by the authorized officer of the estimated volume of all timber to be cut, removed, or destroyed, on O. and C. lands in the construction or operation of the road.

§ 2812.5-2 Payment to the United States for road use.

(a) A permittee shall pay a basic fee of \$5 per year per mile or fraction thereof for the use of any existing road or of any road constructed by the permittee upon the right-of-way. If the term of the permit is for 5 years or less, the entire basic fee must be paid in advance of the issuance of the permit. If the term of the permit is longer than 5 years, the basic fee for each 5-year period or for the remainder of the last period, if less than 5 years, must be paid in advance at 5-year intervals:

Provided, however, That in those cases where the permittee has executed under §§ 2812.3-1 to 2812.3-5 an agreement respecting the use of roads, rights-of-way or lands, no such basic fee shall be paid: *Provided further,* This paragraph shall not apply where payment for road use is required under § 2812.3-1(b).

(b) Where the permittee receives a right to use a road constructed or acquired by the United States, which road is under the administrative jurisdiction of the Bureau of Land Management, the permittee will be required to pay to the United States a fee to be determined by the authorized officer who may also fix the rate at which payments shall be made by the permittee during his use of the road. The authorized officer shall base his determination upon the amortization of the replacement costs for a road of the type involved, together with a reasonable interest allowance on such costs plus costs of maintenance if furnished by the United States and any extraordinary costs peculiar to the construction or acquisition of the particular road. In the case of federally acquired or constructed access roads, an allowance representing a reasonable allocation for recreational or other authorized uses shall be deducted from the replacement costs of the road before the amortization item is computed. A similar allowance and deduction shall be made in cases involving roads constructed as a part of a timber sale contract when, and if, subsequent to completion of such contract any such road becomes subject to recreational or other authorized uses. In arriving at the amortization item, the authorized officer shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved, and the volume of timber currently merchantable which probably will be moved from all sources over such road: *Provided, however,* That this subdivision shall not apply where the permittee transports forest products purchased from the United States through the Bureau of Land Management, or

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where payment for such road use to another permittee is required under this subpart 2812: *Provided further*, That where the United States is entitled to charge a fee for the use of a road, the authorized officer may waive such fee if the permittee grants to the United States and its licensees the right to use, without charge, permittee's roads of approximately equal value as determined under the methods provided in this subdivision and § 2812.4-1(b), as may be applicable.

(c) If an application is filed to use a road built on O. and C. lands by the applicant or his predecessor in interest under a permit which has expired, the authorized officer may issue a new permit which provides that as to such road the applicant's road use payments shall be determined in accordance with paragraph (b) of this section except that he shall be required to pay a road use fee which is adequate to amortize only his proportionate share of any capital improvements which have been or may be placed on the road by the United States or its licensees together with a reasonable interest allowance thereon plus cost of maintenance if furnished by the United States: *Provided, however*, That if the application is for use of a road which has been built by a predecessor in interest the permit shall provide that the applicant may use the road only for the purpose of reaching the lands of the predecessor in interest that were served by the road. As a condition for the granting of such a permit, the applicant must comply with §§ 2812.3-1 to 2812.3-5 to the extent that rights-of-way and road use rights are needed to manage lands of the United States or to remove timber therefrom.

§ 2812.5-3 Bonds in connection with existing roads.

An applicant for permit or a permittee desiring to use an existing road owned or controlled by the United States, shall prior to such use post a bond on a form prescribed by the Director. The amount of the bond shall be determined by the authorized officer but in no event less than five hundred dollars (\$500) per mile or fraction thereof. The bond shall be executed by an approved corporate surety, or the permittee may deposit an equivalent amount in cash or negotiable securities of the United States and the bond shall be conditioned upon compliance with subpart 2812 and the terms and conditions of the permit.

§ 2812.6 Approval and terms of permit.**§ 2812.6-1 Approval.**

(a) Upon the applicant's compliance with the appropriate provisions of this paragraph and if it is determined that the approval of the application will be in the public interest, the authorized officer may, in his discretion, issue an appropriate permit, upon a form prescribed by the Director.

(b) The authorized officer may waive the requirements of §§ 2812.1-2 (c) and (e) and 2812.5-3 in the case of a natural person who applies for a right-of-way for

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not to exceed a period of twelve weeks. Not more than one such waiver shall be allowed in each consecutive twelve calendar months on behalf of or for the benefit of the same person.

§ 2812.6-2 Terms and conditions of permit.

(a) As to all permits: Every permittee shall agree:

(1) To comply with the applicable regulations in effect as of the time when the permit is issued and, as to the permittee's roads as to which the United States has received rights under §§ 2812.3-1 to 2812.3-5 with such additional regulations as may be issued from time to time relating to the use of roads for the purpose of access by properly licensed hunters and fishermen and by other recreationalists to lands of the United States in the O. and C. area which are suitable for such recreational purposes, where such use will not unreasonably interfere with the use of the road by the permittee for the transportation of forest products or unduly enhance the risk of fire, collision, or other hazards on such road and on lands in the vicinity thereof. If, notwithstanding the request of the authorized officer that the permittee allow use of a road in conformity with such additional regulations the permittee shall unreasonably withhold his assent, the authorized officer shall refer the disagreement through the proper channels to the Director of the Bureau for his consideration, and, if the Director concurs in the conclusion of the authorized officer and if the matter is still in dispute, he shall refer the matter to the Secretary of the Interior for his consideration. In the event of the Secretary's concurrence in the conclusions of the authorized officer, and if the permittee nevertheless unreasonably withholds such assent, the United States may institute such judicial proceedings as may be appropriate to enforce said regulations.

(2) Not to cut, remove, or destroy any timber not previously purchased on the right-of-way without having first obtained specific authority from the authorized officer and making payment therefor.

(3) To take adequate precaution to prevent forest, brush, and grass fires; to endeavor with all available personnel to suppress any fire originating on or threatening the right-of-way on which a road is being used or constructed by the permittee or any fire caused by the permittee; to do no burning on or near the right-of-way without State permit during the seasons that permits are required and in no event to set fire on or near the right-of-way that will result in damage to any natural resource or improvement.

(4) To submit to arbitration proceedings and to be bound by the resulting arbitral awards, pursuant to §§ 2812.4-1, 2812.4-3, and 2812.4-4.

(5) In the event that the United States acquires by purchase or eminent domain the land or any interest therein, over which there passes a road which the United States has acquired the right to use under §§ 2812.3-1 to 2812.3-5 of this subpart to waive compensation for the value of the road, equivalent to the

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proportion that the amount the United States has contributed bears to the total actual cost of construction of the road. Such contribution shall include any investment in or amortization of the cost of such road, or both, as the case may be, made by the United States or a licensee either by way of direct expenditures upon such road, or by way of payment United States or a licensee to the permittee, or by way of allowance made by the United States to the permittee in any timber sales contract for such amortization or capital investment.

(6) To construct all roads and other improvements as described in the application for the permit, except as the authorized officer may authorize modification or abandonment of any such proposed construction.

(7) To use the permit and right-of-way afforded subject to all valid existing rights, to such additional rights-of-way as may be granted under this paragraph to a reservation of rights-of-way for ditches and canals constructed under authority of the United States.

(8) Not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and to require an identical provision to be included in all subcontracts.

(9) Except as the authorized officer may otherwise permit or direct to clean up and remove from the road and right-of-way within six months after the expiration or other termination of the permit, all debris, refuse, and waste material which may have resulted from his operations and use of said road; to repair all damage to said road resulting directly or indirectly from his use thereof; and to remove therefrom all structures, timbers, and other objects that may have been installed or placed thereon by him in connection with said operations or use; *Provided, however,* That the road and all usable road improvements shall be left in place.

(10) Upon request of an authorized officer, to submit to the Bureau within 30 days with permission to publish, the detailed terms and conditions, including the fee which the permittee will ask as a condition of such licensee's use for the removal of forest products over any road or right-of-way which the United States and its licensees have acquired a right to use under §§ 2812.1-3 to 2812.1-5.

(11) To grant to the United States, upon request of an authorized officer in lieu of the rights-of-way across legal subdivisions granted pursuant to §§ 2812.1-3 to 2812.1-5, such permanent easements on specifically described locations as may be necessary to permit the Bureau to construct roads on such legal subdivisions with appropriated funds: *Provided,* That at the time of the grant of such permanent easements the Bureau shall release, except for necessary connecting spur roads, the rights-of-way across such legal subdivisions previously granted: *Provided further,* That if the United States builds a road on such permanent easements it shall pay for any timber of the permittee which is cut, removed, or destroyed in accordance with § 2812.4-2. The authorized officer shall

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waive the requirement under this paragraph, however, if the permittee makes a satisfactory showing to the authorized officer that he does not own a sufficient interest in the land to grant a permanent easement, and that he has negotiated therefor in good faith without success.

(b) As to permits for the use of an existing road: In addition, every permittee to whom a permit is issued for the use of an existing road is required to agree:

(1) To maintain such a road in an adequate and satisfactory condition or to arrange therefor with the other users of the road. In the absence of satisfactory performance, the authorized officer may have such maintenance work performed as may be necessary in his judgment, determine the proportionate share allocable to each user, and collect the cost thereof from the parties or the sureties on the bonds furnished by said parties.

(2) Upon the expiration or other termination of his right to its use, to leave said road and right-of-way in at least as good a condition as existed prior to the commencement of his use.

§ 2812.7 Assignment of permit.

Any proposed assignment of a permit must be submitted in duplicate, within 90 days after the date of its execution, to the authorized officer for approval, accompanied by the same showing and undertaking by the assignee as is required of an applicant by §§ 2812.1-2 and 2812.3-1 to 2812.3-5, and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the permit and the applicable regulations of the Department of the Interior in force as of the date of such approval of the assignment.

[35 FR 9638, June 13, 1970, as amended at 41 FR 21642, May 27, 1976]

§ 2812.8 Cause for termination of permittee's rights.**§ 2812.8-1 Notice of termination.**

(a) The authorized officer in his discretion may elect upon 30 days' notice to terminate any permit or right-of-way issued under this paragraph if:

(1) In connection with the application made therefor, the applicant represented any material fact knowing the same to be false or made such representation in reckless disregard of the truth; or

(2) A permittee, subsequent to the issuance of a permit or right-of-way to him, represents any material fact to the Bureau, in accordance with any requirement of such permit or this paragraph, knowing such representation to be false, or makes such representation in reckless disregard of the truth.

(b) The authorized officer in his discretion may elect to terminate any permit or right-of-way issued under this paragraph, if the permittee shall fail to comply with

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any of the provisions of such regulations or make defaults in the performance or obligation of any of the conditions of the permit, and such failure or default shall continue for 60 days after service of written notice thereof by the authorized officer.

(c) Notice of such termination shall be served personally or by registered mail upon the permittee, shall specify the misrepresentation, failure or default involved, and shall be final, subject, however, to the permittee's right of appeal.

(d) Termination of the permit and of the right-of-way under this section shall not operate to terminate any right granted to the United States pursuant to this paragraph, nor shall it affect the right of the permittee, after the termination of his permit and right-of-way to receive compensation and to establish road operating rules with respect to roads controlled by him which the United States has the right to use and to permit its licensees to use; nor shall it relieve the permittee of his duty under this paragraph, to submit to and be bound by arbitration pursuant to §§ 2812.4-1, 2812.4-3, and 2812.4-4.

§ 2812.8-2 Remedies for violations by licensee.

(a) No licensee of the United States will be authorized to use the roads of a permittee except under the terms of a timber sale contract or a cooperative agreement with the United States which will require the licensee to comply with all the applicable provisions of this paragraph, and any agreements or awards made pursuant thereto. If a licensee fails to comply with the regulations, agreements, or awards, the authorized officer will take such action as may be appropriate under the provisions of the timber sale contract or cooperative agreement.

(b) A permittee who believes that a licensee is violating the provisions of such a timber sale contract or cooperative agreement pertaining to use of the permittee's roads, rights-of-way, or lands, may petition the authorized officer, setting forth the grounds for his belief, to take such action against the licensee as may be appropriate under the contract or the cooperative agreement. In such event the permittee shall be bound by the decision of the authorized officer, subject, however, to a right of appeal pursuant to § 2812.9 and subject, further, to the general provisions of law respecting review of administrative determinations. In the alternative, a permittee who believes that a licensee has violated the terms of the timber sale contract or cooperative agreement respecting the use of the permittee's roads may proceed against the licensee in any court of competent jurisdiction to obtain such relief as may be appropriate in the premises.

§ 2812.8-3 Disposition of property on termination of permit.

Upon the expiration or other termination of the permittee's rights, in the absence of an agreement to the contrary, the permittee will be allowed 6 months in which to remove or otherwise dispose of all property or improvements, other than the road and usable improvements to the road, placed by him on the right-of-way, but if not

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removed within this period, all such property and improvements shall become the property of the United States.

§ 2812.9 Appeals.

An appeal pursuant to part 4 of 43 CFR Subtitle A, may be taken from any final decision of the authorized officer, to the Board of Land Appeals, Office of the Secretary.

[41 FR 29123, July 15, 1976]

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II. GLOSSARY OF TERMS AND LIST OF ACRONYMS

Section A. of this chapter contains a glossary of terms that are used throughout the handbook.

Section B. contains a list of acronyms used in this handbook and a description for each.

The glossary definition terms are commonly used in the O&C Logging Road Right-of-Way Program. The definitions are specific to this program and not necessarily germane otherwise. Some of the definitions have been extracted from the regulations at 43 CFR 2812 and 43 CFR 5400. See 43 CFR §2812.0-5 for definitions in the regulations.

The terms in the acronyms section are used somewhere in the handbook and are commonly used by the Bureau of Land Management.

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A. Glossary of Terms

accord: An agreement reached between the assignor and assignee(s), parties to an assignment of a permit. The accord is the “meeting of the minds” between the parties in an assignment regarding such issues as: 1) road control, 2) collection of fees owed by the U.S., 3) payment of fees owed to the U.S., and 4) in areas of intermingled assignor and assignee ownership, the identification of common use of U.S. roads after the assignment, etc. The agreements reached in the accord are usually captured in the written assignment itself or as an attachment or exhibit.

administrative decision: A written document, signed by a BLM authorized officer under delegated authority, which disposes of a stated issue or issues in a case situation (BLM Manual 1841.05A).

Agreement [capitalization emphasized]: The Right-of-Way and Road Use Agreement (hereafter referred to in this handbook as Agreement). A two-fold grant: a) to the United States, pursuant to 43 CFR 2812.3-1(a), rights-of-way for use by the United States, its licensees and permittees, and b) to the United States and its licensees, pursuant to 43 CFR 2812.3-1 b. the rights to use roads and rights-of-way owned or controlled by the Permittee across for the management and removal of timber and other forest products (including mineral products) from lands of the United States. The Agreement is the half of the “reciprocal right-of-way agreement” (see definition below) which contains the U.S. rights over private lands, roads or rights-of-way. An Agreement is a special form of nonexclusive easement to the U.S. The Agreement is the half of the reciprocal right-of-way agreement containing rights for the U.S.

agreement area: A geographic area depicted on a map (typically referred to as Exhibit C) which forms a part of a reciprocal right-of-way agreement. For those reciprocal right-of-way agreements which do not have an agreement area boundary specifically identified on the map, the agreement area constitutes all the lands shown on the map.

agreement land: Land or interest in land owned or controlled by the permittee and listed on Schedule 2 of the Agreement and Permit.

allocation: The setting apart or segregation of a portion of the road replacement cost, capital expenditure, or road maintenance fees attributable to road uses other than log hauling (i.e. recreation and other public uses). The net effect of allocation is that a permittee is not required to share in road costs which are not directly attributable to hauling of timber and other forest products.

amendment: An administrative action associated with a reciprocal right-of-way agreement or unilateral permit. Amendments are prepared for several reasons: 1) to modify a Schedule of Land to delete or add lands, roads or rights-of-way (and the

associated Exhibit C map), 2) to add, delete, or revise the provisions in an Exhibit A or Exhibit B of a reciprocal right-of-way agreement, or c) to revise recorded accessory documents such as the license agreement. An amendment document is executed by both parties to the reciprocal right-of-way agreement, acknowledged, and recorded in the appropriate county or counties.

amortization: To write off, over time, the replacement cost of, or capital expenditure on, a road through the payment of a road use fee.

amortization rate: See “road use fee”

appropriated funds: Funds authorized by Congress for a specific purpose.

arbitration agreement: An older form of reciprocal right-of-way agreement in which the conditions of road use and construction are left to be agreed upon between the permittee and the licensee of the U.S. Disputes are settled by arbitration in accordance with the regulations (43 CFR §2812).

assignee: The party who applies for and receives an assignment of all or part of the rights, title and interest in an O&C permit (either unilateral or reciprocal).

assignment: The transfer of rights, title, interests and responsibilities in an O&C permit. An assignment may be made in whole or in part and assigned to one or more parties. All assignments must be approved by the U.S.

assignor: A permittee who conveys or purports to convey all or part of their rights, title and interest in a permit.

capital expenditure: The costs associated with the betterment of a road, or the relocation or replacement of a road or road facility. Costs may include road improvement, facility upgrading, and "catastrophic maintenance."

catastrophic maintenance: Work activities necessary to return a roadway or bridge facility back to serviceability following a failure that is sudden and complete due to an external cause. Examples include road washouts, avalanches, or rockslides. Catastrophic maintenance is not due to structural deficiencies, normal physical deterioration, or lack of maintenance.

construction plat: See right-of-way plat.

contract purchaser: A purchaser of land under a “land sales contract.” Most often the purchaser gets an immediate possessory interest in the land but the seller remains on title and retains an interest in the property until the contract is fully satisfied.

deficit share: See percentage share.

deficit party: A party with a deficit share. Once that party's deficit share is paid off (or swapped out), that party is no longer a deficit party.

detailed agreement: An older form of reciprocal right-of-way agreement in which all anticipated matters concerning road use are described and every known or probable road use item is agreed upon.

discretion: The ability or legal authority of a party to a reciprocal right-of-way agreement to make decisions or choices, i.e., to approve, modify or reject proposed actions.

exclusive easement: The permanent easement form attached to a Permit for the purposes described in 43 CFR §2812.6-2(a)(11).

fee calculation: See road use fee calculation.

forest products: Timber or other vegetative resources derived from timber (i.e., firewood, chips, poles, cull, and salvage material). Forest products may also include mineral materials (i.e. sand, gravel, and riprap) only to the extent they are to be used in connection with logging, and the manufacturing of lumber (see definition of tramroads). Mineral material as described herein does not include locatable minerals (such as gold, silver, iron ore, etc.) or the commercial removal of mineral material from the forest for delivery to the market place.

grantor: The party who has granted to the U.S. the rights in the Agreement.

guyline: A wire rope cable used to secure a tower or spar tree to stumps, deadman anchors, or heavy equipment for cable logging purposes.

interlocutory decision: A decision in which there are one or more issues which still need to be resolved before the decision is final (sometimes referred to as a "conditional decision;" that is, the applicant must meet certain conditions or perform certain actions for the decision to become final).

interest allowance: A one-time simple interest "surcharge" (currently at 3%) included in the road use fee calculation in accordance with the regulations at 43 CFR 2812.

license agreement: An agreement between a **licensee** (purchaser of U.S. forest products) and a **licensor** (permittee) detailing the terms and conditions of use (by the licensee) of a permittee's roads and lands under an Agreement. The form of the license agreement is negotiated between the United States and the permittee and may be revised only by mutual written agreement. Some reciprocal right-of-way agreements do not include a license agreement.

licensee: Any person who is authorized to remove timber or forest products from lands of the U.S. and executes a license agreement with the licensor. A licensee is not an agent of the U.S.

licensor: A permittee who executes a license agreement with the licensee.

maintenance fee: A fee charged for the upkeep of a road or road improvement. A maintenance fee is typically charged for commercial use on a rate per unit basis.

management: Police protection, fire pre-suppression and suppression, inspection, cruising, reforestation, thinning, stand improvement, inventorying, surveying, construction and maintenance of improvements, disposal of land, the eradication of forest insects, pests and disease, and other activities of a similar nature.

MBF (or M. Bd. Ft.): Thousand Board Feet. This is a measurement unit of timber used for the sale of timber, and calculating road use and maintenance fees. It is based on Scribner Decimal C log scale with taper allowance for logs longer than sixteen (16') feet or a reasonable conversion thereof.

merchantable timber: That timber which is marketable according to prevailing utilization standards in the area and measured in thousand board feet Scribner Decimal C log scale with taper allowance for logs longer than sixteen (16) feet, or a reasonable conversion thereof.

minor forest products: Commonly referred to as minor (or special) forest products and includes vegetative material including grasses, seeds, roots, bark, berries, mosses, ferns, edible mushrooms, tree seedlings, transplants, poles, and firewood (fuel wood).

nondiscretionary action: An action for which the either party to reciprocal right-of-way permit or unilateral permit has no (or little) discretion to deny, approve or modify an action except for limited circumstances or reasons found in regulations or reciprocal right-of-way agreement provisions, etc.

O&C lands: Lands administered by the BLM which are in Oregon and in and west of Range 8 E., Willamette Meridian, Oregon, including the Revested Oregon and California Railroad, Reconveyed Coos Bay Wagon Road Grant Lands, and other public lands administered by the U.S. under the provisions of the Act of August 28, 1937 (43 U.S.C. §1181a and §1181b). See 43 CFR §2812.0-5(e).

O&C permit: An O&C Logging Road Right-of-Way Permit issued pursuant to 43 CFR 2812. When described in this Handbook as an O&C permit (or as "permit"—lower case "p"), it generically refers to either a [reciprocal] Permit or unilateral permit.

percentage share: That proportion of the amortization of a road replacement cost or road improvement cost which is calculated as a percentage of the total volume of merchantable timber tributary to the road or road improvement attributable to each landowner.

Permit [capitalization emphasized]: The O. & C. Logging Road Right-of-Way Permit; a grant from the U.S. to an applicant (permittee) to construct and/or use roads on U.S. lands or interests in land for the management and removal of timber and other forest products owned or controlled by the applicant/permittee. This is the half of the “reciprocal right-of-way agreement” (see definition below) which contains the permittee rights over U.S. lands, roads or rights-of-way. The Permit is “merely a nonexclusive license to transport forest products owned by the permittee” (43 CFR §2812.2-1).

permit [lower case “p”]: see O&C permit.

permittee: A party who holds an O&C Logging Road Right-of-Way Permit (can be either reciprocal or unilateral).

permittee road: A road owned or controlled by a permittee.

proportionate share: See percentage share.

reciprocal right-of-way agreement: Documents which exchange access rights between the U.S. and a permittee pursuant to the regulations at 43 CFR 2812. A reciprocal right-of-way agreement generally consists of an Agreement, a Permit, an exclusive easement, a License Agreement, and associated Exhibits and Schedules (see Chapter V.).

recital: A statement of facts used in various O&C right-of-way documents (such as amendments, assignment, etc.) in order to explain the reasons and/or historical information upon which the transaction is based. Recitals are found in the “Whereas” section of the document.

Regional Solicitor: The legal counsel (attorney) for the Dept. of Interior, Pacific Northwest Region, who provides legal opinions and guidance on agency matters.

right-of-way plat: The map filed pursuant to the regulations at 43 CFR §2812.1-2(c) for construction or improvement of a road, landing, etc. on either U.S. or permittee lands. This is sometimes referred to as a crossing plat or construction plat.

road control: The right to use the road and authorize third parties to use the road subject to the rights of the road owner (see “road ownership” definition).

road improvement: Work and materials expended to better a road by increasing its construction standards when compared to its standards at the time of the original calculation of percentage shares. It may include: widening; surfacing; the addition of drainage structures and turnouts; and bridge replacement.

road maintenance: Work and materials expended to keep a road at its construction standards in effect at the time of the original calculations of percentage shares. Examples may include: 1) blading and shaping, 2) cleaning of ditches, catch basins and culverts, 3) brush cutting, 4) surface patching and pot hole repair, 5) surface replacement, 6) culvert replacement; 7) minor slide removal , 8) slip-out repair, and 8) bridge renovation.

road ownership: The rights of road ownership include: 1) use of the road, 2) first right of maintenance on the road and collecting pro-rata expenses from other users (maintenance and/or surface replacement fees), or allowing for operator maintenance, 3) collection of road use fees from other users for amortization of the replacement cost of the road, and 4) establishing reasonable traffic regulations for the use of the road which are applicable to all users of the road, including the road owner.

road replacement cost: The replacement cost of the road including extraordinary costs peculiar to the construction or acquisition of the road or right-of-way but excluding any capital investment made in the road by the [permittee—if it is a U.S. road] or [U.S. or its licensees if it is a permittee road]. The replacement cost is calculated as of the time of first use by the using party.

road use fee: A fee, expressed in dollars per thousand board feet (MBF or equivalent—Scribner Decimal C log rule), charged for the amortization of a road replacement cost or road improvement cost. A road use fee is charged when a road or road improvement is used until the using party's percentage share is paid off.

road use fee calculation: A procedure used to determine the percentage (deficit) shares and amortization rate (road use fee per MBF) of a road replacement value or cost of improvement using a formula based on the criteria defined in 43 CFR §2812.5-2(b) and the specific formulas found in reciprocal right-of-way agreements.

Schedule 1: A Schedule of Land (attached to a reciprocal right-of-way agreement) which lists the legal descriptions of U.S. lands, roads, or rights-of-way over which a permittee has been granted rights in a Permit. Some reciprocal right-of-way agreements may use an alphabetical designation for the Schedule rather than numerical.

Schedule 2: A Schedule of Land (attached to a reciprocal right-of-way agreement) which lists the legal descriptions of applicant/permittee lands, roads, or rights-of-way over which the U.S. has been granted rights in an Agreement. Some reciprocal

right-of-way agreements may use an alphabetical designation for the Schedule rather than numerical.

Schedule 3: A Schedule of Land (attached to a reciprocal right-of-way agreement) which lists the legal descriptions of U.S. lands, roads, or rights-of-way to which certain provisions of an Agreement or Permit may attach which are in addition to the original provisions applicable to Schedule 1 and Schedule 2 lands.

Scribner Decimal C Log Rule: a log scale method based on diagramming the number of boards (one-inch thick, with allowance for slabs, edgings and saw kerf) that could be recovered from a log of a given diameter and length. The rule uses tens of board feet as its basic unit of measure. It rounds off board foot volumes to the nearest 10 board feet and drops the remaining cipher. The board foot volume is then determined by totaling the volumes of all the boards.

semi-detailed agreement: A current form of reciprocal right-of-way agreement which spells out or provides methods to resolve the known problem areas such as road use fees, maintenance fees, bonds, insurance, traffic rules, etc. Settlement of unforeseen problems may be accomplished through amendments, arbitration, and/or mutual agreement by the parties.

supplement: An administrative document used to implement certain terms and conditions included in a reciprocal right-of-way agreement. The most common supplements are road use fee calculations and right-of-way plats.

swap out: The exchange of deficit share balances (in a road or improvement) of the U.S. and a permittee for the purpose of obtaining free use of each other's roads or road improvements.

system fee: An amortization strategy in which a fixed (negotiated) road use fee is established and paid by a deficit party until that party's total deficit share is paid off. A system fee applies to all roads in the system and not on a road-by-road basis.

system fee agreement: A reciprocal right-of-way agreement in which the amortization record keeping is done on a ledger basis instead of a road-by-road basis. In a system fee ledger, only one party has a deficit balance at any given time. In a system fee agreement, the road use fee/MBF is negotiated (see system fee above). Road use fee calculations are still completed, but only to determine a deficit balance of a road replacement cost or capital improvement, which after the fee calculation is accepted by the using party, will be posted against that party's side of the system fee ledger.

T & E Species: Threatened & Endangered Species. According to the Endangered Species Act (ESA), species may be listed as either "endangered" or "threatened." **Endangered** is defined as a species that is in danger of extinction within its native range. **Threatened** is defined as a species that is likely to become endangered,

potentially in the near term, within part or a majority of its native range. All species of plants and animals, except pest insects and non-native species, can be listed as endangered or threatened.

tailhold: An anchor (usually trees or stumps) used to secure the end of a log yarding (tramway) cable. Anchors may also include mechanical devices such as heavy equipment.

tie road: A U.S. road connecting two or more tributary areas and formally designated by the BLM. Tie roads are exempt from amortization.

timber: Standing trees, down trees, or logs which are capable of being measured in board feet (BF).

tramroads (definition from 43 CFR §2812.0-5(f)): include tramways, and wagon or motor truck roads to be used in connection with logging, and the manufacturing of lumber; it also includes railroads to be used principally for the transportation, in connection with such activities, of the property of the owner of such railroad.

tramway: A system for carrying logs or other forest products using traveling carriages or cars suspended from an overhead cable or cables and supported by one or more towers, hangers, anchors, guylines, etc.

tributary area: For purposes of amortization, a geographic area of forest land, and existing or potential road system or logical extensions of either, where the merchantable timber from such lands has moved over the road system and where the currently merchantable timber probably will be moved over a particular road or road improvement.

tributary timber: The total volume of timber which has been moved over a road and the volume of tributary timber currently merchantable which probably will be moved over the road or road improvement). Tributary timber is used to calculate the percentage shares of the U.S. and the permittee in the amortization of a road or road improvement. Note: Since entering into early reciprocal right-of-way agreements, some new federal requirements have been established. These include environmental considerations, spotted owl management areas, pesticide restrictions, other set-aside areas, etc. These items generally do not appreciably alter the ratios or land and timber tributary to a road system and should not be excluded or removed from tributary area determinations.

tripartite agreement: An agreement between the U.S., a permittee, and an independent contractor which enables the independent contractor to utilize a Permit to haul timber which was purchased from the permittee.

unilateral permit: An O&C Logging Road Right-of-Way Permit which does not involve a reciprocal right-of-way agreement (see Chapter IV.). A unilateral permit is

“merely a nonexclusive license to transport forest products owned by the permittee” (43 CFR §2812.2-1).

U.S. road: A road owned or controlled by the United States.

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B. List of Acronyms

ACEC: Area of Critical Environmental Concern. FLPMA Section 103 (43 U.S. Code 1702([a]) and 43 CFR 1601.0-5(a) describes ACEC's as "areas within the public lands where special management attention is required to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other nature systems or processes, or to protect life and safety from natural hazards." Only BLM-administered lands are included in ACEC boundaries. The ACEC designation is an administrative designation that is accomplished through the land use planning process.

AO: Authorized Officer--an employee of the BLM to whom the authority to take or approve action has been delegated.

BLM: Bureau of Land Management, an agency of the United States Department of Interior. The BLM is responsible for administering the O&C Logging Road Right-of-Way Program the regulations under 43 CFR 2812.

CBS: BLM's Collections and Billings System where all bills are processed, and if not paid, are subject to a specific collection process.

CX: Categorical Exclusion. "Categorical exclusions are categories of actions that Federal agencies have determined do not have a significant effect on the quality of the human environment (individually or cumulatively) and for which, therefore, neither an EA nor an EIS is required (40 CFR 1508.4). A CX is a form of NEPA compliance, without the analysis that occurs in an EA or an EIS. It is not an exemption from the NEPA." (BLM NEPA Handbook, H-1790-1, p. 17) The term is sometimes also used interchangeably to mean the review of a proposed action to determine whether a specific categorical exclusion applies, and whether any "extraordinary circumstances" apply. (See *also* 40 CFR 1508.4)

CEQ: Council on Environmental Quality. Congress established CEQ within the Executive Office of the President as part of the National Environmental Policy Act of 1969 (NEPA). In addition to coordinating federal environmental efforts and providing environmental policy advice to the president, the CEQ oversees implementation of NEPA nationally, and promulgates the regulations that govern NEPA. See: <http://www.whitehouse.gov/administration/eop/ceq/>.

DR: Decision Record. The document the BLM has chosen to use to document decisions for actions for which an EA was completed (as opposed to an EIS, which requires a ROD). NEPA and the NEPA Regulations do not establish specific requirements governing DR, but in general, a DR is generally less complex than a ROD. See the BLM NEPA Handbook, H-1790-1, p. 84, for more details on DR's.

EA: Environmental Assessment. Under the NEPA regulations, an EA is a public environmental analysis document that aids an agency comply with NEPA by providing sufficient evidence and analysis for a decision maker to determine whether an action will have significant environmental effects and would therefore require preparation of an Environmental Impact Statement (EIS) rather than preparation of a Finding of No Significant Impact (FONSI). (See 40 CFR 1508.9)

EIS: Environmental Impact Statement. Under the NEPA regulations, a public environmental analysis document that must be prepared for every major federal action significantly affecting the quality of the human environment. An EIS must first be issued as a Draft EIS, with an opportunity for public comment, and then as an Final EIS. A Final EIS provides multiple alternative actions from which a decision maker may choose, documents analysis of the environmental impacts of each alternative, and responds to public comments on the alternatives. A Record of Decision (ROD) is signed following issuance of a final EIS. (See 40 CFR 1508.11 and 42 UCS 4332(2)(C).)

ERFO: Emergency Relief for Federally Owned Roads (ERFO), The ERFO Program is intended to help pay the unusually heavy expenses associated with the repair and reconstruction of Federal roads and bridges seriously damaged by a natural disaster over a wide area or catastrophic failure. Federal, tribal, state, and local governments that have the authority to repair or reconstruct Federal roads may apply for ERFO funds.

FAMS: Facilities and Assets Management System. The BLM's data base that contains information on buildings, roads, and other facilities. This data base contains detailed information on roads such as control, surfacing, length, access rights, etc.

FBMS: BLM's Financial and Business Management System. Serves as a central business system to manage acquisitions, fleet, property, and budget.

FLPMA: Federal Land Policy and Management Act of October 21, 1976, as amended (Public Law 94-579, 90 Stat. 2743, 43 U.S.C. 1701 et seq.). The organic act for the BLM, which consolidated and articulated BLM's management responsibilities and established a multiple use, sustained yield mandate for public lands. FLPMA requires the BLM to develop land use plans (such as RMP's) to provide for the use and management of public lands. FLPMA specifically provides that in the event of a conflict between the O&C Act and FLPMA with regards to timber resource management, the O&C Act prevails.

FONSI: Finding of No Significant Impact. A public NEPA document an agency prepares briefly presenting the reasons why an action will not have a significant effect on the human environment and for which the agency will therefore not prepare an environmental impact statement (EIS) for the project (40 CFR 1508.13).

GTRN: Ground Transportation (GTRN) Geodatabase, Geographic Information System (GIS). This is the transportation layer of BLM's GIS data base. GTRN is linked to the roads data base in FAMS and uses attributes tied to line features to visually depict road segments and road data (such as road Nos., segment breaks, etc.) on a map.

LR2000: Legacy Rehost 2000 Data Base. This is the BLM's lands records data base.

MIS: Management Information System. This is a component of FBMS in which BLM plans and reports annual units of accomplishment into a central data base.

MO: Maintenance Organization. This is the BLM contracted unit which provides maintenance to BLM's roads, facilities and recreation sites.

MTP's: Master Title Plats--Large-scale graphic representations of current Federal ownership, agency jurisdiction, and rights reserved to the federal government on private land. Federal ownership of the subsurface mineral estate and acquisitions, exchanges, and sales involving federal lands are also identified. Rights granted or permitted to private parties for such commercial activities as road rights-of-way, power lines, pipelines, and communication sites are symbolized on the Master Title Plats. Private lands are identified with the original patent number reflecting ownership transfer out of federal jurisdiction. Supplemental Plats are created for portions of those Master Title Plats where detail is so dense that a larger cartographic scale is required. There are one or more Master Title Plats for each township in Oregon and Washington, except where the township falls completely within an Indian reservation or within a National Park. Land status information for these areas' exclusions is to be found with the appropriate agency, either the Bureau of Indian Affairs or the National Park Service. Master Title Plats and Historical Indices replaced Plat Books and Tract Books in the 1960s.

NBC: National Business Center is a service provider of the United States Department of the Interior. It was created in 2000 by the consolidation of three existing services centers within the Department of the Interior and supports more than 150 government agencies. NBC process all collections and payments for the Bureau of Land Management.

NEPA: The National Environmental Policy Act (NEPA) [42 U.S.C. 4321 et seq.] was signed into law on January 1, 1970. The Act establishes national environmental policy and goals for the protection, maintenance, and enhancement of the environment; and it provides a process for implementing these goals within the federal agencies. The Act also establishes the Council on Environmental Quality (CEQ). It requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions.

NOAA Fisheries: National Oceanic and Atmospheric Administration Fisheries (National Marine Fisheries Service (or NMFS)). NOAA Fisheries is a division within the U.S. Dept. of Commerce responsible for the stewardship of the nation's living marine resources and their habitat. NOAA Fisheries and USFWS share responsibility for implementing the Endangered Species Act (ESA). Generally in relation to ESA, NOAA Fisheries manages marine and anadromous species, while USFWS manages land and freshwater species.

RMOP: Road Maintenance Operations Plan. The annual work plan that the BLM Western Oregon prepares each fiscal year indicating to the Maintenance Operations organization which U.S. roads are to be maintained.

ROD: Record of Decision. A NEPA document, prepared after completion of an EIS, which states the authorized officer's decision, including which alternative was selected from the EIS (see 40 CFR 1505.2). A ROD is distinguished from a Decision Record (DR) in that a ROD is unique to the EIS process.

RMP: Resource Management Plan. The current form of land use plans the BLM uses to satisfy the land use planning requirements of FLPMA. See 43 CFR Part 1601.0-5(n).

SAC: Special Agent-in-Charge, BLM law enforcement position.

SRP: Serial Register page that is generated from LR2000 for a specific case by serial number assigned by LR2000. For reciprocal right-of-way agreements, the rights of the federal government are generally designated with a "PT" (for private land) suffix after the serial number. The permittee rights are generally designated with an "FD" (for federal land) suffix after the serial number.

T & E Species: Threatened & Endangered Species. (See definition in glossary)

TMO: Transportation Management Objective developed for all existing BLM-controlled roads, including BLM constructed roads on private lands. TMOs recommend one or several management actions for each Bureau-controlled road.

TMP: BLM's Western Oregon Transportation Management Plan. The TMP provides goals, objectives, and guidelines for managing the BLM's road system in western Oregon to ensure that BLM's transportation system will be developed and maintained to serve the needs of users in an environmentally sound manner and consistent with BLM's resource management documents and current governing regulations.

U.S.: United States of America (or United States).

USFWS: United States Fish and Wildlife Service. USFWS is a bureau within the United States Department of Interior responsible for conserving, protecting and

enhancing fish, wildlife and plants and their habitats. USFWS and NOAA Fisheries share responsibility for implementing the Endangered Species Act (ESA). Generally in relation to ESA, USFWS manages land and freshwater species, while NOAA Fisheries manages marine and anadromous species.

USDA-FS: U.S. Department of Agriculture, U.S. Forest Service.

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III. APPLICATIONS

A. Purpose

This chapter establishes guidelines for the filing, review, and processing of applications for O&C Logging Road Right-of-Way Permits (O&C permits or permits) filed pursuant to 43 CFR 2812. An O&C permit can be either unilateral or reciprocal.

If the AO has determined that reciprocal rights for the U.S. do not “appear necessary,” the permit that would be approved is a unilateral permit (see glossary). Chapter IV. provides the formatting requirements and post-authorization process for unilateral permits once the AO has made the formal decision to approve the permit.

If the AO has determined that reciprocal rights for the U.S. do “appear necessary,” the document that would be prepared would be a reciprocal right-of-way agreement (or a combined easement/unilateral permit as described in Section B.3. below). Chapter V. provides the formatting requirements for reciprocal right-of-way agreements.

B. Policy

1. O&C Permits for Tramroad Use Only (Management & Removal of Forest Products)

The issuance of O&C permits is limited to U.S. lands, roads, or rights-of-way only for the purposes of management and removal of timber and other forest products which are owned by the applicant (43 CFR §2812.2-1).

Rights-of-way for other purposes (such as residential ingress and egress, power lines, pipelines, waterlines, communication sites, etc.) should be authorized under Title V of FLPMA, pursuant to 43 CFR Parts 2800 and 2880.

2. Use of U.S. Lands Without a Permit is Trespass

Any use of O&C lands (in and west of Range 8 E., as defined in the regulations at § 2812.0-5) is considered to be trespass as shown below:

§ 2812.1-3 Unauthorized use, occupancy, or development.

Any use, occupancy, or development of the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (O & C) lands (as is defined in 43 CFR §2812.0-5(e)), for tramroads without an authorization pursuant to this subpart, or which is beyond the scope and specific limitations of such an authorization, or that cause unnecessary or undue degradation, is prohibited

and shall constitute a trespass as defined in § 2808.10 of this title. Anyone determined by the Authorized Officer to be in violation of this section shall be notified of such trespass in writing and shall be liable to the United States for all costs and payments determined in the same manner as set forth in subpart 2808 of this title. [Bold and underline added.]

Tramroads is defined in the regulations (43 CFR §2812.0-5) as:

(f) *Tramroads* include tramways, and wagon or motor-truck roads to be used in connection with logging, and the manufacturing of lumber; it also includes railroads to be used principally for the transportation, in connection with such activities, of the property of the owner of such railroad. [Underline added.]

In summary, any use of U.S. lands in the O&C area (in and West of Range 8 E.) for the commercial haul of timber without authorization shall constitute a trespass. There is no provision for or guidance in the 2812 regulations regarding casual use.

See Chapter XIV. for guidance in handling trespass cases associated with the 43 CFR 2812 regulations.

3. Applicant Must Grant Reciprocal Rights to U.S. (and its Licensees and Permittees) if it Appears Necessary

Chapter I., Section D.2.a., discusses the intent of the 43 CFR 2812 regulations and the need for reciprocity in order for both the U.S. and private timber operators to get timber to the marketplace. This section cites the regulations that establish the requirement for an applicant to grant reciprocal rights if the AO determines it “appears necessary.”

The regulations at 43 CFR §2812.0-6(d) state:

(d) Accordingly, to the extent that in the judgment of the authorized officer it appears necessary to accomplish these purposes [see Chapter I., Section D.2.a.], when the United States, acting through the Bureau of Land Management, grants a right-of-way across O. and C. lands to a private operator, the private operator will be required to grant to the United States for use by it and its licensees:

- (1) Right-of-way across lands controlled directly or indirectly by him;
- (2) The right to use, to the extent indicated in §§ 2812.3-5 and 2812.3-6, any portions of the road system or rights-of-way controlled directly or indirectly by the private operator which is adequate or can economically be made adequate to accommodate the probable normal requirements of both the operator and of the United States and its licensees, and which form an integral part of or may be added to the road system with which the requested right-of-way will connect;

(3) The right to extend such road system across the operator's lands to reach federal roads or timber; and

(4) In addition, in the limited circumstances set forth in §2812.3-2 of this subpart the right to use certain other roads and rights-of-way. The permit will describe by legal subdivisions the lands of the operator as to which the United States receives rights. In addition, the extent and duration of the rights received by the United States will be specifically stated in the permit and ordinarily will embrace only those portions of such road system, rights-of-way and lands as may be actually needed for the management and removal of federal timber, or other timber committed by a cooperative agreement to coordinated administration with timber of the United States. [Underline added.]

Also, the regulations at 43 CFR §2812.3-1 state:

§ 2812.3 Right-of-way and road use agreement.

§ 2812.3-1 Rights over lands controlled by applicant.

Where, in the judgment of the authorized officer, it appears necessary in order to carry out the policy set forth in § 2812.0-6, **he may require the applicant**, as a condition precedent to the issuance of the permit:

(a) To grant to the United States, for use by it and its licensees and permittees, rights-of-way across lands in the O. and C. area directly controlled by the applicant; and as to lands in such area which are indirectly controlled by him, either to obtain such rights for the United States or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and to waive as to the United States, its licensees and permittees any exclusive or restricted right he may have to such lands as are indirectly controlled by him. [Underline and bold added.]

In 43 CFR §2812.0-6(d) “. . . the private operator will be required to grant [reciprocal rights] to the United States for use by it and its **licensees** . . .”

In 43 CFR §2812.3-1, the AO “may require the applicant [to grant reciprocal rights], as a condition precedent to the issuance of the permit . . . for use by it [U.S.] and its [BLM’s] licensees **and permittees** . . .”

In either case, both sections of the cited regulations (§2812.3-1(a) and 43 CFR §2812.0-6(d)) give discretion to the AO to deny a permit if reciprocal rights (for the U.S., its licensees (and permittees) “appears necessary” and the applicant refuses to grant such rights.

Every application for a new permit shall be reviewed to determine if it “appears necessary” that reciprocal rights are needed by the U.S and its licensees (and permittees). (See Chapter V., Section C.) A permit shall only be approved if the necessary reciprocal rights are granted, if requested.

a. Options for Acquiring and Granting Reciprocal Rights

The BLM AO will determine which of the following two options would be the most appropriate for the acquiring and granting of reciprocal rights:

1) via a reciprocal right-of-way agreement under 43 CFR 2812 (see Chapter V.); or

2) via the U.S. acquiring an easement over the applicant's lands (with rights for licensee and permittees) and the U.S. issuing a unilateral permit to the applicant (see Chapter IV.)

When considering which of the above two options to pursue regarding the granting and acquiring of reciprocal rights with the applicant, the BLM AO should consider: the intent of the regulations (43 CFR §2812.0-6) to establish a reciprocal process “in order for both the U.S. and private timber operators to get their timber to the marketplace.”

Because of this, the U.S. should be requiring applicants to grant rights for the United States, licensees **and** third party permittees (per 43 CFR §2812.3-1(a). Option 1) above fulfills this requirement because of the granting clause (1.a) found in page 24 of the standard reciprocal right-of-way template (Form OR 2812-16—Illustration V-2).

If option 2) is chosen, the AO should ensure that the rights the U.S. is acquiring in the easement fulfills the requirement in 43 CFR §2812.3-1(a) which will enable the U.S. to authorize third party permittees to use U.S. roads constructed on the applicant's (permittee's) lands.

The AO must carefully evaluate which option best fulfills the intent of the regulations and the reciprocal right-of-way agreements.

b. Reserved

C. Defining When U.S. “Controls” a Road and Has Authority to Authorize Use

Before including a road in permits or rights-of-way authorized by the U.S., it is important to know whether the U.S. has sufficient rights to authorize use of that road and to understand the distinctions between road ownership and control (see glossary definitions) when processing applications and establishing fees associated with the individual permit.

This section defines what rights the U.S. has to: 1) authorize the use of certain roads, 2) collect road use and road maintenance fees (including surface replacement fees), and 3) amortize the replacement cost or cost of road improvement.

Illustration VIII-1 (Road Ownership and Control Matrix) describes different categories of road and identifies which party has the authority to control use and collect fees.

1. Roads Qualifying as U.S. Control.

The regulations at 43 CFR 2812 are applicable to U.S. lands or roads owned or controlled by the U.S. The glossary definition for “road control” found in Chapter II. is:

road control: The right to use the road and authorize third parties to use the road subject to the rights of the road owner (see “road ownership” definition).

Basically, U.S. can authorize use of : 1) any road on U.S. lands, and 2) any road on private lands where the U.S. has sufficient rights of control. As shown in Illustration VIII-1, the U.S. “controls” the road and can authorize use for category Nos. 1-4.

However, there are some considerations and limitations on the U.S. right to authorize use in some situations shown on Illustration VIII-1 and as briefly discussed below.

2. U.S. Authorizations under 43 CFR 2812

For category Nos. 1-4 on Illustration VIII-1, the U.S. may issue O&C permits (unilateral or reciprocal) for the purposes identified in the 43 CFR 2812 regulations.

For category Nos. 1-3, the U.S. may also: 1) determine first right of maintenance (and/or collect maintenance/surface replace fees), 2) establish the terms and conditions of use, 3) amortize the replacement or improvement costs, and 4) set reasonable traffic regulations.

For category No. 3 (road built by U.S. on permittee land under a reciprocal Agreement), the U.S. may authorize third party permittee use based on the regulations and the granting clause as identified in item 1.a) of the face sheet of the Agreement (see page 24 of Form OR 2812-16 (Illustration V-2)) as follows:

1.a. To the United States, pursuant to 43 CFR 2812.3-1(a), rights-of-way across the following-described lands for use by the United States, its licensees and permittees, for the following specified periods of time:

For category No. 4 (road built by current permittee on U.S. land), any O&C permits issued by the U.S. are to be issued subject to the road owner (constructing permittee) “establishing reasonable traffic regulations for the use of the road which are applicable to all users of the road, including the road owner.” Any such permits issued to third parties over this category road should include a “cc” copy of transmittal letter to the constructing permittee (with a copy of the permit attached).

3. U.S. Authorizations for Uses Other Than Management and Removal of Timber and Forest Products

For category Nos. 1 and 2 on Illustration VIII-1, the U.S. may authorize public use and issue authorizations for purposes other than management and removal of timber under the 2812 regulations (such as for residential ingress & egress, hauling of rock from commercial rock pits to the marketplace).

For category No. 3 on Illustration VIII-1, since the rights acquired by the U.S. are limited to the purposes found in the 2812 regulations, the U.S. may not authorize public use or grant rights to third parties for non-logging uses (such as FLPMA Title V rights-of-way for residential ingress and egress).

For category No. 4 on Illustration VIII-1 (permittee built road on U.S. land under reciprocal Permit), since the road is on U.S. lands, and since the rights of the constructing permittee are “merely nonexclusive licenses” (see Chapter V.), the U.S. may issue O&C permits or FLPMA rights-of-way to third parties provided that: 1) the use does not interfere with the rights of the constructing permittee, 2) the use is compatible with the constructing permittee rights, and 3) the permit is made subject to the constructing permittee “establishing reasonable traffic regulations for the use of the road which are applicable to all users of the road, including the road owner.” Any such right-of-way grants issued to third parties over this category road should include a “cc” copy of transmittal letter to the constructing permittee (with a copy of the right-of-way grant attached).

4. Right of the U.S. to Collect Fees

This section provides guidance regarding which roads over which the U.S. has the right to collect fees associated with permits issued by the U.S. (road use fees, maintenance fees, and/or surface replacement fees) To determine whether the U.S. has the right to collect fees, the extent of the U.S. ownership in a road must be known. The glossary definition for “road ownership” found in this handbook is:

road ownership: The rights of road ownership include: 1) use of the road 2) first right of maintenance on the road and collecting pro-rata expenses from other users, or allowing for operator maintenance 2) collection of road use fees from other users for amortization of the replacement cost of the road 3) establishing reasonable traffic regulations for the use of the road which are applicable to all users of the road, including the road owner.

The types of fees which the U.S. may collect (based on its “ownership” of certain roads) are: 1) road use (if the U.S. has the right to amortize the replacement cost of the road or to amortize a road improvement), 2) maintenance and/or surface replacement fees (if the U.S. has the first right of maintenance). The following manual sections provide guidance on what fees, if any, the U.S. can collect for the categories of road controlled by the U.S. as shown in Illustration VIII-1.

a. Road Maintenance and Surface Replacement Fees

The U.S. is the “road owner” in road category Nos. 1 – 3 as shown on Illustration VIII-1. As the road owner, the U.S. has the first right of maintenance (and the U.S. would then have the right to collect pro-rata expenses from other users of those roads, or to allow for operator maintenance if the U.S. decides to give up its first right of maintenance). If the maintenance responsibility is retained by the U.S., it may charge maintenance and/or surface replacement fees for Category Nos. 1 – 3.

b. Road Use (Amortization) Fees

The U.S. may also be entitled to amortize the replacement cost of certain roads or improvements. Whether or not the U.S. can amortize its investment and collect road use fees depends on whether the U.S. “owns” the road or improvement. The U.S. clearly has the right to amortize its investment in road category Nos. 1 – 3, but refer to the notes in Illustration VIII-1 for further guidance.

5. Road Control When U.S. Places an Improvement on Permittee-owned road.

If a permittee “owns” a certain road and the U.S. later places a road improvement on that road, the “control” of the road does not transfer to the U.S. when the improvement is placed. The permittee still has all the rights of “road ownership” unless they transfer the control to the U.S. with a release document (see Chapter XII., Section I.). The U.S. has the right to amortize the cost of the improvement. If the road owner waives their first right of maintenance, the BLM may collect pro-rata maintenance fees from other users of the road.

D. Application Filing Requirements

Use of U.S. lands in the O&C area for commercial haul of timber, requires a permit under the 43 CFR 2812 regulations. The filing requirements are found at 43 CFR §§2812.1-1 and 2812.1-2, and §2812.3-1 through §2812.3-5. These requirements are discussed below.

1. Application Form

Authorization to use U.S.-controlled roads or to cross U.S. lands in accordance with 43 CFR 2812 must be requested by formal application using Form OR 2812-8 (see Illustration III-1). The application package must be submitted in duplicate to the BLM District or Field Office which manages the lands requested. Receipt of the formal application package initiates the right of the U.S. to require the applicant, as a pre-condition of approving the O&C permit, to grant reciprocal access rights to the U.S. (and its licensees and permittees) over the applicant’s lands or roads (43 CFR §2812.3-1 and 43 CFR §2812.0-6(d)), if the AO determines it appears necessary.

Section D.2.h. below discusses the evaluation of the applicant's ownership and control of lands or roads and the determination of whether reciprocal rights for the U.S. appear necessary.

2. Pre-Application Meeting

A BLM designated employee should meet with the applicant prior to the time the application is submitted. The designated employee should discuss all of the items shown on pages 5-8 of Form OR 2812-8. This is important to ensure the applicant fully understands all of the requirements in order to minimize delays in the processing of their application. The following information should be discussed at this time so that the applicant is aware of any documentation or information they need to provide in addition to the application.

a. Individuals and Citizenship Certification

The applicant (if an individual) must state whether he/she is a native-born or naturalized citizen of the United States. Naturalized citizens will be required to furnish evidence of naturalization pursuant to 43 CFR §2812.1-2(a).

b. Partnerships and Citizenship Requirement

The following documentation is required if the applicant is a partnership:

- Each member of an unincorporated association must also state whether he/she is a citizen (same as for individuals).
- In addition, a partnership is required to submit a copy of the Articles of Association or Partnership Agreement showing: a) the terms of the partnership, if a limited partnership, b) nature of business to be conducted, c) scope of authority of each partner, and d) provisions for continuance in case of withdrawal or death of a partner.
- If no formal partnership agreement exists, then a letter must be furnished stating no agreement exists and giving the information as outlined in the above paragraph. All partners must sign this letter. Evidence of one partner's authority to sign documents on behalf of others must be signed by all partners.

c. Corporations

The filing requirements for corporations are found in the regulations at 43 CFR §2812.1-2(b):

An application by a private corporation must be accompanied by two copies of its articles of incorporation, one of which must be certified by the proper official of the company under its corporate seal, or by the secretary of the State where organized. A corporation organized in a State other than Oregon must submit a certificate issued by the State of

Oregon attesting that the corporation is authorized to transact business within that State. The requirements of this paragraph shall be deemed satisfied if the corporation having once filed the required documents, makes specific reference to the date and case number of such previous applications, states what changes, if any have been made since the prior filings, and includes a statement that the right of the company to do business in the State of Oregon has not lapsed or terminated.

The following documentation is required to verify corporate status, etc.:

- If the applicant is an Oregon corporation, the regulations require filing of two copies of the Articles of Incorporation (one of which is certified by the proper official of the company under its corporate seal).
- If the applicant is an out-of-state corporation, it must demonstrate authority to operate in Oregon by a certificate issued by the State of Oregon attesting that the corporation is authorized to transact business within Oregon, along with its certified Articles of Incorporation for the state where it is organized.
- Certified copy of the by-laws or resolution of its board of directors authorizing the signing officer or officers to sign for the corporation. When the by-laws of a corporation do not grant authority to its officers to sign right-of-way applications, O&C permits, or easements granted to the U.S., a resolution adopted by the corporation's board of directors must be obtained which specifically gives this authority.
- The State of Oregon website (<http://www.filinginoregon.com/>) should be checked to verify whether the corporation status is still "active." Once you get to the site, click on "Business Name Search" and type in at least part of the corporate name. Select the record for the exact corporate name. When you find the correct record, the "Entity Status" should be "ACT" (for active). If the status is "IP" (for "in process") the application processing can proceed, but the permit shall not be issued until the applicant is in an "active" status with the State of Oregon. If any other status appears here, the application should be rejected.

If any of the aforementioned documents have been furnished with a previous application or timber sale contract, reference may be made to the earlier transaction. The reference must include the date the documents were furnished. If changes have occurred since the original filing, the applicant must furnish a new copy (certified if a corporation) of the pertinent document.

d. Non-Profit Entities, Limited Liability Companies, Partnerships and Sole Proprietors

The above requirements for corporations also apply to other business entities that are required to register with the State of Oregon (not-for-profit entities, limited liability companies, limited partnerships, etc.). If the company is a sole proprietorship

operating under an assumed business name, the sole proprietor is required to file the assumed business name with the State of Oregon. This filing should also be verified. In addition, if the city or county in which the company operates requires a local business license, proof of the license should be provided as well.

e. Owner of Forest Products to be Hauled

The regulations at 43 CFR §2812.2-1 describes the nature of the O&C permit as:

. . . a nonexclusive license to transport forest products **owned by the permittee** . . . [bold emphasis added].

Therefore, an applicant must own title to the forest products that will be hauled under the O&C permit and the applicant must provide documentation that they own the timber at the time of application. If they own the land and timber, a deed or verification of ownership through the county assessor's office will suffice. If the applicant is a contract purchaser of just the timber (and not the land), the applicant would need to provide proof that they will own title to the timber at the time it will move over U.S. lands or roads. See Chapter X., Section C.2.d., for further guidance in dealing with contract purchasers.

f. Maps and Plats

The requirements for maps to be submitted with the application are found at 43 CFR §2812.1-2(c) and (d) which includes the following:

1) Haul Route for Use of Existing Roads

Per 43 CFR §2812.1-2(e), every application for an O&C permit must also be accompanied by a township diagram (included in Form OR 2812-8—Illustration III-1) indicating the roads and rights-of-way which will form an integral part of the road system with which the requested right-of-way will connect. This means they could complete the township diagram included in the application packet (Form OR 2812-8, page 4) or provide a copy of a BLM transportation map showing: 1) the area of planned harvest and 2) the BLM road segments to be used. This map should indicate their entire haul route from their harvest area to a county road. Sometimes an application will only include roads on U.S. land, the applicant not being aware that the U.S. may control roads over private lands as well.

The BLM should work with the applicant to identify the correct road and segment numbers during the pre-application meeting ahead of time so they can be included on the map.

The applicant shall also identify the portions of any road systems which are directly or indirectly controlled by the applicant. For those portions of the road system which the applicant does not control, it shall furnish the name of the person or entity it believes does control the roads.

Where a right-of-way for a railroad is involved, the applicant must indicate which portions of the right-of-way will be available for use as truck roads upon removal of the rails and ties and the probable date of such removal.

2) Planned Improvements to Existing Roads

In addition to the haul route, the map should identify the location of any proposed improvements to U.S. roads. The application should include information on the specifications of the proposed improvements (such as depth and type of rock, culverts (location, size, etc.)).

3) Right-of-Way Plats for New Construction

The filing requirements for right-of-way maps (plats) for construction of new roads are found at 43 CFR §2812.1-2(c). These requirements apply to both the U.S. and the applicant. The same requirements apply to construction under a unilateral permit or a reciprocal right-of-way agreement. Each plat should comply with the following regulatory requirements, “. . . except as the AO may waive in any particular instance all or any of such requirements”:

- Courses [bearings] and distances of the centerline, with courses [bearings] being in true meridian and distances in feet and decimals thereof are clearly identified.
- The beginning and ending points of the survey must be accurately connected by course and distance to the nearest readily identifiable corner of the public land surveys, or to a prominent monument or a natural landmark if no survey corners exist within two miles.
- All subdivisions of the public lands surveys, any part of which is within the limits of the survey, should be shown in their entirety, based upon the official subsisting plat with subdivisions, section, township, and range clearly marked.
- The width of the right-of-way should be given, and if not of uniform width, the locations and amount of change must be definitely shown.
- There shall be a statement on the face of or appended to the map indicating the grade and usable width of the road to be constructed. the type material which will be used for the surface, the type and extent of the drainage facilities, and the type of construction and estimated capacity of any bridges.
- Per 43 CFR §2812-1-2(c), “The map should bear upon its face the statement of the person who made the survey, if any, and the certificate of the applicant; such statement and certificate should be as set out in forms as approved by the Director.” In today’s times, neither the BLM nor the permittees typically have licensed registered surveyors preparing these plats. To meet this requirement, the name and title of the person preparing the plat should suffice. If they are a licensed surveyor they should include that information.

While not required by the regulations, the plat should also bear the signature and title of the person who has delegated authority to formally transmit the plat for review by the landowner.

In addition, it is desirable for the map to have an arrow showing true north and a legend by which map symbols and scales can be interpreted.

While the regulations allow for a waiver of the above map provisions, for a right-of-way plat involving construction of a new road, the AO should seriously consider whether a waiver of any of the requirements would be in the best interest of the government.

*Note: The “capacity” for railroad car bridges cannot be load rated. BLM policy precludes use of any bridge or structure placement on BLM land if the structure cannot be load rated. See Chapter XV. for a further discussion of railroad car bridges.

New authorizations for road construction under the 43 CFR 2812 regulations will also require compliance with NEPA and full disclosure to the public of the proposed action, results of the environmental analysis, notice of available of decision, etc.

When the right-of-way plat is received by BLM, a technical review should be performed using the plat review checklist found at Illustration IX-7 to ensure all information is complete. This checklist contains all of the minimum elements required for right-of-way plats as found in the 2812 regulations. If the plat does not conform to these requirements (and the AO is not willing to waive any requirements), the applicant should be notified of the deficiencies so they can submit a corrected copy. This plat review checklist also makes an excellent guide for BLM employees to utilize when submitting right-of-way plats to the permittee for construction to ensure that BLM plats are also prepared according to standards.

See Chapter IV., Section D.1., and Chapter IX., Section B.17., for guidance on disposal of O&C timber involved with construction of roads on U.S. lands.

g. Term (Duration) of Permit

The applicant must indicate the requested duration of the permit. In order to determine the duration of the permit (especially unilateral permits where the U.S. does not need reciprocal rights), the applicant should submit a harvest schedule or other information to support the requested duration of the permit. If the permit is for a 12-week to three-year term, the harvest plan is optional, as determined by the AO.

According to 43 CFR §2812.3-6, the O&C permit should be issued for the duration needed:

. . . will be for a stated term or terms . . . will normally be coincident with the probable period of use for the removal of forest products by the permittee and any successor in interest . . .

The past practice of the BLM has been to issue unilateral permits of short duration as allowed by 43 CFR §2812.0-6(h):

The Authorized Officer may in his discretion, issue short term right-of-way permits for periods not exceeding three years, subject to one-year extensions in his discretion. Such permits shall specify the volume of timber which may be carried over the right-of-way and the area from which such timber may be logged. . .

If three-year unilateral permits are issued, according to the above regulations, they may be renewed by one-year extensions. However, the regulations do not limit the number of extensions that can be granted.

While it has been a past practice to limit unilateral permits to three years, this practice has created a workload in extending unilateral permits annually thereafter. In instances where the applicant has demonstrated a need for longer-term access (with a harvest plan), the AO should consider whether a permit of longer duration will be in the best interest of both the government and the applicant, taking into consideration the administrative costs for continually renewing shorter permits. Each application should be reviewed thoroughly to determine the term which satisfies the demonstrated need of the applicant regarding the probable period of use for the removal of forest products.

The O&C permit template (Illustration IV-1) includes provisions that would be required if permits longer than three years are issued.

h. Listing of Lands or Roads Directly or Indirectly Controlled by Applicant (to Determine if U.S. Needs Rights)

As discussed in Section B.3. of this chapter, two separate sections of the regulations (§2812.3-1(a) and 43 CFR §2812.0-6(d)) give discretion to the AO to deny a permit if reciprocal rights (for the U.S., its licensees (and permittees)) “appears necessary” and the applicant refuses to grant such rights.

If lands in the area are indirectly controlled by the applicant, the regulations require the applicant to either obtain rights for the U.S. or to make a showing satisfactory to the AO that he has negotiated in good faith for such rights and to waive, as to the U.S., its licensees and permittees, any exclusive or restricted rights he may have to such lands.

Therefore, in order for the U.S. to determine whether it needs access rights across “lands directly or indirectly controlled” by the applicant, the applicant may be required (as determined by the AO) to submit a list of lands and roads directly or indirectly controlled by the applicant anywhere in the O&C area (in and West of Range 8 E.).

The regulations at 43 CFR §2812.3-2 further state:

. . . that in addition to the lands described above, if the applicant owns or controls directly or indirectly other roads or rights-of-way in any O&C area where the AO finds that the U.S. is unreasonably denied access to its timber for management purposes, the AO may require the applicant to negotiate an agreement granting the U.S. and its licensees the right to use the roads or rights-of-way as may be necessary to accommodate such management.

E. Processing of Unilateral Permits

Once an application has been filed, the use of a processing checklist (see sample Illustration III-2) is strongly encouraged to ensure that all of the steps necessary to properly process an application are completed and to ensure the applicant is qualified and has provided all the necessary documentation. The following provides guidance in processing an application once it is filed:

1. Preliminary Adjudication (Review) of Application

Before the NEPA compliance can commence and the permit can be prepared, the following steps must be accomplished to ensure there is a complete and accurate application.

a. Establishment of Case File

Upon receipt of an application, it is recommended that a six-way folder be set up and organized in the following manner:

- Flap 1:
 - Processing checklist (on top of everything else),
 - Serial Register Page,
 - Copy of Bond (original is maintained in a safe with accounting technician),
 - Copy of insurance certificate (original maintained in a safe with accounting technician), and
 - Copies of corporate information (originals maintained in district corporate binder).
- Flap 2:
 - Approved permit including all attachments,
 - Amendments, and
 - File copy of any decision extending the permit.

- Flap 3:
 - Accounting information,
 - Haul reports,
 - Bills, and
 - Receipts.
- Flap 4
 - Inspection (Monitoring) Reports.
- Flap 5 – General Chronological – oldest on bottom:
 - Application,
 - NEPA document (EA, CX, etc.),
 - Letters,
 - Memos, and
 - E-mails.

It is also a good idea to create file section “flap covers” to match the above so that anyone opening the file can easily tell where to find specific items. It is also important that filing be done promptly and consistently.

b. Obtain Serial No. and Create Serial Register Page in LR2000

Using case type 281210, obtain a Serial Number from the LR2000 data base. There is no “suffix” code (“FD” or “PT”) for unilateral permits as there is with reciprocal Permits. Enter the new case in LR2000 with the following action codes:

- 124 – Date application received.
- 501 – Reference number. In the remarks column enter “O&C Unilateral [local permit No].” (See discussion on local permit numbers in Section c. below.)
- 502 – Length in feet or 503 – length in miles (based on combined total length of all roads to be used.
- 504 – Width in feet (Indicate “VAR” for “varies”).
- 846 – Exempt from cost recovery.
- No rental code is needed for 2812 authorizations.

c. Assign a District Permit No.

Each district has for many years established and maintained an O&C permit register which assigns a local district permit number for O&C permits (including both unilateral and reciprocal Permits). A new permit No. should be established and placed on the case file label in addition to the Serial No.

The permit No. starts with the initial of the district (e.g., “R” for Roseburg), followed by a hyphen and the next sequential permit number from the O&C permit register. These local permit registers and numbering systems shall be continued in order to maintain historical tracking and to be consistent with IG guidance for road use reporting and billing purposes. The local permit number (vs. the serial No.) has been proven to be an extremely helpful tool to identify, find and track a permit, especially when many partial assignments of an individual permit are made.

d. Enter Pending Action in District Work Tracking System (if Exists)

Some districts utilize an independent work tracking system to assign and track work assignments and as a tool to easily track and report units of accomplishments at the end of the fiscal year. If such a system exists, the permit should be entered when the application is received as a pending action.

In some districts, the O&C permit register system may be combined with the district work tracking system.

e. Master Title Plat

In order to verify that the lands being crossed are really owned or managed by the U.S. (and are available for issuance of rights-of-way), a copy of the Master Title Plat (MTP) pages should be placed in the case file.

2. Application Complete, Filed Properly

The next step is to complete a thorough review of the application to ensure it is complete. The following items must be verified:

- The application is completely filled in and signed.
- The applicant meets the requirements set forth in 43 CFR §2812.1-2(a) and (b) and 43 CFR §2812.2 to be a qualified applicant. This includes the following items (qualified applicant requirements are detailed in Section D.2. of this chapter):
- Evidence of naturalization is included for naturalized citizens.
- For a partnership or corporation, the partnership or corporate papers are included (or are already on file with the BLM) to verify that is the corporation or

partnership is authorized to do business in the State of Oregon. This will ensure that the application is signed by an individual who is duly authorized to sign on behalf of the partnership or corporation.

- The applicant holds title to the land or forest products.

3. Land Status Check

A check of the Master Title Plat, Historical Index, road record files and GTRN (Ground Transportation) data base should be completed to verify that the U.S. has the ownership of the requested roads or lands sufficient to authorize an O&C permit. The following questions should be answered during this review (see Illustration III-2).

- Does BLM own or have management jurisdiction over the lands over which the right-of-way is requested?
- Are there existing withdrawals? If so, do they affect the ability to authorize rights-of-way?
- Are there mining claims?
- Are there other O&C permits already pending or issued?
- Are there other users with prior authorizations (i.e., grazing leases, timber sales, etc.)?
- Are cultural resources involved?
- Are endangered or threatened species involved?
- Are there wetlands or riparian areas involved?

a. Conformance With Land Use Plan

The district Resource Management Plan should be checked to determine whether the proposed action is in conformance. The following questions should be answered:

- Is the proposal in conformance with the existing land use plan?
- If the application proposal is not within a designated right-of-way corridor, is it in a reasonable location?

b. Reserved

F. Analysis of Proposal

Once the BLM is satisfied that the application is properly filed, the next step is to complete an interdisciplinary analysis of the proposed action in order for the AO make an informed decision on the following issues.

1. Determination of Need for U.S. Reciprocal Rights

In order to know what type of O&C permit will be processed (i.e., reciprocal right-of-way agreement or unilateral permit) an evaluation needs to be made to determine whether it “appears necessary” that the U.S. needs access rights across the lands of the applicant. If the U.S. determines it “appears necessary” that reciprocal rights are needed, a reciprocal right-of-way agreement would be developed. If the U.S. does not need rights, a unilateral permit would be prepared.

2. National Environmental Policy Act (NEPA) Compliance and Analysis

All new applications for O&C permits shall be evaluated to ensure compliance with NEPA and other environmental laws.

a. References and Guidance

- Council of Environmental Quality (CEQ) Regulations, 40 CFR 1500-1508.
- Department of the Interior Manual, 516 DM 1-7.
- BLM Manual Section 1790, National Environmental Policy Act, and the accompanying handbook, H-1790-1, National Environmental Policy Act Handbook. This guidance emphasizes use of existing environmental analysis, when available, to avoid duplication.

b. Interagency Agreement on Application of ESA to Applications for Access over Federal Lands

In January 2003, an interagency agreement was signed by four agencies: 1) U.S. Forest Service (USDA-FS), 2) BLM, 3) U.S. Fish & Wildlife Service (USFWS) and 4) National Oceanographic and Atmospheric Administration (NOAA). This agreement is included as Illustration III-3. The interagency agreement includes: 1) procedures to be followed when processing proposals for access to non-federal land across federal land managed by the BLM and USDA-FS, 2) the issue of discretion, 3) how to identify the “federal action” in the NEPA document, and 4) how to handle direct and indirect effects, of O&C right-of-way actions. Employees processing applications for O&C permits should familiarize themselves with this document.

c. Determination of the Federal Action

The required NEPA analysis for discretionary actions under O&C permits should not include (as part of the federal action) the harvesting the non-BLM timber accessed by the right-of-way if the applicant has other reasonable access. If other reasonable access is available, the No Action alternative should assume that the private timber harvest would occur using the other reasonable access.

d. Processing Time Allowances

Applications which only involve the use of existing roads (no construction involved) will most likely qualify under NEPA as categorical exclusions (CX's). Applications involving ground disturbing activities (such as construction) will most likely require an environmental assessment (EA). While there is no regulatory time frame established regarding the completion of the application process (and NEPA compliance and analysis), the AO should provide an estimate to the applicant regarding the anticipated completion of the NEPA process as well as a reasonable explanation for any project prolonged delays.

The AO shall inform the applicant that they could choose to do all or a part of any environmental analysis or surveys (as long as the work is performed to the established BLM standards and is subject to BLM review and approval). This could expedite the NEPA evaluation and the O&C permit authorization process if the work is accomplished by a party who is acceptable to BLM and who is familiar with BLM's standards and protocols.

e. Effective Date of Decisions for O&C Permits

The O&C regulations (43 CFR 2812) do not contain any language making the decisions under that subpart effective immediately (for purposes of appeal). Absent that language, the regulations at 43 CFR §2812.9 provide guidance for appeals. That section states:

An appeal pursuant to part 4 of 43 CFR Subtitle A may be taken from any final decision of the authorized officer, to the Board of Land Appeals, Office of the Secretary.

The appeal regulations referenced above provide that the effective date for purposes of starting the appeal period is determined by one of the following:

- the date of publication of the Notice of Availability Decision (in the *Federal Register*), or
- if there was no *Federal Register* notice published, the appeal period would start from the date the applicant (and other affected parties) were served notice of the decision (signed the certified mail receipt). If multiple notices were sent, the effective date would be the date the last party received their notice. See Chapter XIII., Section D. detailed discussion of the effective date for O&C permits.

f. NEPA Compliance and Decisions

See Chapter XIII. for guidance on decisions, appeals, and applicability of NEPA for particular O&C right-of-way actions.

The Oregon State Office and the Regional Solicitor have developed administrative remedy language that must go into every EA (or EIS) as well as the public Notice of Availability of EA/EIS for public comment (see Chapter XIII, Sec. E.). This same language should go into any local publication which identifies the process or points of contact for routine right-of-way actions.

Illustration XIII-17 provides the mandatory administrative remedy language for decisions processed with an EA or EIS. Illustration XIII-18 provides the mandatory administrative remedy language for decisions processed with a CX.

This handbook is not intended to provide detailed guidance on NEPA compliance, as the guidance referenced above (in Section F.2.a. of this chapter) serves that purpose. The handbook guidance in Chapter XIII. related to NEPA, decisions and appeals focuses on providing assistance to enable BLM employees to prepare lands decisions for O&C right-of-way actions that are consistent with regulation and Solicitor guidance. The issues related to this final process include ensuring that:

- the proper administrative remedy language is included in decision documents,
- any terms and conditions identified during the NEPA process are included in the final permit document (as they were written in the NEPA document and disclosed to the public), and
- the applicant (and other parties with standing) is properly notified of time frames (effective date of decision).

1) NEPA Compliance Accomplished with a CX

If NEPA compliance is accomplished with a CX and Record, the decision portion of the document must contain the proper administrative remedy language as found in Illustration XIII-18. The CX signed by the AO is the decision record. Most districts provide for public notification of pending or current CX's by use of a district register and typically no public notice of individual proposals are published in the local paper.

If the decision is to approve the unilateral permit, the permittee should be sent a Notice of Decision, along with a copy of the signed CX, along with two copies of the draft unilateral permit for their signature (see Chapter XIII., Illustration XIII-4 for the sample transmittal letter).

The unilateral permit transmittal letter should state that the lands Decision is final and notify the applicant that the permit cannot be signed (approved) until the end of the required (30-day) appeal period. If a request for stay is filed with the BLM, the appeal period is extended another 45 days—see administrative remedy language in Chapter XIII. The letter should also provide instructions for completing and submitting all required documents and payments before the unilateral permit can be signed by the AO (bond, insurance, advance payment of fees, etc.).

Once two copies of the signed unilateral permit are returned by the permittee (along with all fees, bonds, insurance, etc.), the unilateral permit can usually be approved on the 31st day (unless a request for stay has been received by the BLM).

2) EA or Higher Level NEPA

If NEPA compliance is accomplished with an EA (or, rarely, if ever, an EIS), the document must contain the proper administrative review language as found in Illustration XIII-17).

The permit should be drafted hand-in-hand with the NEPA document. Prior to the time the NEPA Decision document is published, a final version of the permit (with all the attachments including required terms and conditions) should be available along with the lands decision document in case a party who has participated in the process asks to review the permit document itself.

It is recommended that the public notification of the decision document be sent to the applicant, the public, or any interested parties at the same time so that the appeal period runs simultaneously (or the dates each receives their notice is close to each other.)

Immediately after publication of the notice of decision, send a letter to the applicant, similar to that found in Illustration XIII-4, which transmits two copies of the unilateral permit for signature, along with the requirements for bonds, advance payment of fees, etc.

When the administrative review process is complete, if the applicant has returned the signed unilateral permit and required fees, bonds, insurance, etc., the unilateral permit could possibly be issued on the 31st day after the start of the appeal period (if no requests for stay have been filed). A sample letter transmitting the final approved unilateral permit (and decision accepting bond) is provided as Illustration VII-4.

If the CX Decision Record approves the action (the NEPA decision is combined with a lands decision), provide a Notice of Decision to the applicant and transmit the unilateral permit for their signature, letting them know it cannot be signed by the AO until the end of the appeal period (see Illustration XIII-4).

G. Document Preparation

Once a decision has been made regarding: 1) whether an authorization will be issued, and 2) if an authorization will be issued, what permit form it will be issued in (e.g., as a unilateral permit, or a reciprocal Permit), the document(s) should be prepared according to the guidance in Chapter IV. (Unilateral Permits) or Chapter V. (Reciprocal Permits and Agreements).

See Chapter VI. for post-authorization administration guidance and Chapter VIII. for road use reporting, hauling, and billing.

H. Transmittal of Lands Decision and Permit

Chapter IV., Section D., provides guidance and samples for transmittal if the permit is unilateral. Chapter V., Section K., provides guidance and samples for transmittal if it is a reciprocal Permit. Close attention needs to be paid to the effective date of the lands decisions in the transmittal documents.

CHAPTER III – Table of Illustrations

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III-2	Sample Processing Checklist for O&C Unilateral Permit Applications ..	III-33
III-3	Interagency Agreement on ESA for Reciprocal Rights-of-Way ..	III-36

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Illustration III-1

Form OR 2812-8 – Application for O&C Logging Road Right-of-Way Permit
Page 2 of 8

O&C LOGGING ROAD RIGHT-OF-WAY PERMIT APPLICATION
Form OR 2812-8 (Cont.)
PL 94-579 (90 Stat. 2743); 43 CFR Subpart 2812

4. ROAD CONSTRUCTION:

Is road construction on public lands required? Yes No (If yes, attach survey and construction information)

5. ROAD IMPROVEMENTS:

Are improvements to existing BLM roads proposed? Yes No (If yes, attach map and statement of work).

6. MAP(S):

The following information is required as part of the application and is attached hereto:

- a. A map of existing roads proposed for use.
- b. Identification of roads directly or indirectly controlled by the applicant which will be used in conjunction with this application.

7. SIGNATURES AND CERTIFICATIONS:

If applicant is an individual or partner: As to all signatures below, signature certifies:

I am a native citizen of the U.S., or I am a naturalized citizen (will be required to furnish proof)

By my signature below, I CERTIFY that all of the statements made in this application are true, complete, and correct to the best of my knowledge and belief and are made in good faith:

_____ Applicant signature	_____ Title (if other than Individual)	_____ Date
_____ Applicant signature	_____ Title (if other than Individual)	_____ Date
_____ Applicant signature	_____ Title (if other than Individual)	_____ Date

Title 18, U.S.C. section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

Illustration III-1

Form OR 2812-8 – Application for O&C Logging Road Right-of-Way Permit
Page 3 of 8

Sample Cross Section Diagram Associated with Road Construction
(See instructions for Item 4)

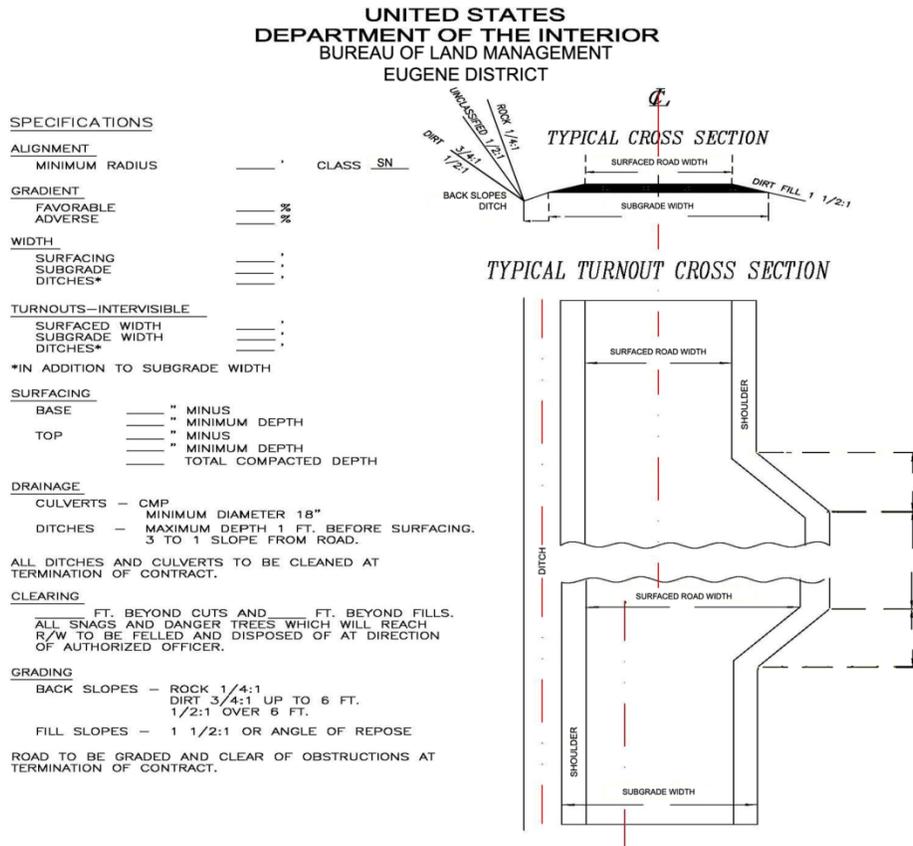


Illustration III-1

Form OR 2812-8 – Application for O&C Logging Road Right-of-Way Permit
Page 4 of 8

Form 9600-18
(February 1979)
(formerly 9180-19)

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

TOWNSHIP DIAGRAM*

Township	Range	Meridian	State
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* Scale: 1 inch = 1 mile

GPO 854-692

Item No. 6: Complete two copies of the above Township Diagram Map (Form 9600-18), or suitable map, showing the road location and the land ownership pattern in the immediate area. List lands or roads directly or indirectly controlled by the Applicant. **As an alternative provide a copy of a BLM transportation map with requested U.S. roads and/or lands highlighted, as well as your lands identified.**

Illustration III-1

Form OR 2812-8 – Application for O&C Logging Road Right-of-Way Permit
Page 5 of 8INSTRUCTIONS AND PROCESSING INFORMATION
For Completing Application for O&C Logging Road Right-of-Way Permit

A permit is required for the use or construction of logging roads on public lands administered by the Bureau of Land Management in Western Oregon. The attached application and supplemental information forms are required when applying for an O&C Logging Road Right-of-Way Permit.

INSTRUCTIONS:

Complete two copies of this Form OR 2812-8, "O&C Logging Road Right-of-Way Permit Application"

For the following, refer to Item Nos. on application form (page 1):

Item No. 1: (per 43 CFR 2812.1-2) requires the name, address, and date.

- a. If the Applicant is an individual, no further information is needed under this item.
- b. If the Applicant is a partnership, submit a copy of the articles of association or partnership agreement showing:
 - (1) The terms of the partnership, if limited.
 - (2) Nature of business to be conducted.
 - (3) Scope of authority of each partner.
 - (4) Provisions for continuance in case of withdrawal or death of a partner.

If no formal partnership agreement exists, then a letter must be furnished stating no agreement exists and giving the information as outlined above. All partners must sign this letter. Evidence of one partner's authority to sign documents on behalf of the others must be signed by all partners.
- c. If the applicant is a corporation, submit the following information:
 - (1) Certified copy of articles of incorporation.
 - (2) Copy of certificate of authority to do business in the State of Oregon (if incorporated in another State).
 - (3) Certified copy of the by-laws or resolution of its board of directors authorizing the signing officer or officers to sign for the corporation. When the by-laws of a corporation do not grant authority to their officers to sign right-of-way applications, right-of-way and road use agreements, permits, or easements to the Bureau of Land Management, a resolution adopted by the corporation's board of directors must be obtained which specifically gives this authority.
- d. If any of the aforementioned documents have been furnished with a previous application or timber sale contract, reference may be made to the earlier transaction, the date the documents were furnished, and a statement as to whether any changes have occurred since then. If changes have occurred, the Applicant must furnish a new copy (certified if a corporation) of the pertinent document.

Item No. 2: List the township, range, section, and subdivision of the BLM lands or easements to be crossed, together with the period of time the right-of-way is needed.

Item No. 3: is a statement of need for the right-of-way: List the land to be logged, together with the name of the land owner and the name of the party who owns the timber to be logged, and an estimate of the volume of timber to be logged or mineral materials to be hauled.

Illustration III-1

Form OR 2812-8 – Application for O&C Logging Road Right-of-Way Permit
Page 6 of 8

Item No. 4: per 43 CFR 2812.1-2(c)(4), if new road construction is involved –

- a. The Applicant must submit two copies of a survey map of the proposed road where it crosses BLM land. The traverse map must show the following:
 - (1) Ties to legal monuments for the beginning and ending points of the survey.
 - (2) Scale (at least 4 inches or 8 inches to the mile).
 - (3) Bearings and distances of the centerline of the survey.
 - (4) Legal description of all subdivisions of public land crossed.
 - (5) Right-of-way width.
 - (6) Type and capacity of any proposed bridges.
- b. The Applicant must also provide road construction specifications. Please use the Road Construction Specification Sheet (on page 3 of this form) to provide the following information. .
 - (1) The maximum grade.
 - (2) Subgrade width.
 - (3) Surfacing width and depth.
 - (4) Draining facilities and locations.

Item No. 5: If any improvements to existing public roads are proposed, provide a road map and statement of the type and location of proposed improvements. Please use Road Construction Specification Sheet (page 3 of this form).

Item No. 6: Complete two copies of the Township Diagram Map (Form 9600-18, page 5 of this packet), or suitable map, showing the road location and the land ownership pattern in the immediate area. List lands or roads directly or indirectly controlled by the Applicant. **As an alternative provide a copy of a BLM transportation map with requested U.S. roads and/or lands highlighted, as well as your lands identified.**

Signatures & Certifications:

If an individual, check the box indicating citizenship and all joint applicants must sign.

If a partnership, check box indicating that all partners are U.S. citizens and all must sign.

If a corporation, a duly authorized officer must sign.

Illustration III-1

Form OR 2812-8 – Application for O&C Logging Road Right-of-Way Permit
Page 7 of 8**UNDERSTANDING THE APPLICATION AND APPROVAL PROCESS****(To be discussed with Applicant at Pre-Application Meeting)****COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA):**

Following our receipt of the completed application and its attachments, BLM will prepare the required analysis under the National Environmental Policy Act (NEPA) in order to determine if the proposed permit would comply with the requirement of the BLM Resource Management Plan (RMP) for the land involved, as well as the Endangered Species Act (ESA) and other environmental laws or guidance. Provisions may be included in the permit (such as seasonal use restrictions) in order to assure that the permit complies with the RMP and ESA. If provisions cannot be included to ensure compliance or the inclusion of such provisions is not acceptable to you, the application will be denied.

If your application includes road construction or renovation, BLM may need to conduct surveys for certain threatened or endangered species or for various plant and animal species specified in the "Record of Decision for Amendments to the Forest Service and Bureau of Land Management Planning Documents within the Range of the Northern Spotted Owl" (April 1994)." Surveys for some of these species are limited to certain times of the year. Processing of your application may be delayed if it is necessary to wait for the appropriate time of the year for such a survey. If the processing of your application will be delayed more than 60 days from the date your completed application is received, BLM will notify you in writing and provide you with an estimate of when the processing of your application will be completed. .

DECISION, RIGHT OF APPEAL AND EFFECTIVE DATE OF DECISION

After completion of the appropriate NEPA analysis, a formal decision will be issued. The decision will become effective on the day after the expiration of a required appeal period (30 days after the publication of the legal notice of the decision), if no appeal or petition for stay is filed (basically on the 31st day after the decision is signed). If a petition for stay is filed, the decision is effective 45 days after the end of the appeal period (or basically on the 76th day after the decision is signed), unless the Director of the Office of Hearings and Appeals or an Appeals Board has determined otherwise in accordance with specified standards enumerated in 43 CFR 4.21(b).

If the decision is to approve your permit, you will be sent a copy of the decision with rights of appeal, along with two copies of the permit for your review and signature. Along with the permit, you will be notified of the required amount of road use bond (performance bond) as well as the amount of required advance road use and maintenance fees. After we receive the signed copies of the permit, along with the advance fees and correct bond and insurance, BLM will hold the permit for approval upon expiration of the appropriate appeal period, at which time the permit can be approved.

APPROVAL

Upon expiration of the appeal period, and once the signed permits, road use bond, insurance certificate and advance fees are received by the BLM and they are found to be in order, the Authorized Officer will approve the permit and a copy will be sent to you. Your receipt of an approved copy will be your authorization to begin operations subject to provisions in the permit or any pre-haul notifications contained in the transmittal letter.

SALE OF RIGHT-OF-WAY TIMBER

If your right-of-way permit involves removal of merchantable timber on BLM-administered lands, you will be required to purchase the timber (under a separate contract with the BLM) in advance of issuance of the permit at a price no less than the BLM appraised value. You will be notified of the person to contact to complete the timber purchase.

Illustration III-1

Form OR 2812-8 – Application for O&C Logging Road Right-of-Way Permit

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BONDING REQUIREMENTS AND OPTIONS FOR FULFILLING

You will be required to submit a bond in an amount no less than \$500 per mile (or fraction thereof) based on the length of United States roads that will be used. The minimum bond amount is \$500 if the length is less than a mile. You have several options for meeting the bonding requirement:

- 1) You may submit cash or other form of cash-equivalent security (such as a cashier's check, irrevocable letter of credit from a financial institution, an assignment of funds for security interest in a savings account, etc.). You should speak with the BLM official handling your case to discuss these options. If you choose to fulfill your bonding requirements with cash (or cash equivalent), it will need to be accompanied by the Form OR 2812-9.
- 2) You may fulfill your bonding requirements by submitting a "surety" bond issued by an approved surety company. This type of bond must be accompanied by Form OR 2812-12. If the bond covers more than one permit, it is called a "blanket performance bond" and it must be accompanied by Form OR 2812-13.

You should discuss your bonding options with the official handling your permit application.

INSURANCE REQUIREMENTS

The authorized officer may require you to maintain insurance of the following types and up to the following amounts: (a) Commercial General Liability covering all operations, including vehicles of the Permittee: (Bodily Injury: \$1,000,000.00 - for injury to any one person; \$1,000,000.00 - for any one occurrence); (b) Property Damage in the amount of \$1,000,000 for any one occurrence, and/or (c) Loggers Broad Form B - \$1,000,000.00 - for any one occurrence. **The authorized officer will determine the insurance requirements (if any) for your permit.**

ADVANCE ROAD FEES

The BLM authorized officer will determine whether the agency will be maintaining the road(s) and charging you fees, or whether it will allow you to maintain the road(s). If the BLM retains the maintenance responsibility, you will be required to submit fees in advance for road use, maintenance and surface rock replacement fees. These fees are determined based on a state-wide fee schedule. You should discuss the potential fees with the official handling your permit. If the BLM decides to let you maintain the road(s), you will still be required to pay road use. You will also be required to pay surface rock replacement fees (unless you are placing rock on the road and the fees are waived).

RECIPROCAL RIGHTS

The authorized officer will request that you provide a list of your entire land ownership in Western Oregon in order to determine if it appears necessary that the United States may need reciprocal rights. Under the regulations at 43 CFR 2812, the United States may require you to grant the reciprocal rights as a condition of approving the permit. If you refuse to grant such rights when requested, your application could be denied.

Illustration III-2

Sample Processing Checklist for O&C Unilateral Permit Applications

Page 1 of 3

**BUREAU OF LAND MANAGEMENT
PROCESSING CHECKLIST FOR O&C UNILATERAL PERMIT APPLICATIONS
UNDER 43 CFR 2812**

Applicant Name:		Permit No.:	
Phone No.:		Serial No.:	
Date Application Filed:		Assigned to (employee):	
#	Action Item	Resp. Employee	Init./ Date
Adjudication of Application			
1)	Entered in district realty work tracker (Action Item # _____)	LLE or DRS	
2)	Place a copy of Master Title Plat for U.S. lands in file (flap 1)	LLE	
3)	Initial LR2000 Completed	LLE	
	<input type="checkbox"/> 124 – Apln recd		
	<input type="checkbox"/> 504 Width in Feet (enter "var" in remarks)		
	<input type="checkbox"/> 503 Length in Miles (enter estimated total length of road to be used in remarks)		
	<input type="checkbox"/> 501 – Reference (in comment column add "OC Unilateral [Permit No.]")		
	<input type="checkbox"/> 501 – Enter road Nos. in comment column		
	<input type="checkbox"/> In Remarks screen – Enter "Unilateral permit to haul ____ MBF for ____ [term of permit]"		
4)	a) Application Filed on Proper form (OR 2812-8)	LLE	
	b) Submitted in duplicate		
5)	Qualified Applicant (check which type and verify items below):		
	<input type="checkbox"/> Corporation (see handbook Chap III):		
	<input type="checkbox"/> Corporate papers submitted (or already on file in district binder)		
	<input type="checkbox"/> Authorized to do business in the state (check State website if needed).		
	<input type="checkbox"/> Copy of corporate by-laws on file (certified by proper official of company under corporate seal).		
	<input type="checkbox"/> Corporate signing authority for this action is clearly shown (may be in form of corporate resolution, etc.).		
	<input type="checkbox"/> Individual:		
	<input type="checkbox"/> They are a native or naturalized citizen. (If not, they are not a qualified applicant and application must be rejected (prepare decision)		
	<input type="checkbox"/> Partnership:		
	<input type="checkbox"/> Each member is a citizen. If not, they are not a qualified applicant—prepare decision.		
	Verify that the following are included in Articles of Assoc. or Partnership:		
	<input type="checkbox"/> terms of partnership, if limited		
	<input type="checkbox"/> nature of business to be conducted		
	<input type="checkbox"/> scope of authority of each partner		
	<input type="checkbox"/> provisions for continuance in case of withdrawal or death of partner		
6)	Applicant holds title to the land served by the permit or title to the timber that will be hauled (verify through timber deed or land ownership) (43 CFR 2812.2-1)	LLE	
7)	Map filed in accordance with regulations 43 CFR 2812.1-2(c) & (d) (Handbook chap III.2.e.)	LLE	
8)	Listing of Lands or Roads Directly or Indirectly Controlled by Applicant is provided (43 CFR 2812.3-1 (Handbook Chap III.C.2.g.)	LLE	

Illustration III-2

Sample Processing Checklist for O&C Unilateral Permit Applications

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Processing Checklist for O&C Logging Road Permits (Cont.) (Keep in front flap of file & route file as indicated)			
	Action	Resp Emp.	Init./ Date
9)	Land Status Check (using MTP's, GTRN, FAMS, etc.:	LLE or ROW Spec	
	<input type="checkbox"/> BLM has sufficient control of all roads to authorize use (see Handbook Illustration III-2).		
	<input type="checkbox"/> Any withdrawals that would affect ability to authorize?		
	<input type="checkbox"/> Any mining claims?		
	<input type="checkbox"/> Any roads on U.S. built or controlled by 3 rd party Permittees? (U.S. can authorize use of road, subject to right of 3 rd party to set road rules). (which roads:		
10)	Conformance with Land Use Plans Yes () No ()	ROW Spec	
Analysis of Proposal			
11)	Transmit information to Field Office (Lead Engineer & NEPA Coord) per Unilateral Permit Routing Memo & attach items indicated in Memo	ROW Spec	
	NEPA & other information supplied from F.O.:	ROW Spec.	
	<input type="checkbox"/> F.O. determined U.S. needs reciprocal rights.		
	<input type="checkbox"/> Easement Justification Report received	ROW Spec.	
	<input type="checkbox"/> Plat received (both routed to Easement Specialist)	ROW Spec.	
	<input type="checkbox"/> Bond Amount determined by AO: \$	ROW Spec.	
	<input type="checkbox"/> Special provisions identified by F.O.	ROW Spec.	
	Permit prepared (w/all attachments) & available in file during admin. Review process.		
12)	Decision Document: Administrative Review Requirements Met		
	<input type="checkbox"/> If CE, it includes administrative review language and refers to specific permit (attached).		
	<input type="checkbox"/> IF EA, it refers to specific permit and includes administrative review language (copy is mailed to applicant and public at same time). Date decision published: _____ 31 st Day after publication: _____		
Permit Preparation & Transmittal for Signature			
	Immediately after publication of decision (if EA) or approval of CE:		
13)	Finalize Permit		
	Permit document & all exhibits finalized.	ROW Spec.	
	Transmittal Letter Finalized (w/two copies of Permit (and all attachments) indicating if they return them signed, w/payment of fees, bonding, etc. permit can be approved: 1) 31 st day (if no appeals or requests for stay filed), 2) 76 th day if request for stay filed and no denial/approval of stay by IBLA, 3) If stay is granted, when stay is lifted.(route file) cc: Acct Tech, Lead Engineer	ROW Spec.	
14)	DRS Review & Sumame	DRS	
	<input type="checkbox"/> Correct legals, if applicable.	DRS	
	<input type="checkbox"/> Correct fees.	DRS	
	<input type="checkbox"/> Map matches permit.	DRS	
	<input type="checkbox"/> Proper bond amount requested	DRS	
	<input type="checkbox"/> Proper insurance requested	DRS	
	<input type="checkbox"/> If reciprocal rights indicated, notification included.	DRS	
15)	Field Manager signature & date package mailed to Permittee	ROW Spec.	
16)	Dated copy of letter w/fees due provided to Acct. Tech.	ROW Spec.	

Illustration III-2

Sample Processing Checklist for O&C Unilateral Permit Applications

Page 3 of 3

Processing Checklist for O&C Logging Road Permits (Cont.) (Keep in front flap of file & route file as indicated)			
Permit Approval			
17)	Date Permit returned signed		ROW Spec
	<input type="checkbox"/> Admin. Review process complete & no stay granted.		LLE
	<input type="checkbox"/> Proper fees paid.		LLE/Acct Tech.
	<input type="checkbox"/> Bond reviewed: Correct amount (), Proper form (), Approved Surety ()		LLE
	<input type="checkbox"/> Insurance certificate filed: Correct amount (), Approved Surety ()		LLE
	<input type="checkbox"/> Signor on Permit is authorized to sign on behalf of corp., partnership, etc.		LLE
18)	Prepare transmittal letter w/approved Permit (2 copies) (cc: Lead Engineer, Maint. Foreman (if BLM is maintaining any roads).		ROW Spec.
	Route for Signature (surname by DRS, Lead Engineer)		ROW SPEC
	After it gets mailed: Effective Date _____, Expiration Date: _____		ROW Spec.
	Enter dates & who will conduct pre-haul (and mid-haul monitoring) inspections in Realty Tickler.		ROW Spec.
LR 2000 & Administration			
19)	LR 2000 Finalized:		LLE
	<input type="checkbox"/> 307 – ROW Granted – Issued (Effective date on Permit)		
	<input type="checkbox"/> 950 – Compliance Report Approved (date pre-haul condition assessment)		
	<input type="checkbox"/> 763 – Expires (enter expiration date)		
	File to DRS w/copy of SRP for QC of SRP and entering in ticker as "completed" .		DRS

Illustration III-3
 Interagency Agreement on ESA for Reciprocal Rights-of-Way
 Page 1 of 3



Application of the Endangered Species Act to proposals for access to non-federal lands across lands administered by the Bureau of Land Management and the Forest Service

Effective immediately, the following applies to proposals for access to non-federal land across federal land administered by the Bureau of Land Management (BLM) and the Forest Service (FS) (hereinafter referred to as “federal land”).

Not all proposals for access to non-federal land across federal land (hereinafter “rights-of-way” or “ROW”) are the same. Application of the ESA to a ROW proposal depends on the discretion available to BLM and the FS under applicable statutory ROW authorities and on the nature of legal rights held by the applicant. If BLM or the FS has a mandatory duty to issue a ROW with no discretion under applicable law, no consultation is required under the ESA. This does not affect the applicability of other provisions of the ESA or other federal or State laws protecting species and habitat.

When BLM or the FS has discretionary authority to issue or condition a ROW, the agency must determine whether the proposed federal action “may affect” listed species or designated critical habitat. If a “no effect” determination is made, ESA compliance is complete. This finding should be placed in the record and processing of the application may continue in accordance with agency authority.

When the BLM or the FS cannot make a “no effect” determination, the agencies will consult either formally or informally with the Fish and Wildlife Service and/or the National Marine Fisheries Service (the “Service”) when considering whether to authorize access to private lands across public land. The following applies during such consultation:

- The “proposed federal action” is the authorization of access across federal land and includes the location and method of access, e.g., the character of the road, where it will lie, the method of road building and the use of the right of way. The proposed federal action does not include any private action on private land.

Illustration III-3

Interagency Agreement on ESA for Reciprocal Rights-of-Way

Page 2 of 3

- The “action area” is the area that will be affected directly or indirectly by the proposed action.
- The “effects of the action” are the direct and indirect effects to the species caused by the access across federal lands. Indirect effects are those effects to the species that are caused by the proposed action, are later in time, and are reasonably certain to occur.
- “Reasonably certain to occur” requires existence of clear and convincing information establishing that an effect that will be caused by the proposed action is reasonably certain to occur. This is a rigorous standard; it is not based on speculation or the mere possibility that effects to the species may occur. Nor is this a foreseeability standard as is commonly used in NEPA analysis. If no such information exists, or is speculative or not credible, then that effect is not reasonably certain to occur and should be disregarded. In no event should a conclusion be reached that some effect is reasonably certain to occur absent clear and convincing information to support that finding in the record.
- A finding that an “indirect effect” is “caused by a federal proposed action” requires an actual cause-effect relationship between the proposed federal action to authorize access across federal land and the effect to the species. When the authorization of access is essential in causing an effect to the species, the effect should be viewed as an indirect effect subject to consultation if it is reasonably certain to occur. If the authorization of access is not essential in causing an effect to the species, but merely facilitates such an effect, then it is not an effect subject to consultation. Consequently, the effect to a species from subsequent action on non-federal land that is facilitated, but not actually caused by the authorization of access, is not an effect of the proposed federal action. 

Informal consultation may result in a determination by the BLM or the ES that the proposed federal action “may affect, is not likely to adversely affect” listed species or critical habitat, with written concurrence from the Service in this determination. As a part of this process, the BLM and the FS may suggest modifications to the proposed action the applicant could implement to avoid the likelihood of adverse effects to listed species or critical habitat, but these suggestions must be limited to the federal action itself – the right-of-way across federal lands. The modification or regulation of activities on private lands is not authorized unless the applicant requests the consultation to include activities on private land, as discussed below. Written concurrence of the Service terminates the consultation process and no further action is necessary. This finding and concurrence should be placed in the record and processing of the application may continue in accordance with agency authority.

A finding of “may affect, likely to adversely affect” requires formal consultation. Formal consultation resulting in a no jeopardy conclusion may include discretionary conservation recommendations. Conservation recommendations must be limited to the proposed federal action itself – the right-of-way across federal lands. Recommendations with regard to activities on non-federal lands are not authorized unless the applicant requests that the consultation include activities on non-federal land, as discussed below.

Illustration III-3

Interagency Agreement on ESA for Reciprocal Rights-of-Way

Page 3 of 3

Formal consultation resulting in a finding of jeopardy or likely to adversely modify designated critical habitat includes the Service's recommendation of "reasonable and prudent alternatives" unless there are no reasonable and prudent alternatives. The Service is required to utilize the expertise of BLM, the FS and the applicant in identifying these alternatives. Alternatives must be consistent with the intended purpose of the proposed federal action and within the scope of the BLM's or FS's legal authority.

Jeopardy and no jeopardy determinations also will include a statement concerning incidental take if take is anticipated. An incidental take statement includes reasonable and prudent measures the Service considers necessary or appropriate to minimize the impact of incidental take. Reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes. Further, both the reasonable and prudent measures and the terms and conditions must serve the purpose of minimizing the take of the proposed federal action under consideration. BLM and FS authorities and the nature of the "action" itself also will affect the reasonable and prudent measures and terms and conditions that may be a part of an incidental take statement.

An applicant has a right to receive an incidental take statement, with reasonable and prudent measures, if take is anticipated from the access itself. The applicant also may desire to include reasonable and prudent measures in the incidental take statement for take resulting from activities on non-federal land. If the applicant requests an incidental take statement for take resulting from activities on non-federal lands, the activities on non-federal land may be analyzed in the section 7 consultation for the access application. If the applicant chooses to be covered through the section 7 consultation, then the incidental take statement can include reasonable and prudent measures related to activities on non-federal land. If the applicant abides by these measures, the applicant has ESA coverage for any associated take. If the applicant chooses not to include activities on non-federal land, then there is no ESA coverage from the access consultation for any take associated with those activities.

Except when requested by the applicant, the consultation process associated with the proposed federal action to authorize access across federal land may not be used to condition activities on non-federal land. BLM and the FS may not deny or condition access across federal lands based on the implementation of measures or conditions related to the use of non-federal land. Further, the Service may not request re-initiation of consultation based on subsequent activities on non-federal land.

Consultation also includes consideration of the destruction or adverse modification of critical habitat. For this purpose, only habitat formally designated as "critical habitat" by a Service rule making is included. Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. The concept of "take" does not apply to critical habitat, but only to the listed species itself.

Approved by:

/s/ Dale N. Bosworth, Chief, Forest Service, Department of Agriculture, 01/27/03

/s/ Kathleen Clarke, Director, Bureau of Land Management, Department of the Interior, 01/13/03

/s/ Steven A. Williams, Director, U.S. Fish & Wildlife Service, Dept. of the Interior, 01/17/03

/s/ William T. Hogarth, Assistant Administrator for Fisheries, National Marine Fisheries Service,
National Oceanic & Atmospheric Administration, 01/30/03

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IV. O&C LOGGING ROAD RIGHT-of-WAY (UNILATERAL) PERMITS

A. Purpose

This chapter explains what documents are necessary to create a unilateral permit (see glossary) once an application has been determined to be adequate and a decision has been made to approve the application. This chapter also provides examples of the required documents and identifies provisions that are unique to a unilateral permit. The application process is covered in Chapter III.

B. Background

If the AO has determined that no reciprocal access rights are needed from the applicant per 43 CFR §2812.3-4 (see Chapter III., Section B.3.), a unilateral permit, is prepared. If reciprocal rights are needed, refer to Chapter V. for preparation of a reciprocal right-of-way agreement.

In order to qualify for a unilateral permit, as described in Chapter III., Section D.2.e., the applicant must either: 1) own the land which will be served by the permit for management and removal of timber and other forest products, or 2) hold title to the timber at the time it is hauled over U.S.-controlled roads or lands. This should have already been determined before the unilateral permit is prepared (see Chapter III.)

C. Required Components of a Unilateral Permit

The following items are required components of a unilateral permit. Illustration III-2 is a sample checklist. Each district has developed its own checklist, but this illustration (III-2) provides an example of a standardized process.

1. Standard Unilateral Permit Format

Form OR 2812-3 - O&C Logging Road Right-of-Way Permit is to be used as the standard template for all unilateral permits. The form is included as Illustration IV-1. The form is to be used for all unilateral permits, regardless of the term. No deviation from the wording in the boilerplate unilateral permit or standard verbiage in the standard Exhibit B - Special Provisions shall be used without concurrence from the Oregon State Office. Any additional provisions shall also be approved by the Oregon State Office.

The standard unilateral permit template is comprised of the following required components:

a. Permittee Name

The full legal name, address and telephone number of the permittee is included. If a corporation, the name should include “incorporated in the State of _____.” The name should be the same as that on the application or as verified the correct owner of the land or timber to be served by the permit.

b. Permit and Serial Number

Each unilateral permit shall include the district permit number and Serial Number assigned in LR2000 when the application was filed. (See Chapter III., Section E.1.c., for guidance on establishing local permit numbers.

c. Road Fees

Every unilateral permit must include a provision that provides for payment of fees. The type and amount of fees differ in particular situations. The types of fees that can be assessed are: 1) road use, 2) road maintenance (including surface replacement), and 3) administration (basic permit fee). These fees are further described in Sections 1), 2), and 3) below.

1) Road Use Fees

Road use fees are included in all unilateral permits unless these fees are waived for any of the reasons shown in section a) directly below. There are two types of road use fees: a) from Road Maintenance Fee Schedule and b) calculated as discussed below.

a) Fee from Oregon/Washington Road Maintenance Fee Schedule.

Oregon State Office publishes and periodically updates a Maintenance Fee Schedule (which includes a standard road use fee.) This standard road use fee to be used in a particular permit is based on road surfacing type as shown in the Road Maintenance Fee Schedule. This road use fee applies to all new unilateral permits (unless road use fees are waived as shown below). The state-average road use fee is paid at a rate per MBF/per mile.

b) Calculated road use fees. Some older existing perpetual unilateral permits may contain road amortization formulas (similar to those in semi-detailed reciprocal Permits) which require road use fees to be calculated. In these permits, the calculated fee would be used. However, there should never be calculated road use fees in newer permits as there is no standard amortization formula in the O&C Logging Road Right-of-way Permit template (Form OR 2812-3 - Illustration IV-1).

a) Waiver of Road Use Fees

There are some exceptions to BLM charging a road use fee for the hauling of forest products over roads it owns and controls. No road use fee is charged in the following instances:

- For any road when the total private percentage share of the road's replacement cost has been collected.
- If a permittee, or his predecessor, built the road under terms of a permit that has since expired (43 CFR 2812.5-2(c)). NOTE that a road use fee is charged for that portion of the road's replacement cost which represents an improvement made by BLM or its licensees. When a road was built by the permittee's predecessor and the road use fee is waived for this reason, the permit must contain a provision stating that the permittee may use the road only for the purpose of reaching the lands of the predecessor that were served by the road.
- If a permittee is the underlying landowner for an easement granted to the U.S. and they (or their predecessor in title) reserved free commercial use of the road in the easement document.
- Road use fees are not applicable to mineral haul. Even though unilateral permits utilize the state-wide standard road use fee instead of a calculated road use fee, the reason road use fees do not apply to mineral haul is because the road amortization formula defines the "F" (or fee) in the formula as:

$F = \text{Road use fee per unit of merchantable timber.}$

Since this formula describes the fee in a unit of merchantable timber, the premise is that the merchantable timber hauled over time will fully amortize the investment in the road. Therefore, it is not appropriate to charge road use fees for the hauling of commercial mineral material.

b) Reserved

2) Maintenance Fees (Including Surface Replacement Fees)

The Oregon/Washington Road Maintenance Fee Schedule also includes "maintenance" and "surface replacement" fees. Both of these types of fees are considered "maintenance" fees. The maintenance fee is assessed at a rate per MBF/per mile. The Road Maintenance Fee Schedule has different maintenance

fee rates based on road surfacing, recreation use allowance, and the type of forest product to be hauled (timber, chip, rock, etc.).

Generally, maintenance fees are charged in situations where the BLM maintains the road (both the maintenance and surface replacement fee is assessed). In situations where the BLM allows operator maintenance, the “maintenance fee” portion would be waived, but the “surface replacement fee” portion would still be assessed.

3) Basic Permit Fee

A “basic permit fee” fee is charged and collected in advance for all permits in which a road use fee or maintenance fee is not being charged (see 43 CFR §2812.5-2(a)). The regulations establish the basic permit fee rate of \$5.00/mile or fraction of a mile (the right-of-way length is always rounded up to the next whole mile), payable in installments of 5 years. If the permit term is less than 5 years, the fee for the entire term is collected in advance.

In practice, it would be extremely rare for this basic fee to be charged in lieu of the payment of maintenance and road use fees.

4) Advance Payment of Fees

BLM policy requires the advance payment of all fees associated with unilateral permits, based on the estimated volume of timber to be hauled using the BLM Oregon/Washington Road Maintenance Fee Schedule rates as shown above.

At the time the unilateral permit expires or is otherwise terminated, if the actual volume hauled is greater than that stated in the unilateral permit, the permittee shall be billed for the additional fees due for the actual volume hauled which is in excess of the original estimated volume. The additional billing is based on the fee schedule in the Exhibit C. If the permittee hauled less than the estimated volume, the fees collected for the portion of the original estimated volume not hauled shall be refunded at the close of the permit by requesting the refund through CBS.

In cases where an advance payment is in excess of \$10,000, or if the permittee indicates a large advance payment would create a financial hardship, the AO may set up a schedule to collect the advance payment in smaller increments (annually, semi-annually, quarterly, etc.) after reviewing the request. However, for 12-week permits, the entire amount should be paid in advance.

For long-term unilateral permits (more than three years) the advance payment can be scheduled annually, or as otherwise determined by the AO.

5) Applying Road Use Fees Paid under a Unilateral to a Reciprocal Permit

BLM has issued unilateral permits while an amendment to a reciprocal right-of-way agreement that will include the same roads authorized in the unilateral permit is pending. This practice is strongly discouraged since an amendment can usually be done as quickly as a unilateral permit. Most delays in processing amendments come from the NEPA analysis, but since new unilateral permits and discretionary amendments both require a NEPA analysis, there should be no difference in the time for processing the amendment.

However, if there are any existing unilateral permits for which road use fees were paid and the roads were later added to a reciprocal Permit with the same party, the road use fees paid under the unilateral permit can be applied toward that permittee's calculated deficit share for those same roads in the reciprocal Permit.

The permittee should submit a written request in order to have such credit applied to a reciprocal Permit. The permittee should provide the information to document their specific request (the unilateral permit number, road Nos., amounts paid, etc.). The BLM AO should never deny such a request that is documented and supported by the record because of the regulations at 43 CFR §2812.5-2(c):

(c) If an application is filed to use a road built on O. and C. lands by the applicant or his predecessor in interest under a permit which has expired, the authorized officer may issue a new permit which provides that as to such road the applicant's road use payments shall be determined in accordance with paragraph (b) of this section except that he shall be required to pay a road use fee which is adequate to amortize only his proportionate share of any capital improvements which have been or may be placed on the road by the United States or its licensees together with a reasonable interest allowance thereon plus cost of maintenance if furnished by the United States: *Provided, however,* That if the application is for use of a road which has been built by a predecessor in interest the permit shall provide that the applicant may use the road only for the purpose of reaching the lands of the predecessor in interest that were served by the road. As a condition for the granting of such a permit, the applicant must comply with §§ 2812.3-1 to 2812.3-5 to the extent that rights-of-way and road use rights are needed to manage lands of the United States or to remove timber therefrom. [Underline added.]

d. Bonding Requirements

See Chapter VII. for detailed guidance on bonding requirements and processing. The regulations at 43 CFR §2812.5-3 require all permittees (except for individuals

as described in the following paragraph) to provide BLM with a performance bond before using a U.S.-controlled road. The regulations specify that the amount of the bond must be no less than \$500 per mile or fraction thereof (which is interpreted to mean fraction of a mile). The minimum dollar amount is determined by multiplying the length of the road(s) to be used (rounded up to the next whole mile) by \$500. The AO has discretion to require a larger bond amount when the circumstances warrant.

The AO may waive the bonding requirement per 43 CFR §2812.5-3 for unilateral permits issued to an individual for a period of 12 weeks or less. Not more than one such waiver may be allowed in any 12 consecutive calendar months on behalf of or for the benefit of the same person.

The regulations require that a performance bond be posted (filed with and accepted by the AO) prior to using a road. The bond must be accepted by the AO prior to approval of the unilateral permit and the bond must be maintained for the full term of the permit.

If maintaining the bond during extended periods of non-use would create a financial hardship for the permittee, the AO may agree to allow the bond to be released during periods of extended non-use and then reinstated prior to the use commencing again. However, prior to releasing any bond, there should be a written agreement in writing from the permittee that: 1) they understand their obligation to notify the AO in advance that they intend to commence haul, 2) they will re-submit the bond prior to haul, and 3) that hauling over roads included in a permit without posting a satisfactory bond constitutes noncompliance (see Chapter VI., Section B.)

e. Insurance Requirements

The insurance requirements for unilateral permits are identical to those for Permits attached to reciprocal right-of-way agreements, as outlined in Chapter VII.

f. Duration of Rights (Term of Permit)

A determination of the term of the permit needs to be made before the permit is prepared and issued.

1) Three-Year Permits

Historically, BLM has routinely limited the term of unilateral permits to three years (which can be extended annually) based on the following regulation:

43 CFR §2812.0-6(h): The authorized officer may in his discretion, issue short term right-of-way permits for periods not exceeding three years, subject to one-year extensions in his discretion. Such permits

shall specify the volume of timber which may be carried over the right-of-way and the area from which such timber may be logged.

The regulations do not limit the number of consecutive one-year extensions that may be approved, but the workload on the part of the BLM to continually renew these three-year permits should be evaluated against issuing a longer-term permit if the demonstrated need of the applicant is for a longer duration as shown below.

2) Permits Longer Than Three Years

The following regulations 43 CFR §2812.3-6 allow for the issuance of a permit which meets the demonstrated need of the applicant:

The rights-of-way granted by the U.S. . . . will be for a stated term or terms which may vary for each portion of the right-of-way granted; such term or terms will normally be coincident with the probable period of use for the removal of forest products by the Permittee and any successor in interest of the various portions of the right-of-way. . . . [Emphasis added]

As discussed in Chapter III., Sec. D.2.g., a harvest schedule plan provided by the applicant may be a factor in deciding what term is appropriate. While the above cited regulation does not limit the term of unilateral permits, there are factors that should be considered before long-term unilateral permits (over three years) are issued.

Paragraph 11 (required) in the standard Form OR 2812-3 (O&C Logging Road Right-of-Way Permit (Unilateral) –Illustration IV-1, covers the issue of reciprocity if the AO determines that reciprocal rights “appear necessary” during the life of the permit.

11. Reciprocal Rights if U.S. Determines it Appears Necessary - If, during the term of this permit, the Authorized Officer determines it appears necessary that reciprocal rights over roads owned or controlled by the Permittee or over lands owned by the Permittee (now or in the future) appear necessary, the Permittee must comply with 43 CFR §§2812.3-1 through 3-5, and 43 CFR §2812.0-6(d) to the extent that rights appear necessary for the United States, its licensees and permittees. During the life of this permit, the Permittee shall notify the Authorized Officer if they acquire any lands in Oregon which are in and West of Range 8 E. in order for the U.S. to determine if it appears necessary to acquire rights over such lands.

In addition to the above paragraph, if the permit is for a term longer than three years, the following alternate paragraph 1 regarding payment of road fees should be used (as shown on the Illustration IV-1):

1. (Alternate) Permittee will pay an initial advance payment of road use, maintenance and/or surface replacement fees as identified in the Exhibit C attached hereto and made a part hereof. The total payment due for advance fees is summarized below:

Fee Type	Required Advance Fees
Road Use	\$
Maintenance	\$
Surface Replacement	\$
TOTAL ADVANCE FEES	\$

Every three years, adjustments to the advance payment for the next three years will be made based on overpayment or underpayment of advance fees as compared to certified haul reports for the preceding three-year period. Any overpayment will be applied to advance payment for the subsequent three-year period and any underpayment of fees will be required to be paid in order to zero out the fees before estimating the advance payment for the subsequent three-year period.

After the first three-year period, the Permittee will submit an estimated volume of haul for the next three-year period and the advance fees will be calculated based on the rates in the published Oregon/Washington Road Maintenance Fee Schedule in effect at the time of the estimated volumes are submitted.

If no haul is anticipated for an extended period of time, the Permittee shall notify the Authorized Officer in writing and the requirement for estimating volume and advanced payment will be suspended during that time. However, if the Permittee then decides to haul, they are once again required to submit their estimate of volume to be hauled.

g. Expiration Date (Term of Permit)

Every unilateral permit needs to have the expiration date (or specific term after which the unilateral permit will expire) clearly identified or contain the following statement:

This permit expires three (3) years [or other stated term] from the date approved by the Authorized Officer.

If the unilateral permit is perpetual, be sure to so indicate in the document.

h. Signature Blocks

Two signature blocks appear on the unilateral permit form: 1) the permittee, and 2) the BLM AO. The permittee signature block should contain enough blocks for multiple permittees (if applicable), or, in the case of a corporation or other business entity, it should contain an “Attest to” block.

i. Standard Provisions

These provisions are included as part of Form OR 2812-3. All unilateral permits must contain the provisions contained in the form.

j. Exhibits

The exhibits attached to a unilateral permit are different from those attached to a reciprocal right-of-way agreement and they are identified in the following paragraphs.

1) Exhibit A

The Exhibit A is a map which serves to identify the specific roads and lands authorized by the unilateral permit. It should include the following as a minimum:

- Header Containing: (if Exhibit is more than one page, they should be numbered):
 - Exhibit A
 - Permit No.
 - Serial No.
- Legend Containing: U.S. lands, roads, or rights-of-way included in the permit
 - Other U.S. lands identified
 - Permittee lands to be served by the permit.

The roads or right-of-way should be clearly identified by road and segment No.

2) Exhibit B

The Exhibit B contains the additional provisions. It identifies specific terms and conditions pertaining to the permittee's use of the authorized lands, roads or rights-of-way. These provisions are optional and can be utilized as the circumstances dictate. The standard Exhibit B contained in Illustration IV-1 contains paragraphs that can be chosen based on the situation. It also includes some standard construction provisions. Any provision not found on Illustration IV-1 must be approved by the Oregon State office and/or Solicitor. Exceptions to this are those mitigating measures identified as part of the NEPA process specific to a given unilateral permit.

3) Exhibit C

The Exhibit C contained in Illustration IV-1 is the table of fees. It serves as the basis for establishing the advance payment of fees. The table should include all of the columns shown, even if fees are not required. For any roads where fees are not required, the columns should indicate zero (0).

4) Exhibit D

The Exhibit D is the right-of-way plat and specifications if the permit involves road construction. The requirements for right-of-way plats in a unilateral permit are the same as described for right-of-way plats in Chapter IX., Section B.

2. Reserved

D. Approval Processing and Transmittal of Permit for Signature

The following sections provide guidance in the final preparation, approval and transmittal of unilateral permits.

1. Payment for O&C Right-of-Way Timber (if applicable) Prior to Approval

If the unilateral permit involves any timber to be cut, removed or destroyed, the permittee must (**prior to the issuance of the permit**) pay for the timber as identified in the regulations at 43 CFR §2812.5-1:

An applicant will be required to pay to the Bureau of Land Management, in advance of the issuance of the permit, the full stumpage value as determined by the authorized officer, of the estimated volume of all timber to be cut, removed, or destroyed, on O. and C. lands in the construction or operation of the road.

The timber is sold as a negotiated (non-advertised) timber sale. The guidance for timber valuation for non-advertised timber sales is found in BLM Manual Section 9350 and it applies to both U.S. and permittee right-of-way timber.

If the total amount of right-of-way timber is valued at \$2,499 or less, this is accomplished with BLM Form No. 5450-5 (Vegetative or Mineral Material Negotiated Cash Sale Contract). If the right-of-way timber is valued at more than \$2,499, the permittee (or other qualified purchaser if the permittee is an exporter) enters into a negotiated timber sale contract with the BLM. In either case, payment for the timber must be made prior to the issuance of the unilateral permit.

See Chapter IX., Section B.17., for further discussion on disposal of O&C timber and guidance when the permittee is an exporter.

2. Approval Processing

While the NEPA process is being completed, the unilateral permit and all exhibits should be prepared so that by the time the final NEPA decision is made, the permit can be transmitted to the permittee immediately for signature. It is advisable to have the permit prepared well in advance of the NEPA decision so that the permittee can review a draft copy. However, the exhibits cannot be finalized until the NEPA analysis is completed to ensure that any identified mitigating measures are also included.

Guidance for the required administrative language which must go in every NEPA decision related to O&C permits is found in Chapter XIII. It is important to note that the effective date of O&C right-of-way decisions is tied to the appeal regulations at 43 CFR Part 4, Subtitle A. See Chapter XIII., Section D., for guidance on the effective date and start of appeal period.

a. Transmittal to Permittee For Signature (with Appeal Rights)

The Notice of Decision (for the NEPA document) is transmitted separately by certified mail to the applicant and any other parties who participated in the process. After the Notice of Decision is mailed to the applicant (and any other party who participated in the NEPA process), two copies of the permit (with all required attachments) shall be transmitted to the applicant with one of the following transmittal letters which contain the appeals language as follows:

1) If NEPA Completed with a CX

If NEPA compliance was accomplished by means of a CX, (most common), two copies of the permit will be transmitted with the use of Illustration XIII-4.

2) If NEPA Compliance Done with an Environmental Analysis (EA) or Higher

If the NEPA analysis was accomplished by means of an Environmental Assessment (EA), or Environmental Impact Statement (EIS), two copies of the permit will be transmitted with the use of a decision similar to that shown in Illustration XIII-5. Typically, unilateral permits involve use of existing roads so most NEPA compliance for unilateral permits is accomplished with a CX. The only time NEPA for unilateral permits is typically accomplished with an EA (or EIS) instead of a CX is when road construction (or other ground-disturbing activity) is involved.

b. Review After Permit and Required Documents Returned by Applicant

When the two signed copies of the unilateral permit are returned to the issuing office, verify the following:

- Both permit copies have been signed by the applicant, dated and that the person who signed has the authority to do so.
- The advanced fees required by the permit have been submitted in the proper amount(s).
- Payment for O&C right-of-way timber, if any, has been made.
- If insurance is required by the AO, the insurance binder is: 1) in the proper minimum coverage amount, 2) the types of coverage are correct, and 3) the insurance carrier is on the Dept. of Justice approved insurer list. See Chapter VII. for guidance on insurance requirements and adjudication.
- Verify that the performance bond is submitted properly (correct form and amount, etc.) and adjudicated with the use of one of the checklists found in Chapter VII. (Illustration VII-3—Checklist for Adjudicating Surety Bonds, or Illustration VII-8—Checklist for Adjudicating Personal Bonds). Follow the process for adjudicating bonds in Chapter VII.
- If the applicant fails to remedy a defective bond, a formal decision should be sent with the right of appeal. Illustration No. VII-5 is a sample notice of defective surety bond. Illustration No. VII-11 is a sample notice of defective personal bond.

If any of the above items are missing or not properly executed, notify the applicant and request corrective action (by certified mail). Add documentation to the case file showing the deficiencies found and how and when the applicant was notified.

c. Transmittal of Permit and Acceptance of Bond Letter

When the above items have been verified and/or corrective action has been completed, prepare a transmittal letter for the approved permit and include a statement that the bond is acceptable. Use Illustration VII-4 for this dual purpose.

Unilateral permits are approved (signed) by the appropriate Field Manager. If the permit is only in one Resource Area, it is signed by the Field Manager. If the permit covers more than one Resource Area within a single district, it is signed by the District Manager. If the permit covers more than one district (which is extremely rare) it is signed by all the district managers who are affected, unless by special delegation of the State Director, one district manager is authorized to sign on behalf of all districts. It is best to keep permits specific to one district.

The second signed original copy goes in the case file.

E. Documentation and Reporting

After the permit is approved and transmitted to the permittee, the following actions need to be completed:

- Update LR2000
 - Action Codes 307 - enter the date permit is granted
 - Action Code 763 – enter the date permit expires
 - Make sure the acreage is correct
 - Make sure the permittee is the same as the billee and that the address in LR2000 is correct.
- Report Unit of Accomplishment: Report an “ER” unit of accomplishment under the appropriate subactivity (probably 6310) (See Illustration VI-9).
- Establish a Road Record File for any new construction to document that the road was built under a unilateral permit.

F. Post Authorization Administration

After the unilateral permit is issued, there are routine actions that occur: 1) pre-haul, mid-haul, and post-haul (end of permit or end of season) road condition assessments, 2) report of haul by permittee, 3) monitoring of provisions of the permit, etc. Guidance for some of these actions is found in other chapters if indicated below.

1. Road Inspections (Monitoring)

Once the permit is issued, and the permittee notifies the AO of their intended start date, a pre-haul inspection should be scheduled to establish the “pre-haul” condition of other roads. The permittee is required to leave the roads in “as least as good of a condition as what existed prior to their use.” The permittee should be invited to participate in the pre-haul inspection so there is no misunderstanding during the final hauling inspection regarding whether or not they left the road in “as good of a condition than what exited prior to haul.”

These pre-haul inspections should be documented on the Road Condition Assessment form (Illustration VIII-8). The permit administrator should conduct frequent road inspections during the active haul periods and document the inspections with this same form (if there is room). Additional discussion of pre- and post-haul (or mid-haul) inspections is found in Chapter VIII.

The road inspections are reported in MIS with a unit of accomplishment under the 6310 subactivity and using the “NH” (monitoring inspection) program element. In addition, LR2000 should be updated with an action code of 950 “Compliance Report Approved” using the date the inspection form was signed.

2. Reports of Road Use and Collections and Billings

Chapter VIII. provides detailed guidance on road use reporting, monitoring, billings, and collections. Procedures are similar for both unilateral and reciprocal permits. One difference, however, is that for unilateral permits, there is an advance payment for all fees made at the time the permit is issued. The Reports of Road Use are submitted throughout the life of the unilateral permit and payments are not required at the time they are submitted because the advance fees should cover the use. However, based on the filed Report of Road Use, if the permittee has well underestimated their volume, the AO could require payments mid-permit or they can choose wait until the end and bill for the difference.

The collection procedures for unilateral permits are the same as for reciprocal Permits (see Chapter VIII., Section G.13.).

G. Extensions

O&C permits may be extended for a period of one year (see 43 CFR §2812.0-6(h), upon receipt of a request from the permittee. The request must be made prior to the expiration of the permit, as once the permit expires, there is no permit to extend. The AO has discretion to decide whether to extend the permit, and extensions are subject to the same NEPA compliance as a new application (see Chapter III.) unless the NEPA document adequately cover such extensions. There is no limit to the number of consecutive one-year extensions that may be approved.

H. Case Closure

There is a difference between a case closure and a termination. A case is closed when the case has expired or when the permittee requests closure of an authorization before its stated expiration date and the AO has signed a letter (or decision) releasing the permittee from any further responsibility under the permit and closing the case. A termination occurs when the holder of an authorization has failed to comply with its terms and conditions and the AO has issued a decision terminating the permit before its stated expiration date.

If a permit has expired by its terms, it cannot be renewed; the permit will be closed. See 43 CFR §2812.0-6(h).

The following steps should be followed when closing a permit:

- 1) Conduct a field review to verify whether the permittee has complied with all provisions of the permit and that no unnecessary damage has occurred to the roads or lands of the U.S.

- 2) If the field review identifies any noncompliance issues, initiate a non-compliance action (see Chapter VI., Section B.) to require the permittee to correct the areas of noncompliance within a reasonable stated time period. If the noncompliance is not corrected to the satisfaction of the AO (within the specific period of time), initiate the appropriate process to attach the permit bond (see Chapter VII.) and correct the deficiency. The permit may not be closed until the non-compliance is corrected to the satisfaction of the AO. See Chapter VII. for further guidance on handling issues of noncompliance.

- 3) Assure that all scale reports have been submitted to verify that all volume has been reported and has been billed, collected, and (if applicable) road use fees have been posted to the amortization records.

- 4) As appropriate, refund any cash bond or notify the surety that a surety bond has been released.

- 5) Send the permittee a letter (or decision letter), signed by the AO, releasing the permit bond and closing the case.

- 6) Update LR2000 (970 action code) (Refer to Lands Data Standards). Update any district tracking systems to show that the case is closed. LR2000 documentation is required in order to obtain credit for Units of Accomplishment (see Illustration VI-8)

- 7) Report a unit of accomplishment in MIS for FP (case closure).

8) Stamp permit case file folder “Case Closed” and print out an updated LR2000 serial register page to file in the case file.

9) Transfer the closed case file to OSO Docket.

10) If the district uses a folder tracker system, update it to show the case is closed and the new case file location (OSO).

Illustration IV-2 is a sample letter used to close out unilateral permit case files.

Chapter IV - Table of Illustrations

No.	Title	Page
IV-1	Form OR 2812-3 – O&C Logging Road Right-of-Way Permit	IV-19
IV-2	Case Closure Letter	IV-34

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Illustration IV-1
Form OR 2812-3 - O&C Logging Road Right-of-Way Permit (Unilateral)
Page 1 of 15

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

O&C LOGGING ROAD RIGHT-OF-WAY PERMIT

43 CFR 2812

Title V, Pub. L. No. 94-579, 90 Stat 2743

PERMITTEE NAME:		SERIAL NO.	
ADDRESS:		PERMIT NO.	

The United States hereby grants to Permittee the right to use roads and rights-of-way under the jurisdiction of the Bureau of Land Management (BLM), _____ District, for the transportation of timber, minerals, or other forest products from the following lands owned or controlled by Permittee:

Township	Range	Section	Subdivision

The Permittee is authorized to use and/or improve BLM-controlled road(s) or lands shown in the table below (and identified on the Exhibit A map attached hereto and made a part hereof). If the Permittee is responsible for maintenance of roads during their period of use, it is so indicated in the table below.

Road Number	Segment	Road Name	Length To Be Used (Miles)	Maintenance Responsibility

[] If checked, the Permittee is also authorized to construct the road (location as identified on the plat map labeled as Exhibit D attached hereto and made a part hereof), subject to provisions identified in Exhibit B.

Illustration IV-1

Form OR 2812-3 - O&C Logging Road Right-of-Way Permit (Unilateral)

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This permit is approved SUBJECT TO the following terms and conditions as well as the additional Exhibit B, Additional Provisions, attached hereto and made a part hereof.

1. ROAD USE AND MAINTENANCE FEES - Permittee will pay an initial advance payment of road use, maintenance and/or surface replacement fees as identified in the Exhibit C attached hereto and made a part hereof. The total amount due for advance fees is summarized below:

Fee Type	Required Advance Fees
Road Use	\$
Maintenance	\$
Surface Replacement	\$
TOTAL ADVANCE FEES	\$

Payment for additional volume will be made in the same manner and rates shown in the Exhibit C. If, at the end of the permit, the final volume hauled by the Permittee is less than that upon which the estimate is based, then the Authorized Officer shall calculate and make a refund at the appropriate per/unit volume rate shown in Exhibit C. If this permit is extended, the Exhibit C and rates charged herein may be modified to reflect the current rates identified in the BLM Oregon/Washington Road Maintenance Fee Schedule in effect at the time of extension.

[If the permit is a longer term permit (three (3) years or longer), replace Paragraph 1 with the following]:

1. (Alternate) Permittee will pay an initial advance payment of road use, maintenance and/or surface replacement fees as identified in the Exhibit C attached hereto and made a part hereof. The total payment due for advance fees is summarized below:

Fee Type	Required Advance Fees
Road Use	\$
Maintenance	\$
Surface Replacement	\$
TOTAL ADVANCE FEES	\$

Every three years, adjustments to the advance payment for the next three years will be made based on overpayment or underpayment of advance fees as compared to certified haul reports for the preceding three-year period. Any overpayment will be applied to advance payment for the subsequent three-year period, and any underpayment of fees will be required to be paid in order to zero out the fees before estimating the advance payment for the subsequent three-year period.

After the first three-year period, the Permittee will submit an estimated volume of haul for the next three-year period and the advance fees will be calculated based on the

Illustration IV-1

Form OR 2812-3 - O&C Logging Road Right-of-Way Permit (Unilateral)

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rates in the published Oregon/Washington Road Maintenance Fee Schedule in effect at the time of the estimated volumes are submitted.

If no haul is anticipated for an extended period of time, the Permittee shall notify the Authorized Officer in writing and the requirement for estimating volume and advanced payment will be suspended during that time. However, if the Permittee then decides to haul, they are once again required to submit their estimate of volume to be hauled.

2. PERFORMANCE BOND - Permittee shall obtain a performance bond in an amount not less than \$ _____, (minimum of \$500/mile or fraction thereof) in favor of the United States, conditioned upon faithful performance of the terms and conditions of this permit. If this permit is extended, the Authorized Officer may modify the bond amount.

Or, if the permit is less than 12 weeks and the Permittee is an individual (or individuals), the bonding requirement is hereby waived if the following box is checked and initialed by the Authorized Officer. [] _____ (initial of AO).

3. REPORTING OF ROAD USE - Permittee shall furnish a Permittee Report of Road Use (Form OR 2812-6) to the Authorized Officer showing the road segments that were used, the total amount of merchantable timber or minerals hauled over each road segment and the land from which the material was removed. The report shall be submitted by the 15th of the month following hauling and shall be accompanied by certified copies of all scale reports. If the Permittee notifies the Authorized Officer in advance of any specific period of non-haul, this requirement is waived until such time as the Permittee indicates haul will be re-initiated. At the end of the notified haul period, the Permittee shall submit the Form OR 2812-6 certifying that no haul occurred by checking the box that states: "I certify that no hauling occurred on any U.S. roads during the above reporting period" and signing the form. If the hauling is for minerals only, the reporting shall be no less than semi-annually (for the periods of: 1) January 1st through June 30th and 2) July 1st through December 31st of each year, with the report being filed within 30 days of the end of the reporting period).

4. REPORTING DURING EXTENDED PERIODS OF NON USE - Before commencing hauling under the terms of this permit for the first time, or after a shutdown of thirty (30) or more days, the Permittee shall notify the Authorized Officer in writing of the date the resumption of operations is planned. The Permittee shall also notify the Authorized Officer in writing of any intended cessation of operations for any period of thirty (30) or more days. Such written notification may be made by notation on Form OR 2812-6, Report of Road Use.

5. VERIFICATION OF FINAL VOLUME - The Authorized Officer may conduct a final verification of reported volume by comparing the total volume reported to the Bureau of Land Management with other state or federal agencies. The Permittee will be asked to account for any difference.

Illustration IV-1

Form OR 2812-3 - O&C Logging Road Right-of-Way Permit (Unilateral)

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6. ROAD RULES - Permittee shall comply with all safety standards and insurance requirements governing road use and log hauling as may be required by law or considered common practice within the State of Oregon. Any loads in excess of limitations set forth in ORS 818.010 to 818.080 on U.S. roads will require prior approval from the Authorized Officer.

7. LANDINGS, YARDING, AND CONDITION OF ROADS DURING USE - Landings shall be requested by submitting a map prepared according to the standards established by the Authorized Officer. No landings shall be located on United States land without written approval by the Authorized Officer. No yarding shall be allowed on any road. Permittee shall keep the roadway and ditches clear of logging debris. The Permittee shall, to the satisfaction of the Authorized Officer, clean up landings and areas on United States land where equipment has been operated or repaired and shall remove, or otherwise dispose of in a legal manner, all garbage, temporary buildings, trash, litter, or other refuse resulting from the Permittee's operations including fuel containers, oil cans, and discarded equipment or parts thereof.

The Permittee is responsible for all damages beyond normal maintenance as determined by the Authorized Officer of the Bureau of Land Management. The Permittee agrees to repair damages to the satisfaction of the Authorized Officer or to reimburse the Bureau of Land Management for repair of such damages. The road(s) must be open for travel at all times, unless permission for temporary road closure is approved by the Authorized Officer in writing.

8. FIRE PROTECTION - Permittee shall comply with all State of Oregon fire laws.

9. ENVIRONMENTAL STIPULATIONS - The Permittee agrees that in all operations under this permit, during the life of this permit he shall comply with:

A. All provisions of the State and Federal Water Quality Standards as they may apply to any waterway, stream, lake or reservoir, on or near the permit area, together with all applicable State and Federal laws and regulations. The Permittee shall also undertake every reasonable measure to minimize damage to waterways, streams, lakes or reservoirs on or near the permit area in connection with any operations under this permit.

B. All applicable State and Federal laws and regulations concerning the use of poisonous substances including insecticides, herbicides, fungicides, rodenticides and other similar substances. Prior to the use of such substances on or near the right-of-way, the Permittee shall obtain from the Authorized Officer approval of a written plan for such use. The plan, shall state the type and quantity of material to be used, the pest to be controlled, the method of application and such other information as the Authorized Officer may require. All use of such substances on or near the right-of-way shall be in accordance with the approved plan. If the use of a poison is prohibited by the Secretary of the Interior, it shall not be used. If use of a poisonous substance is limited by the Secretary of the Interior, it shall be used only in accordance with that limitation.

Illustration IV-1

Form OR 2812-3 - O&C Logging Road Right-of-Way Permit (Unilateral)

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C. If in connection with his operations under this permit, across the lands of the United States, the Permittee encounters or becomes aware of any objects or sites of cultural value, such as historical or pre-historical ruins, graves, grave markers, fossils or artifacts, the Permittee shall immediately suspend all operations in the vicinity of the cultural value and notify the Authorized Officer of the findings. The Permittee's operations may resume at the discovery site upon receipt of written instructions and authorization by the Authorized Officer.

D. All other applicable State and Federal environmental laws, regulations and standards.

The Permittee shall immediately discontinue all construction or other operations under this permit upon receipt of written notice from the Authorized Officer that such operations or any part thereof are in violation on this provision.

10. MAY BE AMENDED - This permit may be amended to include additional rights for the Permittee over existing roads controlled by the United States or over roads controlled by third parties, limited to land identified as "United States Lands" or over any roads controlled by the United States on private lands on the attached Exhibit A map. However, approval of such amendment shall be subject to all regulations and laws current at the time of application.

11. RECIPROCAL RIGHTS IF U.S. DETERMINES IT APPEARS NECESSARY - If, during the term of this permit, the Authorized Officer determines it appears necessary that reciprocal rights over roads owned or controlled by the Permittee or over lands owned by the Permittee (now or in the future) appear necessary, the Permittee must comply with 43 CFR §§2812.3-1 through 3-5, and 43 CFR §2812.0-6(d) to the extent that rights appear necessary for the United States, its licensees and permittees. During the life of this permit, the Permittee shall notify the Authorized Officer if they acquire any lands in Oregon which are in and West of Range 8 E. in order for the U.S. to determine if it appears necessary to acquire rights over such lands.

12. NONEXCLUSIVE LICENSE AND ASSIGNABILITY - This permit is a nonexclusive license to use U.S. lands, roads or rights-of-way. When the Permittee lands served by this permit are sold or transferred to another owner who needs the rights granted by this permit to remove forest products from those lands, assignment of the permit is required. Application for assignment shall be made in accordance with 43 CFR §2812.7. Any hauling over U.S. lands by the new landowner done without such assignment is considered to be in trespass per 43 CFR §2812.1-3.

13. CEASE AND DESIST IN CASE OF DAMAGE - The Bureau of Land Management reserves the right to stop any or all activities authorized under this Permit when the Authorized Officer determines that damage to the road or environment may occur or is anticipated.

Illustration IV-1

Form OR 2812-3 - O&C Logging Road Right-of-Way Permit (Unilateral)

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14. RESERVATIONS - 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 the lands involved in this grant.

15. EQUAL EMPLOYMENT OPPORTUNITY CLAUSE - During the performance of this contract, the Permittee agrees as follows:

(1) The Permittee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Permittee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Permittee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting the provisions of this nondiscrimination clause.

(2) The Permittee will, in all solicitations or advertisements for employees placed by or on behalf of the Permittee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Permittee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Permittee's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Permittee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Permittee will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Permittee's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Permittee may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive

Illustration IV-1

Form OR 2812-3 - O&C Logging Road Right-of-Way Permit (Unilateral)

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Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Permittee will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, HOWEVER, that in the event the Permittee becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Permittee may request the United States to enter into such litigations to protect the interests of the United States.

16. SPECIAL PROVISIONS – This permit is also subject to the special provisions identified in the Exhibit B, attached hereto and made a part hereof.

17. TERM OF PERMIT. All rights under this Permit expire _____ [Number of weeks, months, or years] from the effective date of the permit.

PERMITTEE ACCEPTANCE:

APPROVED:
UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Signature Date

Signature

Title:

Title: _____

Attest Signature (if corporation) Date
Attest Title: _____

Date Signed by BLM Authorized Officer
(effective date of Permit):

Illustration IV-1
Form OR 2812-3 - O&C Logging Road Right-of-Way Permit (Unilateral)
Page 8 of 15

EXHIBIT A

MAP

Should include the following at a minimum:

- Permittee land to be harvested.
- Haul route from Permittee land to County Road.
- Along the haul route, identification of road Segments controlled by the U.S. and authorized in the Permit. Make sure they are labeled with the road No. and Segment designation. The legend should show that these are the specific roads authorized.
- Include a legend.

Illustration IV-1
Form OR 2812-3 - O&C Logging Road Right-of-Way Permit (Unilateral)
Page 9 of 15

Serial No. _____
Permit No. _____

EXHIBIT B

ADDITIONAL STIPULATIONS

[OPTIONAL PARAGRAPHS TO BE USED AS APPLICABLE] – IF THE PARAGRAPH IS CHECKED, THIS PERMIT IS SUBJECT TO THE PROVISION.]

I-1 - Insurance Requirements [use at the discretion of the AO]:

The Permittee shall maintain the following types of insurance under this permit, in amounts not to exceed the following whenever it exercises any of the rights granted by this permit:

- (a) Commercial General Liability covering all operations, including vehicles of the Permittee: (Bodily Injury: \$1,000,000 - for injury to any one person; \$1,000,000 - for any one occurrence);
- (b) Property Damage in the amount of \$1,000,000 for any one occurrence, and
- (c) Loggers Broad Form B - \$1,000,000 - for any one occurrence.

The Permittee shall deliver to the United States a certificate from the insurer stating that such insurance is in force and that the insurer will give the United States thirty (30) days' notice prior to any intended or proposed cancellation or modification of such policies.

RU-1 - Roads Limited to Dry Weather Use (Based on Road Design)

Use of the following roads is prohibited from October 15th of one year to May 15th of the following year unless written permission of the Authorized Officer is granted.

Road No.	Segment

RU-2 – Presumption of Abandonment [Mandatory if permit is longer than five years].

Failure of the Permittee to use any right-of-way for the purpose for which it was granted for any continuous five-year period shall constitute a rebuttable presumption of abandonment of that right-of-way.

[MAINTENANCE PROVISIONS – IF CHECKED THEY APPLY TO THIS PERMIT]

OM-1 - Operator Maintenance

Permittee shall be responsible for maintenance of BLM Road No(s).as shown on the right-of-way permit (page 1) during haul operations. The following provisions shall apply in connection with this maintenance.

Illustration IV-1

Form OR 2812-3 - O&C Logging Road Right-of-Way Permit (Unilateral)

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OM-2 – Waterbars

Waterbars shall be installed in accordance with Exhibit __, attached hereto and made a part hereof. Permittee shall notify the Authorized Officer upon completion of maintenance for inspection and approval by the Authorized Officer.

OM-3 – Culvert & Ditch Maintenance

Permittee shall clean all logging debris including dislodged rocks or soil from ditches, culverts, and catch basins which will inhibit free drainage of water from the roadway and adjacent shoulders.

Permittee shall be responsible for maintaining normal flow in drainage structures. This includes cleaning of ditches, catch basins, culverts, and drain dips.

OM-4 – Grading & Shaping

Permittee shall grade and shape all roads in a manner and frequency to promote drainage away from the roadway and minimize erosion and sedimentation.

Permittee shall remove or shape unplanned berms to promote drainage away from the roadway.

OM-5 – Brushing

Roadside brushing shall be performed to meet the requirements for safety and sight distance as shown on the plans.

SR-1 - Snow Removal

For any roads that are not limited to summer use as described above, the Permittee will be permitted to perform snow removal subject to the following conditions:

- Permittee must notify _____ by phone at _____ at least 24 hours prior to conducting snow removal operations. The notification shall include identification of the road segments. Provisions in addition to the following may apply.
- Removal of snow may be done by a rubber-tired grader or front-end loader. A ____-inch layer of compacted snow shall be left on the road surface.
- Snow shall be removed as it accumulates.
- Snow shall be removed to a width sufficient to provide for safe operating room, and turnouts shall be spaced to be intervisible. Provisions shall be made to provide for snow storage and to adequately drain the road surface.
- Holes shall be punched through the snow bank as directed by the Authorized Officer at periodic intervals (maximum 1,000 feet) to allow for snow melt to drain off the road surface.

Illustration IV-1

Form OR 2812-3 - O&C Logging Road Right-of-Way Permit (Unilateral)

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- Permittee shall be liable for reimbursement to the BLM for repairs to the road resulting from damage caused by its snow removal operations.

[] DA-1 – Dust Abatement [Usually in residential areas or under exclusive easement letters of agreement]

Prior to your use of the following roads, dust abatement shall be performed as shown below. Dust abatement is required in addition to payment of maintenance fees.

Road & Segment No.	From M.P.	To. M.P.	Type (water, lignin sulfonate, or bituminous)

Prior to application of dust palliatives, the roadbed shall be bladed and shaped to remove surface irregularities and loose material.

The prepared surface shall be visibly moist and drying just prior to application of the Lignin Sulfonate or Bituminous dust palliative.

The required bituminous or Lignin Sulfonate material shall be applied only when the surface temperature is 70°F (or higher and the weather is not foggy or rainy). No application shall be made when rain or cold weather is anticipated within 24 hours.

[] DA-2 – Dust Palliatives Application Specifications

Dust palliatives shall be applied as follows:

Type	Frequency	Application Rate
Watering	Once Each Day of Haul or 1/	0.5 Gal./Sq.Yd.*
Watering	Each 40 MBF Hauled	Same
Watering	Each 120 C.Y. Hauled	Same
Lignin Sulfonate	Once per summer season**	0.25 Gal./Sq.Yd.*
Bituminous	Once per permit period**	0.25 Gal./Sq.Yd.*
Magnesium Chloride	Once per summer season**	0.25 Gal./Sq.Yd.*

* Application rates may be adjusted by the Authorized Officer to accommodate conditions or surface types.

** Additional applications may be required by the Authorized Officer to repair deficient or deteriorating sections of dust palliative.

1/ 1 to 3 Log Truck Loads per Day, dust abatement may be waived by the Authorized Officer.

Illustration IV-1

Form OR 2812-3 - O&C Logging Road Right-of-Way Permit (Unilateral)

Page 12 of 15

[ROAD CONSTRUCTION STIPULATIONS – IF CHECKED THEY APPLY TO THIS PERMIT]

[] RC-1 – Approval of Location and Specifications Prior to Approval. .

The routes and construction specifications for roads to be constructed by the Permittee shall be prepared in accordance with 43 CFR §2812.1–2(c) and filed with the Authorized Officer. No construction shall be commenced until such routes and specifications have been approved by the Authorized Officer. The location and specification shall, upon approval, be attached hereto and become a part hereof as Exhibit D. Upon receipt of such approval, unless the Authorized Officer shall otherwise direct, the Permittee shall forthwith, to the extent that conditions of weather permit, initiate construction of such roads in accordance with the approved route and construction specification and diligently prosecute such construction to completion.

[] RC-2 - Pre-Work Notification

The Permittee shall notify the Authorized Officer at least one week before any construction work is commenced to conduct a pre-work meeting.

[] RC-3 - Clearing & Grubbing

Clearing and grubbing shall consist of removal of vegetation, debris, surface objects, and protruding objects from _____ feet above the top of cut bank to _____ feet below the toe of fill slope.

Clearing and grubbing debris shall be disposed of as shown on the plans or as directed by the Authorized Officer.

The areas beyond the top of the cut bank or below the fill slope shall not be machine cleared.

All roots and embedded wood material shall be removed to a depth of not less than _____ feet below the subgrade surfaces, and not less than _____ feet below the fill slope surfaces excluding fill-widening materials.

No clearing or grubbing debris shall be left lodged against standing trees.

[] RC-4 - Excavation and Embankment

Excavated material shall not be allowed to cover boles of standing trees to a depth in excess of two (2) feet on the uphill side.

Excavated material shall not be side cast on side slopes that exceed 60 percent.

All rocks larger than four (4) inches in diameter shall be removed from the top six (6) inches of the subgrade.

Embankment materials shall be placed in successive parallel layers, not exceeding eight (8) inches in depth, in areas cleared of all stumps, cull logs, brush, and other vegetative or deleterious materials.

Illustration IV-1

Form OR 2812-3 - O&C Logging Road Right-of-Way Permit (Unilateral)

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RC-5 - Drainage

Newly constructed road segments shall be winterized by providing a well-drained roadway during construction and during periods of non-activity.

The roadway or subgrade shall be shaped in the required crowned, outsloped, or insloped configuration to promote drainage away from the roadway. Construct additional diversion ditches to facilitate drainage.

Drain dips shall be constructed in locations shown on the plans, staked on the ground, or as otherwise directed by the Authorized Officer.

All drain dips shall be skewed 30 degrees and graded to remove water from the roadway.

Culverts shall be installed in locations shown on the plans, staked on the ground, or as otherwise directed by the Authorized Officer.

Grade culverts shall have gradient of 2 to 4 percent steeper than the adjacent road grade and shall be skewed downgrade 30 degrees unless otherwise directed by the Authorized Officer.

Construction (and/or) installation of downspouts, catch basins, ditch dams, leadout ditches, and splash pads shall be required for all culverts and conform to the attached drawings.

RC-6 – Grading and Surfacing

The subgrade must be graded, compacted, and shaped to the required dimensions and configuration prior to acceptance for surfacing. See attached drawings.

Check one: Crowned Outsloped Insloped

The subgrade must be approved in writing by the Authorized Officer prior to surfacing.

Rock used for surfacing must conform to the following specifications:

Gradation	_____
L A Abrasion	_____
Durability	_____
Sand Equivalent	_____

The finished surface must be graded, compacted, and shaped to the required dimensions and configuration prior to acceptance by the Authorized Officer. See attached drawings.

Check one: Crowned Outsloped Insloped

Illustration IV-1
Form OR 2812-3 - O&C Logging Road Right-of-Way Permit (Unilateral)
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EXHIBIT D

ATTACH THE ROAD CONSTRUCTION PLAT
(INCLUDING SPECIFICATIONS SHEET, ETC.)

Illustration IV-2
Case Closure Letter
Page 1 of 2

2812(ORG CODE)
[Permit No.]
[Serial No.]

Ms. Ima Dunn, President
Ima Dunn Logging
Dunnerville, OR 97542

DECISION
RELEASE OF BOND, REFUND OF FEES & CASE CLOSURE
O&C LOGGING ROAD RIGHT-OF-WAY PERMIT
Permit No. _____, Serial No. _____

Dear Ms. Dunn:

[Permittee Name or “you”] reported final hauling of _____ MBF of timber over Bureau of Land Management (BLM) roads under O&C Logging Road Right-of-Way Permit No. _____, serial No. OR _____. You paid advance fees in the amount of \$_____ when the permit was approved. The following table indicates you have made an overpayment in the amount of _____. A revised fee schedule is attached which shows the new total fee calculations by road.

	Road Use Fees	Surface Replacement Fees	Maintenance Fees	Totals
Advance Fees Paid				
Actual Fees Due for Hauling _____ MBF				
Overpayment to be Refunded				

You should receive a refund from our National Business Center within approximately three weeks.

An inspection of the roads has been performed and it has been determined that you left the roads in “at least as good of condition” than what existed prior to your use and that no resource damage occurred.

Illustration IV-2
Case Closure Letter
Page 2 of 2

You have fulfilled all other terms and conditions of the permit. Therefore, your Bond No. _____, in the amount of _____ is hereby fully released and the permit case file will be closed. [Since your bond was a cash bond, you should be receiving a refund at the same time any overpayment of fees is received.] or [We are providing a copy of this letter to your bonding company.]

Thank you for your cooperation. If you have any additional questions, please call _____ at (____)____-____.

Sincerely,

Field Manager
_____ Resource Area

[THE ENCLOSURE IS THE UPDATED EXHIBIT C FEE SCHEDULE]

cc:
Accounting Tech (OR-____)
Surety (if applicable)

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V. RECIPROCAL RIGHT-OF-WAY AGREEMENTS

A. Purpose

This chapter provides guidance on preparing and formatting new reciprocal right-of-way agreements (and associated exhibits and attachments) when the U.S. determines it appears necessary that reciprocal rights are needed over an applicant's lands or roads controlled by the applicant. See the glossary definitions for the use of the terms "reciprocal right-of-way agreement," "Permit" [capitalization emphasized], and "Agreement" [capitalization emphasized]. These terms are used frequently in this chapter.

This chapter also provides a standardized required format for reciprocal right-of-way agreements, including the minimal required provisions, exhibits, and attachments.

In addition, this chapter provides some interpretive guidance to language and provisions found in existing semi-detailed reciprocal right-of-way agreements. However, each reciprocal right-of-way agreement should be read on its own terms and AO's should seek advice from the Oregon State Office if further guidance on particular verbiage is needed.

B. Responsibility

District and Field Managers are responsible for negotiating and entering into reciprocal right-of-way agreements (Oregon/Washington Supplement to the 1203 Manual - Delegation of Authority, Appendix 1, page 32).

In the creation of new reciprocal right-of-way agreements or amendments, the following are the signing officials:

If a reciprocal right-of-way agreement contains lands within one resource area, the Field Manager signs.

If a reciprocal right-of-way agreement contains lands within one district but more than one resource area, the District Manager signs.

If the reciprocal right-of-way agreement includes land located in more than one district, the document is signed by the District Managers from each affected district, unless authority there is a special delegation by the Oregon State Director for one District Manager to sign on behalf of all districts..

In the day-to-day administration of the reciprocal right-of-way agreements, the authority for individual actions lies with the Field Manager for the affected resource area.

C. Policy and Need for Reciprocal Right-of-Way

Chapter I., Section D.2.a., refers to the policy set forth in the O&C regulations (43 CFR §2812.0-6) for the U.S. to enter into reciprocal right-of-way agreements with private timberland owners in order to provide access to both the U.S. and private timber lands.

Chapter III., Section B.3., cites two different portions of the 43 CFR 2812 regulations (43 CFR §2812.0-6(d) and 43 CFR §2812.3-1) regarding reciprocity whenever the U.S. receives an application for an O&C permit and the AO determines that reciprocal rights “appear necessary.”

As Chapter III. summarized:

In 43 CFR §2812.0-6(d) “. . . the private operator will be required to grant [reciprocal rights] to the United States for use by it and its **licensees . . .**”

In 43 CFR §2812.3-1, the AO “may require the applicant [to grant reciprocal rights], as a condition precedent to the issuance of the permit . . . for use by it [U.S.] and its [BLM’s] licensees **and permittees . . .**”

In either case, both sections of the cited regulations (§2812.3-1(a) and 43 CFR §2812.0-6(d)) give discretion to the AO to deny a permit if reciprocal rights (for the U.S., its licensees (and permittees) “appear necessary” and the applicant refuses to grant such rights when requested by the AO.

It is imperative that the AO conduct a thorough review of an applicant’s ownership of lands and rights-of-way to identify where it “appears necessary” that reciprocal rights are needed by the U.S. to accomplish the purposes identified in the regulations (see 43 CFR §2812.0-6(d)). If it “appears necessary” that the U.S. needs reciprocal rights, the AO shall not approve a Permit (or amendment or assignment) without first obtaining the needed reciprocal rights.

See Chapter III., Section B.3., for detailed guidance on the requirements and options for the U.S. granting and receiving reciprocal rights. This Chapter covers the process and guidance for preparing new reciprocal right-of-way agreements, once it has been determined that reciprocal rights “appear necessary” and the AO decides that a reciprocal right-of-way agreement is the option that will best fulfill that requirement.

D. Background

A reciprocal right-of-way agreement is an exchange of access rights between the U.S. and a private landowner (called a permittee, or "applicant" in older reciprocal right-of-way agreements). It grants to each party the right to use the other party's lands, roads and rights-of-way as well as constructing new roads over the other party's lands for the removal of timber and other forest products.

E. Negotiations

When a permit application is received, the AO is required by regulation to determine if it appears necessary for the applicant to grant reciprocal rights to the U.S. This determination is made by the AO and is usually based on information provided by staff most familiar with access and forest road construction development (such as Lead Engineers).

The determination of whether reciprocal rights are needed is not limited to the district to which the applicant has applied for rights (including applications for amendments). The applicant should be required to submit a list of their entire ownership anywhere in the O. and C. lands as defined in the regulations (43 CFR §2812.0-5(e)—“in and west of Range 8 E., Willamette Meridian, Oregon.”

After receiving a list of the applicant's ownership, the AO should check with all of the other western Oregon districts in which the applicant owns land or has control of roads sufficient to grant rights to the U.S. to see if it “appears necessary” that reciprocal rights are needed over applicant's land in their district.

Priority consideration should be given to future BLM timber sale plans which will require legal access over lands or roads controlled by the applicant. If it is determined that reciprocal rights are needed, the applicant will be notified in writing. This notice begins the formal negotiations between the applicant and BLM personnel in the development of a reciprocal right-of-way agreement.

There is no regulatory requirement which establishes a timeframe for processing an application for an O&C permit. However, the processing should be completed as promptly as possible. If the application covers a large area (multiple townships, etc.), it may take more time to complete the necessary studies or evaluations, determine the fees and identify ownership or control of existing roads. It may require extended time to negotiate and agree upon the terms and conditions with respect to location, specifications, maintenance, and use of each other's roads. Diligence in resolving problems will enhance the process.

F. Nature of Rights

As defined in the Glossary of Terms (Chapter II.), the reciprocal right-of-way agreement is composed of two parts:

1) the O&C Logging Road Right-of-Way Permit (Permit) containing the rights granted to the applicant over U.S. lands, roads, and rights-of-way; and

2) the Right-of-Way and Road Use Agreement (Agreement) contains the rights for the U.S. (and its licensees and third party permittees) over the applicant's lands, roads, or easements.

The nature of rights granted in these two documents is reciprocal in nature but not necessarily equivalent in rights as described below.

1. O&C Logging Road Right-of-Way Permit (Permit)

This section identifies some of the specifics of the Permit that are different than the rights of the U.S. found in the Agreement.

a. Permit is “Merely a Nonexclusive License”

The nature of rights contained in an O&C permit (whether unilateral or reciprocal) is described at 43 CFR §2812.2-1 as “merely nonexclusive licenses”:

. . . Permits for rights-of-way for tramroads, do not constitute easements, and do not confer any rights on the permittee to any material for construction or other purposes except, in accordance with the provisions of §§ 2812.6-2 and 2812.8-3, such materials as may have been placed on such lands by a permittee. The permits are merely nonexclusive licenses to transport forest products owned by the permittee. Such permits may be canceled pursuant to § 2812.8. [Underline added.]

Because the rights held by the permittee are “merely nonexclusive licenses,” the rights are personal in nature and must be assigned to a new landowner before the new landowner can exercise any rights in an O&C permit. As noted in Chapter III., Section B.2., any use of U.S. lands without a permit (or assignment of rights in this case) constitutes a trespass. See Chapter XI. for guidance on requirements for and processing of assignments.

b. Permit Can be Terminated Unilaterally for Cause

In accordance with 43 CFR §2812.8, the rights acquired by the permittee can be unilaterally terminated by the AO for cause as shown below:

- § 2812.8 - Cause for termination of permittee's rights.
- § 2812.8-1 - Notice of termination.

(a) The authorized officer in his discretion may elect upon 30 days' notice to terminate any permit or right-of-way issued under this paragraph if:

(1) In connection with the application made therefor, the applicant represented any material fact knowing the same to be false or made such representation in reckless disregard of the truth; or

(2) A permittee, subsequent to the issuance of a permit or right-of-way to him, represents any material fact to the Bureau, in accordance with any requirement of such permit or this paragraph, knowing such representation to be false, or makes such representation in reckless disregard of the truth.

(b) The authorized officer in his discretion may elect to terminate any permit or right-of-way issued under this paragraph, if the permittee shall fail to comply with any of the provisions of such regulations or make defaults in the performance or obligation of any of the conditions of the permit, and such failure or default shall continue for 60 days after service of written notice thereof by the authorized officer.

(c) Notice of such termination shall be served personally or by registered mail upon the permittee, shall specify the misrepresentation, failure or default involved, and shall be final, subject, however, to the permittee's right of appeal.

(d) Termination of the permit and of the right-of-way under this section shall not operate to terminate any right granted to the United States pursuant to this paragraph, nor shall it affect the right of the permittee, after the termination of his permit and right-of-way to receive compensation and to establish road operating rules with respect to roads controlled by him which the United States has the right to use and to permit its licensees to use; nor shall it relieve the permittee of his duty under this paragraph, to submit to and be bound by arbitration pursuant to §§ 2812.4-1, 2812.4-3, and 2812.4-4. [Underline added.]

It is important to note, however, that the 2812 regulations do not allow for the U.S. to arbitrarily terminate a permittee's rights except for cause as shown above. See Chapter VI., Section B., for detailed guidance and requirements for initiating notices of noncompliance and processing termination of permits for noncompliance (or cause) should the permittee fail to remedy any noncompliance issues. The guidance found in Chapter VI. provides an opportunity for the permittee to remedy any noncompliance situations prior to termination of the permit. Termination should be the last resort after exhausting all other remedies.

c. Disposition of Permittee Right-of-Way Timber

The regulations at 43 CFR §2812.4-2 specify how the permittee timber will be valued when the U.S. constructs or improves a road on permittee land:

. . . When the United States constructs or improves a road on a permittee's land or right-of-way it shall pay to the permittee the full value at current stumpage prices of all timber of the permittee cut, removed, or destroyed in the construction or maintenance of such road or road improvements. Current stumpage prices shall be determined by the application of the standard appraisal formula used in appraising O. and C. timber for sale, to the volume and grade of timber. Such volume and grade shall be determined by a cruise made by the permittee or, at his request, by the authorized officer. If either the permittee or the authorized officer does not accept the cruise made by the other, the volume and grade shall be determined by a person or persons acceptable both to the permittee and the State Director.
[Underline added.]

The language in the reciprocal right-of-way agreement regarding disposal of right-of-way timber is found in Exhibit B of most existing reciprocal right-of-way agreements and is similar to or the same as that found in the standard template for reciprocal right-of-way agreements (Exhibit B, Provision No. 11 (Form OR 2812-16, page 36 Illustration V-2) as follows:

11. Payment and Disposal of Right-of-Way Timber (Applies to U.S. and Permittee). Prior to the construction of a road on the lands of the other party, the timber on the right-of-way shall be cruised and paid for; provided, however, that if the right-of-way is across lands belonging to the Permittee, the Permittee may elect to retain title to the right-of-way timber and have such timber decked along the right-of-way by giving written notice of such election to the United States. Such notice shall be given within thirty (30) days after the map described in paragraph _____ is filed with Permittee. If Permittee elects to retain title to the right-of-way timber, it shall remove such timber within six (6) months after the road to be constructed becomes usable. When right-of-way timber is to be paid for, it shall be cruised and appraised in accordance with the standard procedures for cruising and appraising O&C timber.
[Underline added.]

This standard template provision gives the permittee two options for disposing of their right-of-way timber when the U.S. constructs a road. The permit can: 1) elect to have its merchantable timber felled, bucked, and decked at appropriate loading points along the right-of-way, or 2) sell the right-of-way timber to BLM's licensee; the volume and value being determined in accordance with standards for cruising and appraising O&C timber. The default in the standard provision is that it will be cruised and paid if the permittee does not provide written notice that they choose to retain title and have the timber cut and decked.

If the permittee timber is to be paid for by the BLM licensee, the guidance for timber valuation for non-advertised timber sales is found in BLM Manual Section 9350 and it applies to both BLM and permittee right-of-way timber.

d. Only the U.S. May Authorize Third Party Use of U.S. Lands (Permittee-Constructed Road)

The regulations at 43 CFR §2812.2-2 specify that only the U.S. can authorize third parties to use roads constructed by the permittee over U.S. lands:

A permittee may not authorize other persons to use the right of-way for the transportation of forest products which are not owned by the permittee. . . [Underline added.]

See Chapter VIII., Section H. for detailed guidance on 1)the use of Tripartiate Agreements when a permittees sells its timber, and 2) the U.S. issuance of permits to third parties over permittees roads (constructed on U.S. land, or U.S. roads constructed on permittee land.)

See Illustration VIII-1 – Road Ownership and Road Control Matrix. See also Chapter III., Section C.1., for guidance in determining when the U.S. has sufficient control in a road to authorize use over that road.

2. Right-of-Way and Road Use Agreement (Agreement)

This section discusses the components of the Agreement and the ways it differs from a Permit.

a. Agreement is a Special Form of Nonexclusive Easement

The Agreement is a special form of nonexclusive easement and is a recorded encumbrance on the permittee's title. Unlike typical nonexclusive easements, the rights in the Agreement allow the U.S. to authorize third party use over roads built by the U.S. over permittee lands. (See d. below.) The rights of the U.S. continue upon transfer of title to a new landowner. If a permittee sells their lands, the purchaser "inherits" the encumbrance (both the rights and obligations of the Agreement). For this reason, the Agreement is drafted in a recordable format, and recorded in the county courthouse per 43 CFR §2812.3-3. While the regulations state that the "applicant shall record," the BLM has traditionally completed the recording of the Agreement to ensure that the U.S. rights are fully protected and made a matter of public record.

b. Permittee Agrees to Grant Permanent Easements if U.S. Builds Roads with Appropriated Funds

If the U.S. builds a road across Schedule 2 lands owned by the permittee, and that road is to be constructed with appropriated funds (timber sale road construction

does not qualify as appropriated funds), then, in accordance with 43 CFR §2812.6-2(a)(11), the permittee is required to grant an exclusive easement to the U.S.:

(11) to grant to the U.S., upon request of an authorized officer in lieu of the right-of-way across legal subdivisions granted pursuant to §§2812.1-3 to 2812.1-5, such permanent easements on specifically described locations as may be necessary to permit the Bureau to construct roads on such legal subdivisions with appropriated funds: Provided, That at the time of the grant of such permanent easements the Bureau shall release, except for necessary connecting spur roads, the right-of-way across such legal subdivisions previously granted: Provided further, That if the U.S. builds a road on such permanent easements it shall pay for any timber of the permittee which is cut, removed, or destroyed in accordance with §2812.4-2. The authorized officer shall waive the requirement under this paragraph, however, if the permittee makes a satisfactory showing to the authorized officer that he does not own a sufficient interest in the land to grant a permanent easement, and that he has negotiated therefor in good faith without success. [Underline added.]

The form of “permanent” easement attached to reciprocal right-of-way agreements is an exclusive easement and is the approved form that will allow the U.S. to construct roads with appropriated funds. This form is attached to the standard template for reciprocal right-of-way agreements (Form OR 2812-16, pages 20 and 21 of Illustration V-2), and is attached to existing recorded reciprocal right-of-way agreements.

c. Disposal of O&C Timber

If right-of-way timber on U.S. lands is needed to be removed in connection with road construction under an O&C permit, the regulations at 43 CFR §2812.5-1 state:

§ 2812.5-1 Payment required for O. and C. timber.
An applicant will be required to pay to the Bureau of Land Management, in advance of the issuance of the permit, the full stumpage value as determined by the authorized officer of the estimated volume of all timber to be cut, removed, or destroyed, on O. and C. lands in the construction or operation of the road [underline added]

The standard template for reciprocal right-of-way agreements contains the following provision in Exhibit B (Form OR 2812-16, page 36--Illustration V-2) regarding payment and disposal of right-of-way timber:

11. Payment and Disposal of Right-of-Way Timber (Applies to U.S. and Permittee). Prior to the construction of a road on the lands of the other party, the timber on the right-of-way shall be cruised and paid for; provided, however, that if the right-of-way is across lands belonging to the Permittee, the Permittee may elect to retain title to the right-of-way timber and have such timber decked along the right-of-way by giving written notice of such election to the United States. Such notice shall be given within thirty (30) days after the map described in paragraph is filed with Permittee. If Permittee elects to retain title to the right-of-way timber, it shall remove such timber within six (6) months after the road to be constructed becomes usable. When right-of-way timber is to be paid for, it shall be cruised and appraised in accordance with the standard procedures for cruising and appraising O&C timber.

This provision is similar to that found in most semi-detailed reciprocal right-of-way agreements. Both the regulations and the standard provision require that O&C timber will be paid for “prior to the construction of a road” on the U.S. lands. The wording after the “provided however” only applies to permittee timber. The BLM AO cannot choose to have the U.S. timber cut and decked and then used for other purposes—it must be purchased.

See Chapter IX., Section B.17.a. for guidance valuation of and method of disposal and payment for right-of-way timber on U.S. lands.

d. U.S. Issues Hauling Permits Over Roads it Builds on Permittee Lands

The party who can authorize use of a road is the party who “controls” the road. See Glossary of Terms (Chapter II.) for definitions of “road control” and “road ownership.”

If the U.S. or its licensees, builds a road over permittee lands, only the U.S. may issue permits (under 43 CFR 2812) for third party use of those roads. However, the U.S. may not issue rights-of-way to third parties over such roads under Title V of FLPMA for purposes other than transportation of timber and other forest products (like access to a communication site, ingress and egress to a private residence, power lines, pipelines, etc.). These other uses may only be authorized by the permittee on their land, subject to BLM’s right to set reasonable traffic rules for the road.

See also the definitions for road control and road ownership in Chapter II. – Glossary and Illustration VIII-1 – Road Ownership and Control Matrix for examples of U.S. ownership and/or control.

G. Required Components of Reciprocal Right-of-Way Agreements

As previously mentioned, the reciprocal right-of-way agreement is comprised of two main components:

- 1) the O&C Logging Road Right-of-way Permit (Permit)—containing the rights of the permittee, and
- 2) the Right-of-way and Road Use Agreement (Agreement)—containing the rights of the U.S.

See Illustration V-1 for a comparison chart of these two documents.

A standardized template for new reciprocal right-of-way agreements comprising the two separate documents (Agreement and Permit) and including the required exhibits and attachments, has been developed as Form OR 2812-16 (see Illustration V-2). This standard format shall be followed when preparing new reciprocal right-of-way agreements. No deviation in wording or additional provisions can be made without the approval of the Oregon State Office.

The following sections provide detailed information and requirements for the various components of the reciprocal right-of-way agreement as found in Form OR 2812-16.

1. O&C Logging Road Right-of-Way Permit (Permit)

The Permit grants the right to use U.S. lands, roads and rights-of-way for the management and removal of timber, forest, and mineral products from lands owned or controlled by the permittee. The following sections discuss the components of the Permit side of a reciprocal right-of-way agreement.

a. Permit Boilerplate

The required face sheet (boilerplate) for the Permit side of reciprocal right-of-way agreements is found on Page 1 of Illustration V-2 (Form OR 2812-16). Pages 8 and 9 of this form is entitled “Special Provisions” and it contains the required language for the Equal Employment Opportunity (EEO) requirements for all Permits.

In the permittee name & address block, if a business entity, the exact name as registered with the State and as shown on corporate papers, etc. should be shown. If a corporation, type, “an Oregon corporation” [or whatever state they are incorporated in].

Additional provisions that apply to the Permit are found in the attached Exhibits A and B as described below. The following sections discuss the boilerplate provisions or give reference to the implementing guidance found elsewhere in this handbook.

1) Granting Clause

The granting clause that specifies the rights granted to the permittee is found in the first paragraph in the boilerplate face sheet (page 1, Illustration V-2):

In accordance with and subject to the provisions of the above-noted regulations which are incorporated herein and made a part hereof and in consideration of a grant of the right to use roads and rights-of-way across the lands described in Schedule 2, attached hereto and made a part hereof, said grant to the United States having been made by the Permittee by Right-of-Way and Road Use Agreement No. _____ (serial No. _____) , dated _____ , the United States hereby grants to Permittee the right to use lands, roads and rights-of-way across the lands described in Schedule 1, attached hereto and made a part hereof, for the respective periods of time indicated on Schedule 1. The use of such lands, roads and rights-of-way by the Permittee shall be for the purpose of management and removal of timber, forest and mineral products from lands which are owned or controlled by Permittee as of the time of exercise by Permittee of the rights herein granted by the Government. Except as expressly provided in Exhibit A, attached hereto and made a part hereof, rights-of-way and road use fees shall be determined and paid in accordance with the above-identified regulations. [Underline added.]

Note that the rights granted to the permittee over U.S. lands are granted in reciprocity for the rights given to the U.S. and they are for the purpose of “management and removal of timber, forest and mineral products from lands which are owned or controlled by Permittee as of the time of exercise by Permittee of the rights herein granted . . .” This wording is the basis for the requirement for the Permittee having to own title to land or timber.

2) Eliminates Duplicate Rights in Other Permits

The following paragraph is found on pages 1 and 2 of Form OR 2812-16.

All rights of Permittee with respect to the use of roads and rights-of-way across the lands described in Schedule 1 shall hereafter be determined in accordance with this permit. All outstanding rights heretofore granted to the Permittee to use such roads and rights-of-way are hereby terminated.

The second sentence provides that if the permittee holds any other permits for lands that are also included in this particular Permit, those prior rights are automatically terminated. This is to avoid having duplicate rights over the same lands and having to decide under which permit to administer the rights.

3) Right-of-Way (Construction) Plat Specifications

The following paragraph is found at the bottom of page 2 of Form OR 2812-16:

The routes and construction specifications for roads to be constructed by the Permittee over the lands described in Schedule 1 shall be prepared in accordance with 43 CFR §2812.1-2(c) and filed with the Authorized Officer. No construction shall be commenced until such routes and specifications have been approved by the Authorized Officer. Upon receipt of such approval, unless the Authorized Officer shall otherwise direct, the Permittee shall forthwith, to the extent that conditions of weather permit, initiate construction of such roads in accordance with the approved route and construction specifications and diligently prosecute such construction to completion. [Underline added.]

This provision basically addresses two issues related to road construction: 1) it requires the plat to be filed in accordance with the requirements found in the regulations, and 2) it specifies that the permittee shall construct the road with due diligence to its completion. More detailed guidance on filing road right-of-way plats is found in Chapter IX., Section B (nondiscretionary plats), and Chapter XII. (discretionary amendments).

4) Clause Specifying Form of Exclusive Easement as Attachment

This provision (that requires the granting of a permanent easement if appropriated funds are used to build a road) is found in the boilerplate also:

Any permanent easement which the permittee may grant pursuant to 43 CFR §2812.6-2(a)(11) shall be granted on the attached Exclusive Road Easement form.

As stated in Section G.1.d. of this chapter, the exclusive easement form as found in the Form OR 2812-16 is an attachment to the reciprocal right-of-way agreement is the form of “permanent” easement that has been approved by the BLM for use when appropriated funds are spent. This is to ensure there is no question as to what form of easement would be required if the U.S. ever needed to exercise this right.

5) Nature of Rights and Requirement for Assignment

The last clause in the permit boilerplate page 2 is the following:

This Permit is a nonexclusive license as described in 43 CFR §2812.2-1. If the Permittee disposes of any lands owned or controlled by him that are served by this Permit and the new landowner wishes to

exercise any rights hereunder, the new landowner must apply for an assignment.

This defines the nature of rights as found in the regulations and clarifies that the Permit must be assigned in order for a new party to exercise any rights.

b. Exhibits

The following discusses the provisions covered in the exhibits associated with the Permit.

1) Exhibit A

Exhibit A is the attachment that identifies additional provisions and requirements pertaining to the permittee's use of the authorized U.S. lands, roads, or rights-of-way.

Exhibit A-1 is used to identify additional provisions that may apply to the permittee's use of certain U.S. lands, roads, or rights-of-way, and these lands are specifically identified in a Schedule 3 in addition to being on Schedule 1. Schedule 3 is usually created as a result of an amendment which attaches additional provisions ONLY to the lands being amended into the Permit. In many cases, these additional provisions include environmental protection provisions which were not included in the original Permit. If lands, roads or rights-of-way are included on a Schedule 3, they must also be included in the Schedule 1 in order to make them subject to the basic granting clause in the first page of the permit. By failing to list the U.S. lands, roads or rights-of-way on Schedule 1, the permittee does not even have the basic rights to use the U.S. lands, roads or rights-of-way. In addition, if the lands must be added to the Schedule 1 in order to make the provisions in Exhibits A & B applicable as well.

Some reciprocal right-of-way agreements use a Schedule 3 for other purposes (such as listing of U.S. lands managed by USDA-FS). In this case, a different schedule number should be applied.

Examples of the types of additional provisions found in Exhibit A1 (which apply to Schedule 3 lands) are: 1) the environmental provisions (see provision No. 10 of Exhibit A in the standard template—Form OR 2812-16, Illustration V-2, Page 16), and 2) the additional reasons for objection to nondiscretionary right-of-way plats as shown in provision No. 10 to the Exhibit B I the standard template—form OR 2812-16—Illustration V-2). The additional reasons to object that aren't typically found in older semi-detailed agreements are reasons (4) (another road is suitable) and (5) (the right-of-way "may affect" a listed species. See Chapter IX., Section B.

The following sections either provide reference to other areas of the handbook which provide implementing guidance for Exhibit A provisions (found in Form OR 2812-16—Illustration V-2) or the section will clarify the implementation effect.

a) Provision Nos. 1 - 3 (Amortization Formulas)

Provision Nos. 1-3 of the Exhibit A (Form OR 2812-16, Pages 12-14) are the formulas that are used to complete road use fee calculations at the time the permittee wishes to use a road or improvement of the U.S. The three different scenarios where fee calculations are anticipated are covered in the separate provisions and the purpose of the fee calculation is identified in the title of the provisions as indicated. These are mirror-image provisions of those found in Exhibit B.

Further guidance on doing fee calculations and implementing these provisions is found in Chapter IX., Section C.

b) Provision No. 4 – Tributary Area Determination

This provision (No. 4 on page 14 of Illustration V-2) provides guidance in regard to the tributary area and tributary volume associated with road use fee calculations. Further guidance is found in Chapter IX., Section C.

c) Provision No. 5 – Permittee Report of Mineral Haul

This provision (No. 5 on pages 14 and 15 of Illustration V-2) is based on the current mineral haul policy. See Chapters VIII. and XV. for further discussion on the current policy and future expectations.

d) Provision No. 6 – Bonding and Insurance Requirement for Permittee

This paragraph (No. 6 on page 15 of Illustration V-2) sets forth the: 1) maximum bond amount the U.S. and permittee have agreed to require of each other, and 2) the types and maximum coverage amounts of insurance that the U.S. and permittee have agreed to. The amounts in this Exhibit A provisions should exactly mirror the amounts in the Exhibit B provision. Further guidance is found in Chapter VII. Since these amounts are part of a recorded document, any desired changes in amounts (of bond or insurance) or type of coverage must be done with a recorded amendment unless there is wording in a specific reciprocal right-of-way agreement that would allow them to be modified through some other method.

e) Provision No. 7 – Permittee Report of Road Use to U.S.

This provision (No. 7 on page 15 of Illustration V-2) sets forth the requirement for the permittee to report hauling over U.S. roads. The procedures are discussed in detail in Chapter VIII.

f) Provision No. 8 – Allocation of Costs

See provision 8 on pages 15 and 16 of Illustration V-2. When preparing fee calculations for permittee use of U.S. roads or improvements, this provision allows the U.S. to apply a deduction to: 1) the final replacement cost of U.S. roads, or 2) to the improvement cost. This deduction is called allocation of costs and is made to take into account public use on certain qualifying roads. Further guidance on allocation of costs is found in Chapter IX., Section C.

g) Provision 9 – Permittee Request for Terms and Conditions of Use

The provisions (No. 9 on page 16 of Illustration V-2) specifies that the permittee request terms and conditions of use prior to hauling on U.S. roads. Further guidance on this provision can be found in Chapter VIII.

h) Provision No. 10 - Compliance with Environmental Laws (Includes Cultural Resources)

This provision (No. 10 on pages 16 and 17 of Illustration V-2) requires the permittee to comply with various state and federal environmental laws including cultural laws and rules regarding the use of pesticides, etc. These provisions apply to any discretionary action in the permit. While this provision is mentioned in several places, Chapter IX., Chapter XII., etc., there is no specific section discussing implementation in detail but any violation of this provision as it relates to any U.S. lands to which it applies, would be considered noncompliance. In new permits the provisions would apply to all the lands. In amendments to reciprocal right-of-way agreements, the provisions would apply to lands added by discretionary amendment and are usually identified by their inclusion in a Schedule 3.

i) Provision No. 11 – Rebuttable Presumption of Abandonment

FLPMA required this provision (No. 11 on page 17 of Illustration V-2). It provides that if a Permit is not used for a continuous five-year period it could be unilaterally terminated by the U.S. However, if the U.S. issues a decision to terminate based on this reason, the decision must be issued with rights of appeal and the permittee is allowed to “rebut” the presumption of abandonment. This provision is required to be in all permits issued after the passage of FLPMA.

j) Provision No. 12 – Reservation for Compatible Uses

See provision No. 12 on page 17 of Illustration V-2. In this required provision, the Secretary of the Interior reserves the right to authorize additional rights-of-way for uses compatible with the permittee’s rights over the same location on U.S. lands.

k) Provision No. 13 – Construction Location Approved

This provision (No. 13 on page 17 of Illustration V-2) is used if, at the time the Permit is consummated, there are one or more specific road locations which are being approved at the same time the permit is being approved. The right-of-way location and specifications would be included as attachments.

2) Exhibit B

While Exhibit B contains provisions specifically tied to the U.S. use of permittee lands, roads, and rights-of-way, this Exhibit also contains provisions for some items which apply to both the U.S. and the permittee. In administering the permit rights, attention must be paid to both exhibits. See Section G.2.b. of this chapter for descriptions of the specific provisions found in Exhibit B.

3) Exhibit C Map

Exhibit C is the map displaying:

- 1) land ownership of the permittee, U.S., and third parties,
- 2) road control (not all older maps include this, but new reciprocal right-of-way agreements should include this element),
- 3) agreement area boundary, if it exists (see definition of agreement area boundary in 4) below), If no boundary is shown on the Exhibit C, it is assumed the entire Exhibit C map area constitutes the agreement area, and
- 4) a visual depiction of which specific lands, roads or rights-of-way the parties have granted rights (or which lands, roads or right-of-way are included in a land schedule).

There are often lands that are shown on the map, but the parties have chosen not to include on a land schedule. To make it easier to administer the Agreement in the future, these should be labeled as: 1) "Other U.S. Lands (not on Schedule 1)," 2) "Other Permittee Lands (not on Schedule 2)," or 3) "3rd party lands."

a) Agreement Area Boundary

An agreement area boundary is sometimes shown on an Exhibit C map. The agreement area boundary is not a tributary timber boundary. It merely gives effect to several provisions found in Exhibit B of the Agreement, which typically read as follows:

If either party to this Agreement acquires any lands within the Agreement Area set forth on Exhibit C . . . it agrees to grant to the

other party right-of-way and rights of road use across such lands under the same terms and conditions as contained in this Agreement.

and

If either party to this agreement acquires the ownership of any roads or rights-of-way across the lands within the Agreement Area set forth on Exhibit C it agrees to grant to the other party the right to use such roads or rights-of-way under the same terms and conditions as contained in this Agreement . . .

and

If either party to this Agreement should hereafter acquire or dispose of any of the lands within the Agreement Area shown on the attached Exhibit C, the percentage shares of the replacement costs of the roads in the Area shall be proportionately increased or decreased to reflect such acquisition or disposal . . .

The above provisions each appear to be a latent grant, which places a burden on the acquiring party to grant rights over their newly acquired lands, roads, or rights-of-way if requested by the other party. However, if the non-acquiring party wishes to claim such a right, over the newly acquired lands, roads, or rights-of-way of the other party, the only way to grant such rights is through a formal amendment. The adding of rights by amendment in this case would be nondiscretionary on the part of the acquiring party. See Chapter XII., Section C.1.a., for guidance on determining whether lands qualify as newly acquired.

b) Reserved

4) Exhibits D, E, and F

In some existing reciprocal right-of-way agreements there are Exhibits labeled as D, E, or F (other designation). They are less commonly used than Exhibits A-C. They were usually used in unique situations such as:

- truck loading diagrams,
- identification of maximum road construction specifications to which the parties have agreed to share and for which costs associated with that portion of a
- road's construction that exceed the specifications are absorbed by the constructing party and not shared by the using party.

In new reciprocal right-of-way agreements, these additional Exhibits are not usually used or required. The AO should check with the Oregon State Office in the use of additional exhibits.

c. Schedule of Lands

Each reciprocal right-of-way agreement contains land schedules which identify the lands, roads or right-of-way over which each party has granted rights to the other. The standard Schedule of Lands (Right-of-Way Land Description, Form OR 2812-15 (see Illustration V-3)) can be used interchangeably for both U.S. and permittee lands by designating on top whether it is a Schedule 1 (U.S. lands) or Schedule 2 (permittee lands) (see Sections 1) and 2) below).

The purpose of the Schedule of Lands is to identify, with certainty, those lands and interests in lands owned by the respective parties that are encumbered by the reciprocal right-of-way agreement.

Other lands owned by the U.S. or permittee which are not encumbered by the reciprocal right-of-way agreement are not included in the schedules, even if they are within the same geographic area. However, they may be shown on the Exhibit C map and identified as “Other Land Owned by _____.” Or “Third Party Lands,” etc.. They would only be added to the land schedule if they are added by amendment. In this case, the Exhibit C map should also be revised by changing the legend designation for those lands to the correct designation showing that they are Schedule 1 or 2 lands.

Legal description of lands can be described in different ways:

- by fractional or aliquot parts,
- if an irregular tract, by a metes and bounds description, or
- by government lots.

If the description is quite long (especially a metes and bounds description) the schedule can make reference to the recording information for the appropriate deed instead of writing out the entire legal description. Or the page from the title report which contains the legal description can be attached and referred to in the schedule.

Partial interests in lands (less than fee title ownership), such as exclusive easements or roads built by the U.S. on permittee land under the terms of a third party Agreement, are identified in the schedule by reference to the appropriate recording information. For descriptions of U.S. lands, the description must always match how it is described on the Master Title Plat (government lots, aliquot parts, etc.)

In existing reciprocal right-of-way agreements, there are many discrepancies found between what is shown on the Exhibit C map and how the land is described in the Schedule of Lands. If lands, roads or right-of-way are described on a Schedule of Land, but the Exhibit C map legend designation does not identify them as being on

Schedule 1 or 2, the Exhibit C map should be corrected as an error and omission (nondiscretionary amendment). Conversely, if lands, roads or rights-of-way are designated on the Exhibit C map as either Schedule 1 or Schedule 2 lands but they are not described anywhere on the actual Schedule of Land, the land schedule should be corrected as an error and omission (nondiscretionary amendment). See Chapter XII. for instructions on preparing amendments for errors and omissions.

The typical Schedules of Land that are attached to a Permit are as follows:

1) Schedule 1 (U.S. Lands)

This schedule contains a listing of the U.S. lands, roads or rights-of-way over which the permittee has been granted rights. (In a few older reciprocal right-of-way agreements this schedule is lettered “A” rather than numbered.)

Illustration V-4 (Schedule of Lands samples) includes examples of the correct way to describe land descriptions for various situations. A separate Schedule 1 example has been included for the following situations:

- Schedule 1 - U.S. Lands (not road descriptions), includes aliquot part descriptions, metes and bounds descriptions and government lots. Government lots should be described as, for example, “Govt. Lot 1,” or if multiple lots, consecutively numbered as “Govt. Lots 1-4.”
- Schedule 1 – U.S. roads on U.S. Lands – Describes only the U.S. roads on U.S. lands.
- Schedule 1 – U.S. roads controlled by U.S. via an exclusive easement.
- Schedule 1 – U.S. roads controlled by U.S. via an Agreement.
- Schedule 1 – U.S. controlled road – Constructed by Third Party reciprocal permittee on U.S. land.

2) Schedule 2 (Permittee Lands)

This schedule contains a listing of the permittee lands, roads or rights-of-way over which the U.S. has been granted rights. (In a few older reciprocal right-of-way agreements the schedule is lettered “B” rather than numbered.)

3) Schedule 3 (U.S. Lands with Unique Provisions, Etc.)

Schedule 3 is an additional listing of lands which have provisions attached to them that are in addition to the provisions found in Exhibit A or B. Typically Schedule 3 is used to attach environmental provisions or construction specifications that apply to a particular right-of-way location. In all cases, when using a Schedule 3, the specific purpose must clearly be delineated in the provisions of the Agreement and/or Permit

and any lands included in a Schedule 3 must also be included in a Schedule 1 or 2 in order for the provisions in the Exhibit A and B to apply.

d. Exclusive Easement Form

An exclusive easement form is attached to the Permit in all reciprocal right-of-way agreements (see Illustration V-2, pages 20 and 21 of Form OR 2812-16). The following provision is also included as a provision of the Permit. It specifies that the exclusive easement form will be used as the grant to the U.S. where the U.S. plans to construct roads on permittee lands using appropriated federal funds (roads built under a BLM timber sale do not qualify as appropriated funds). See 43 CFR §2812.6-2(a)(11) for additional easement requirements.

Any permanent easement which permittee may grant pursuant to 43 CFR §2812.6-2(a)(11) shall be granted on the attached exclusive road easement form.

This provision is found on the face sheet of the Permit (see page 2 of Illustration V-2).

2. Right-of-Way and Road Use Agreement (Agreement)

The Agreement is the grant from the permittee to the U.S. to use permittee lands, roads or rights-of-way for the management and removal of timber, forest and mineral products from lands of the U.S.

a. Agreement Boilerplate Provisions

The following sections provide information on specific clauses in the template or provide references for guidance on the implementation and administration of some provisions.

These required boilerplate provisions found in the face sheet in the Agreement are on Pages 24 and 25 of Illustration V-2 (form OR 2812-16). The associated Agreement exhibits are described below.

The following sections either provide reference to other areas of the handbook which provide implementing guidance for Exhibit A provisions or the section will clarify the implementation effect.

1) Granting and Purposes Clause

The following provisions are found on the face sheet (Pages 24 and 25 of Form OR 2812-16, Illustration V-2) and they contain the wording for the basic rights and purposes acquired by the U.S.

1. For and in consideration of the granting of the right-of-way applied for on the above-mentioned date, the Permittee hereby grants:

a. To the United States, pursuant to 43 CFR §2812.3-1(a), rights-of-way across the following-described lands for use by the United States, its licensees and permittees, for the following specified periods of time:

All that certain real property on Schedule 2 which is attached hereto and made a part hereof by reference as though fully set out herein.

b. To the United States and its licensees, pursuant to 43 CFR §2812.3-1(b), the rights to use the roads and rights-of-way owned or controlled by the Permittee across the hereinafter described lands for the management and removal of timber and other forest products from lands of the United States:

All that certain real property on Schedule 2 which is attached hereto and made a part hereof by reference as though fully set out herein.

The regulations cited require the recording of the document in which the roads, rights-of-way or lands are located. As discussed in Section F.2.a. of this chapter, the rights of the U.S. are a special form of nonexclusive easement and run with the land.

2) Warranty Clause

The following clause is also found in the standard template (Form OR 2812-16—Illustration V-2), Provision No. 2 on Page 25). In this provision, the permittee certifies that: 1) they do own the property (or have sufficient rights in the property to grant rights to the U.S.), and 2) they will defend the title.

Permittee covenants and warrants that he is lawfully seized and possessed of the land described in section 1(a) and has the full right, power, and authority to grant the rights in section 1(b), and that he will defend the title to all of the rights conveyed herein and the quiet enjoyment thereof against any claims and demands of all persons whomsoever.

3) U.S. Controls Roads It Constructs on Permittee Lands

The following provision (No. 3 on Page 25 of the Exhibit A - Form OR 2812-16—Illustration V-2) indicates that the U.S. “controls” any roads it builds on permittee lands and that it sets the road rules and can charge fees. See Chapter VIII. for more discussion on road control and use of U.S.-constructed roads on permittee land.

3. If the United States, or its licensees, constructs a road across the lands described in section 1(a), the United States shall be entitled to

establish road rules for such road. It shall also be entitled to issue licenses and permits for the use of such road and to charge a road use fee in accordance with 43 CFR §2812.5-2(b). The Permittee may not issue licenses or permits for the use of such road and may not use the road for the transportation of forest products except upon payment of the road use fee established pursuant to 43 CFR §2812.5-2(b).

4) If Conflict with Regulations, Regulations Prevail

The following provision indicates that if there are any conflicts between the regulations and the Agreement associated with the exercise of Agreement rights by the U.S. and its licensee's, the regulations will prevail. The exceptions (to having the regulations prevail) are those Exhibit B provisions to which the parties have already reached agreement (see underlined section of provision below).

4. This agreement is subject to and made in accordance with the applicable regulations of the Department of the Interior (43 CFR 2812), including but not limited to the provisions thereof relating to the compensation to be paid by the United States and its licensees for the use of the roads, rights-of-way, and lands described under section 1(b) hereof. In any respect in which this agreement may conflict with such regulations, such regulations shall prevail, except that the terms and conditions specified on Exhibit B, attached hereto and made a part hereof, have been agreed upon pursuant to the authority granted the Authorized Officer under 43 CFR §2812.3-7(a). [Underline added.]

b. Exhibits

The following sections covers the Exhibits associated with the Agreement.

1) Exhibit B (Some Provisions Apply to both Permit and Agreement)

Exhibit B identifies specific provisions applicable to the U.S. use of permittee lands, roads or rights-of-way found on Schedule 2. Unlike the Exhibit A, which contains provisions pertaining only to the permittee, the Exhibit B also includes provisions which are applicable to both the U.S. and the permittee regarding items of mutual concern. If the provision applies to both the U.S. and permittee, it is so indicated after provision title in the Exhibit B of the Form OR 2812-16. The items that apply to both the U.S. and permittee include:

- road construction requirements when building on the other party's land,
- procedures for the cruising and appraisal of right-of-way timber owned by either party,
- road maintenance options and responsibilities, and

- provisions relating to subsequent land and road acquisitions and land disposals.

The following sections will either: 1) give reference to other areas of the handbook which provide implementing guidance for Exhibit B provisions, or 2) will clarify the implementation effect.

a) Provision Nos. 1-3 – Amortization Formulas

Provision Nos. 1 - 3 found on the Exhibit B of Form OR 2812-16 (page 31-33)—see Illustration V-2) are the formulas that are used to complete road use fee calculations at the time the U.S. wishes to use a road or improvement of the permittee. The three different scenarios where fee calculations are anticipated are covered in the separate provisions and the purpose of the fee calculation is identified in the title of the provisions as indicated. These are mirror-image provisions of those found in the Exhibit A.

Further guidance on completing fee calculations and implementing these provisions is found in Chapter IX., Section C.

b) Provision No. 4 – Determination of Tributary Timber.

This provision (No. 4 on page 33 of Illustration V-2) provides guidance in regard to the tributary area and tributary volume associated with road use fee calculations. Further guidance is found in Chapter IX., Section C. Note: This is an identical provision to the one found in the Permit Exhibit A.

c) Provision No. 5 – U.S. Report of Mineral Haul to Permittees

This provision (No. 5 on page 33 of Illustration V-2) provides the requirement for the U.S. to report mineral haul (other than through timber sales) to the permittee. The mineral haul policy is covered and discussed further in Chapters VIII. and XV.

d) Provision No. 6 - BLM Licensee Use of Permittee Roads (Includes Insurance and Bonding Limitations for License Agreements)

This provision (No. 6 on page 34 of Illustration V-2) that sets forth the requirement for a license agreement when a BLM timber sale purchaser (BLM's licensee) uses roads of a permittee (licensor). The provision also contains the requirements and limitations for the amounts of insurance and bonding that the permittee can require of the BLM licensee. Detailed guidance on license agreements is found in Chapter VIII.

e) Provision No. 7 – Payment of Road Use Fees by BLM Licensees

This provision (No. 7 on page 34 of Illustration V-2) provides requirements for when the payment to the permittee by the licensee are to be made. It also specifies that the payment for road use fees will be determined by multiplying the number of MBF to be hauled over each road by the established road use fee for that road or system. See Chapter VIII., Section F.2., for detailed guidance on BLM licensee use of permittee roads.

f) Provision No. 8 – Annual Meetings and Road Owner First Right of Maintenance

This provision (No. 8 on page 34 of Illustration V-2) establishes the requirement for annual meetings unless the U.S. and permittee agree not to meet. See Chapter VI. for more detailed discussion on annual meetings. This provision also provides that the party who owns a road has the first right to maintain and collect pro rata maintenance fees from others users of the road.

g) Provision No. 9 – Road Use Reporting for Purposes of Collecting Pro Rata Maintenance

If a party is performing the maintenance on the other's road, that party is entitled to collect pro rata maintenance as shown in Provision No. 8. If the maintaining party wishes to charge pro rata maintenance to other users of the road, this provision sets forth the requirement for any other party using the road to submit haul reports to the party maintaining the road. It allows for the using party to examine the maintenance records of the party maintaining the road. Pro rata maintenance is covered in more detail in Chapter VIII. and XV. Pro rata does not apply if the maintaining party is charging fees based on the Oregon Maintenance Fee Schedule.

h) Provision No. 10 – Right-of-Way Plat Filing Requirements (Applies to U.S. and Permittee)

This provision (No. 10 on page 35 of Illustration V-2) sets forth the right-of-way plat filing requirements and reasons to object for nondiscretionary right-of-way plats. After the parties submit a right-of-way plat which meets the requirements in the regulations, the requesting party may commence construction after a specified number of days (usually 30) if the landowner does not "object" for one of the reasons in the provision. The Endangered Species Act is required to be included in new reciprocal right-of-way agreements as one of the reasons to object. Detailed guidance on the processing of nondiscretionary right-of-way plats is found in Chapter IX., Section B.

i) Provision No. 11 – Payment and Disposal of Right-of-Way Timber (Applies to U.S. and Permittee)

This provision (No. 11 on page 36 of Illustration V-2) identifies the requirement for payment of right-of-way timber. For U.S. timber, it must be sold to the permittee prior to it being cut. For permittee timber, they have the option of having it cut and decked for them or selling it to the BLM licensee. This is covered in more detail in Chapter VIII.

j) Provision No. 12 – Traffic Regulations (Applies to U.S. and Permittee)

This provision (No. 12 on page 36 of Illustration V-2) specifies that the party who owns or control the road may issue reasonable traffic regulations for the use of the road. This is discussed in more detail in Chapter VIII.

k) Provision No. 13 - Newly Acquired Land (Applies to U.S. and Permittees)

This is the provision that places an obligation on a party who acquires land to grant rights over their acquired land (or roads or rights-of-way) to the other party. This is commonly referred to the “newly acquired lands” provision and if lands qualify as “newly acquired” the adding of those newly acquired lands is nondiscretionary. See No. 13 on page 36 of Illustration V-2. This is discussed in more detail in Chapters XI. and XII.

l) Provision No. 14 – Newly Acquired Roads or Right-of-Way (Applies to U.S. and Permittee)

This provision (No. 14 on page 36 of Illustration V-2) is similar to the above provision and places an obligation on the party who acquires ownership of roads or easements to grant rights to the other party if they qualify as “newly acquired.” See Chapters XI. and XII.

m) Provision No. 15 – Adjustment to Proportionate Share if Acreage Changes +/- 2%

This provision (No. 15 on pages 36 and 37 of Illustration V-2) allows for the proportionate share established for a party in a road use fee calculation to be re-calculated if the tributary area changes (increases or decreases) by more than 2%. This is discussed in more detail in Chapter IX., Section C.

n) Provision No. 16 – Release of Rights for Lands More Valuable for Non-Timber Uses (Applies to U.S. and Permittee)

This provision (No. 16 on page 37 of Illustration V-2) recognizes that sometimes land becomes less valuable for timber production. It states that “in the event that either party determines that any of its lands are so valuable, upon mutual agreement, the parties hereto shall execute an amendment to this agreement removing such lands.” The removal of lands is by “mutual agreement” and there is no obligation.

o) Provision No. 17 – Road Crossings (Applies to U.S. and Permittee)

This provision (No. 17 on page 37 of Illustration V-2) specifies that whenever either party uses a “crossing of less than 1/8 of a mile in length,” no road use fees are applicable. This is covered in more detail in Chapter VIII.

p) Provision No. 18 – Definition of MBF (Applies to U.S. and Permittee)

This provision (No. 18 on page 37 of Illustration V-2) gives a formal definition of MBF to mean “thousand board feet Scribner Decimal C log scale with taper allowance for logs longer than sixteen (16) feet.” See also glossary.

q) Provision No. 19 – Compliance with Environmental Laws

This provision (No. 19 on page 37 of Illustration V-2) requires a BLM licensee or BLM (third party) permittee to comply with applicable state and federal laws in the use of reciprocal right-of-way agreement roads (if the provision is found in the reciprocal right-of-way agreement).

r) Provision No. 20 - Binding on Successors

This provision (No. 20 on page 37 of Illustration V-2) states that the Agreement is binding on the successor of the permittee. That is, the U.S. retains its rights over the permittee’s lands even if the permittee sells their lands.

2) Exhibit C

The Exhibit C attached to the Agreement is one and the same as the Exhibit C attached to the Permit as described above. There is only one Exhibit C map which covers both Schedule 1 and Schedule 2 lands.

3) Exhibits D, E, and F

The Exhibits D, E, and F attached to the Agreement are identical to the Exhibits D, E and F attached to the Permit as described above.

c. Schedules of Land

The same schedules described above for the Permit are also referenced and incorporated into the Agreement. They include the following:

1) Schedule 1

See the description for Schedule 1 under the Permit section above, as they are identical. While Schedule 1 is the listing of the U.S. lands to be used by the permittee, this Schedule is always recorded with the Agreement because some provisions found in Exhibit B apply to both Schedule 1 and Schedule 2 lands.

2) Schedule 2

See the description for Schedule 2 under the Permit section above as they are identical.

Illustration V-4 (Schedule of Land samples) includes examples of the recommended way to describe land descriptions for various situations as follows:

- Schedule 2 – permittee lands (not roads)—descriptions include aliquot part, metes and bounds, or government lot descriptions.
- Schedule 2 - permittee roads on permittee lands.
- Schedule 2 – permittee roads controlled by permittee via an exclusive easement.

3) Schedule 3

See the description for Schedule 3 under the Permit section above as it serves the same purpose in both the Permit and Agreement.

d. License Agreement

See pages 38-44 of Illustration V-2 for the approved form of license agreement. The requirement for the purchaser of BLM timber to enter into a license agreement with the permittee is found in Exhibit B. A license agreement is a contract between the purchaser of forest products from the U.S. (licensee) and the permittee (licensor). The license agreement details the terms and conditions for the BLM licensee's use of permittee roads and lands. It includes the requirements for bonding, insurance,

road use fees, road maintenance responsibility, road maintenance fees (including surface replacement fees), etc.

The form of the license agreement has been negotiated between the U.S. and the permittee at the time the reciprocal right-of-way agreement was consummated. It is particular to a specific reciprocal right-of-way agreement. See Chapter VIII. for guidance on changing the “form” of license agreement associated with an individual reciprocal right-of-way agreement. Some older reciprocal right-of-way agreements do not have a license agreement and the parties must rely on the applicable provisions in Exhibit B.

H. Bonding and Insurance

1. Bonding Requirements

Chapter VII. provides detailed guidance on bonding for both BLM licensee use of permittee roads and permittee use of U.S. roads. The following sections provide guidance for bonding related to reciprocal right-of-way agreements.

The dollar amount identified as the maximum bond amount should be the exact same amount in the Exhibit A and Exhibit B. The following sections discuss the bonding requirements for each party’s use.

The “not to exceed” amount specified in the particular Agreement and Permit are negotiated between the parties. If either party wishes to increase the maximum bond amount this modification needs to be accomplished with a recorded amendment to the reciprocal right-of-way agreement (if this requirement is included as a provision which is part of a recorded document). The “not to exceed” amount in the Exhibit A and Exhibit B should be identical. See Chapter XII. for guidance in preparing amendments for this purpose.

a. Bonds for Permittee Use of U.S. Roads

The regulations require permittees to file performance bonds in connection with their use of U.S. roads or lands as follows:

43 CFR §2812.5-3

. . . a permittee desiring to use an existing road owned or controlled by the United States shall, prior to such use post a bond on a form prescribed by the Director. The amount of the bond shall be determined by the authorized officer but in no event less than five hundred dollars (\$500) per mile or fraction thereof. The bond shall be executed by an approved corporate surety, or the permittee may deposit an equivalent amount in cash or negotiable securities of the United States and the bond shall be conditioned upon compliance with subpart 2812 and the terms and conditions of the permit.

The only exception to the above bonding requirement is the ability of the AO to waive a bond for a 12-week permit to a natural person (not a business entity) per 43 CFR §2812.6-1(b). Reciprocal right-of-way agreements do not qualify for this waiver so bonds are required in all Permits.

Hauling over roads included in a Permit without posting a satisfactory bond constitutes noncompliance (see Chapter VI., Section B.).

The bonding requirement for a Permit is specified in Exhibit A. The following is the verbiage found as part of Provision No. 6. in Exhibit A of Form OR 2812-16 (Illustration V-2, Page 15), and this language is typical in most semi-detailed agreements today:

6. Bonding and Insurance Requirements for Permittee Use. When the Permittee exercises any rights granted by this permit, the United States may require the Permittee to furnish a performance bond in an amount of _____ [not to exceed \$10,000], in favor of the United States conditioned upon faithful performance of the terms and conditions of this permit. . .

Most reciprocal right-of-way agreements are issued in perpetuity and usually include numerous roads and rights-of-way. In establishing an adequate bonding amount for the individual Permit, the amount of the bond (not to exceed the maximum amount in the Exhibit) may be determined by estimating the mileage of U.S.-controlled roads that will typically be used during a reporting period and multiplying the number of miles (rounded up to the next whole mile) by \$500.

In most reciprocal right-of-way agreements today, the U.S. and permittees have agreed to limit the bond amount to \$10,000. If the parties wish to modify this amount it would have to be done with an amendment since this is part of a recorded document (unless there is a provision in the specific agreement allowing for modification by written agreement.)

The BLM requires the bond to be posted prior to approving a Permit and an active bond must be maintained for the full term of the Permit. In situations where the use of U.S. roads is intermittent and maintaining a bond during long periods of non-use would create a financial hardship for the permittee, the permittee may notify the BLM in writing of their planned extended period of non-use and request a release of the bond during this period. In this case the BLM AO should ensure in writing that the permittee will notify BLM prior to commencing operations and that they agree to file a bond before any haul occurs. The release letter should state that hauling without a bond would constitute noncompliance.

See Chapter VII., Section F., for more detailed guidance on processing permittee bonds. In the case of a permittee who holds multiple permits with the U.S., the

permittee usually prefers to have one blanket bond (see Chapter VII.) filed with the U.S. which covers all of their permits. Only the Oregon State Office can negotiate blanket bond amounts with the permittee and they approve all blanket bonds.

b. Bonds for BLM Licensee Use of Permittee Roads

Just as the BLM can require the permittee to post a bond with the U.S. prior to haul, the permittee can require the BLM licensee to post a bond with the permittee prior to hauling over permittee roads under the BLM timber sale contract.

In connection with most Agreements, the following is the standard provision found in Exhibit B of Form OR 2812-16 (Illustration V-2, page 34). This or a similar clause is found in the Exhibit B: most semi-detailed Agreements:

6. BLM Licensee Use of Permittee Roads (And Licensee Bonding and Insurance Requirements). When a Licensee of the United States uses any road which is owned or controlled by the Permittee, located on the lands described in Schedules 1 or 2, or severs Licensor's timber in the construction of a road or roads the Licensee shall enter into an agreement with the Permittee. The Permittee may also require such Licensee to obtain a performance bond in the amount of \$ [Not to exceed \$10,000], in favor of the Permittee, conditioned upon faithful performance of such agreement.

There is a similar provision in the standard license agreement.

As with bonds BLM requires of permittees, the permittee cannot require of BLM's Licensees a bond amount which exceeds the maximum amount found in the Exhibit B and this amount should be the same as that identified in Exhibit A for Permittee use.

See Chapter VII., Sec. D., for further guidance on bonding of BLM licensees by permittee.

c. No Bond for BLM Direct Use of Permittee Roads

If the BLM directly uses permittees roads for commercial haul (not through its licensees), the regulations at 43 CFR §2812.4-2 state, in part: “. . . Provided, however, That no bond or other security or liability insurance is to be required of the United States.”

2. Insurance Requirements

See Chapter VII., Section K., for detailed discussion on insurance requirements under both the Agreement and Permit. The amount of required insurance coverage is generally the amount that is customary at the time for the timber industry in

western Oregon. Insurance providers in the area or the Oregon State Office can be contacted to ascertain the current industry practice.

The following the portion of Provision No. 6 to the Exhibit B of Form OR 2812-16 (Illustration V-2, Pages 33 and 34) which covers insurance requirements for BLM licensees. This or a similar provision is found in most semi-detailed agreements.

6. BLM Licensee Use of Permittee Roads (And Licensee Bonding and Insurance Requirements). . . .

The Permittee may also require the Licensee of the United States to maintain the following types of insurance under this permit, in amounts not to exceed the following whenever it exercises any of the rights granted by this permit:

(a) Commercial General Liability covering all operations, including vehicles of the Licensee: (Bodily Injury: \$1,000,000.00 - for injury to any one person; \$1,000,000.00 - for any one occurrence);

(b) Property Damage in the amount of \$1,000,000 for any one occurrence, and

(c) Loggers Broad Form B - \$1,000,000.00 - for any one occurrence.

The Licensee shall deliver to the Permittee a certificate from the insurer stating that such insurance is in force and that the insurer will give the Permittee thirty (30) days notice prior to any intended or proposed cancellation or modification of such policies.

As with bonds BLM requires of permittees, the permittee cannot require of BLM's Licensees a bond amount which exceeds the maximum amount found in the Exhibit B and this amount should be the same as that identified in Exhibit A for Permittee use.

The dollar amount may be changed at a later date to reflect changes in industry practice upon mutual written agreement of BLM and the permittee. However, since these changes would modify a provision in a recorded document, the amounts can only be modified with a recorded amendment to the reciprocal right-of-way agreement (unless there is wording in the reciprocal right-of-way agreement which provides for modification by written agreement of the parties). The types of insurance and maximum amounts in the Exhibit A and Exhibit B must be identical.

I. Formatting Standards for Reciprocal Right-of-Way Agreements (including Permits).

The following guidance is required when drafting new reciprocal right-of-way agreements.

1. Page Numbering

Use the following for numbering of pages in both the Agreement and Permit:

- All pages are numbered, including the notary affidavit page.
- The numbering format shall be “page ___ of ___.”
- The Agreement and Permit document, each exhibit, schedule and attachment has its own sequence of numbers.

2. Dates

Each page of the document and attachments are dated with the date of the final change made to that document. It is preferable that all documents (Agreement, Permit, Exhibits and Attachments) be dated the same date.

3. Formatting to Meet Recording Requirements

Each county has its own requirements for margins, etc. If the reciprocal right-of-way agreement is prepared according to the following standards, it will meet all of the western Oregon county requirements. However, if in doubt, check with your local county.

- If the document is to be recorded, generally the counties like to see the return address labeled as “After Recording Return to:” in the upper left hand corner of the first page.
- Room for recording stamp/label: Most counties now use a recording label in the upper right hand corner of the first page. All Agreements expected to be recorded should have a space in the upper right-hand corner which is approximately 2-1/2” high x 3” wide. The top margin of the first page of the document should be at least 3” to allow for the label to be affixed and to ensure that no text or any part of the recorder’s label will be eliminated if the document is subsequently two-hole punched at the top for filing.
- If the document is to be recorded in more than one county, there should be a cover sheet affixed to the document allowing all counties to affix their label.

4. Use of Acronyms for Names of the Parties

An acronym or alternate designation for any of the parties (permittee or U.S.) may be used if the full name as identified in the title report or deed is identified as the name specific party and then followed by the phrase "hereinafter called" is used to identify the acronym for one of the parties once it is identified. The acronym may subsequently be used throughout the entire document except in the names, signature, and notary sections.

The U.S. rights are always acquired in the name of the United States (not the BLM). If an acronym or alternate designation is not used, the full name as it appears in the title report must be used throughout the entire document and attachments. If other federal agencies own land in the O.&C. area (in and West of Range 8 E.), and the agency needs rights to access their federal timber, rights can be acquired on behalf of those other agencies, but the rights would still be acquired in the name of the U.S.

5. Signatures and Acknowledgements

A signature and notary blank is needed for the permittee and the BLM AO (Field Manager(s) or District Managers (if a multi-district permit)). If the signature blocks and notary blanks do not fit on the bottom of a page with assignment, amendment, Permit or Agreement text, break a page and keep them together on the following page.

If the permittee is other than an individual, it may require use of a specific signature block format. If in doubt, the applicant can provide the format it uses for signing legal documents.

Select the appropriate notary blank for each signatory. The typed names in the signature blocks must appear identical to how they are listed in the beginning of the document (and must match the title evidence).

If the signatory is other than an individual (like an officer of a corporation), the signatory's status should be verified using the required legal documents submitted with the application, or that are on file. In the case of corporations, some corporate resolutions require the AO's signature to be "attested to" by a designated official of the corporation. See Chapter III. for qualifications.

J. System Fee Agreements

A system fee agreement is a semi-detailed reciprocal right-of-way agreement that utilizes a "system fee" accounting arrangement for road amortization records instead of a calculating separate road use fees for individual road segments (as described in Chapter IX.C.).

1. Exhibit A Provisions for System Fee Agreements (Permittee Use)

In order for there to be a system fee arrangement, the following provisions must be included in the Exhibit A and B to the reciprocal right-of-way agreement:

The following provision needs to be included in the Exhibit A when there is a system fee arrangement in order to reference an Exhibit C map denoting the status of roads that have already been designated as free use and will remain free use to the

permittee after the system fee system has been established unless a capital improvement is made.

Permittee shall have the right to use free of charge, except as provided in Paragraph __ below, and except for pro rata maintenance expense, the road owned or controlled by the United States as shown by a cross-hatched line (#####) [or whatever symbol is used] on Exhibit C.

Use the following to establish the system fee arrangement in lieu of the typical method of establishing fees on a road-by-road basis and maintaining separate deficit share balances for each road. This provision would be added to the Exhibit A and would apply in addition to the other provisions found in the Permit.

The Permittee's percentage share of roads owned or controlled by the United States as described in Paragraph __ above, shall be calculated as provided in said Paragraph __, increased by a three (3) percent interest allowance, and then added to an open balance due the United States. The Permittee's percentage share of future capital expenditures made by the United States or its Licensee's on roads described in Paragraph 3 above, and roads described in Paragraph 4 of Exhibit B to Right-of-Way and Road Use Agreement No. ____, shall be calculated as provided in said paragraphs, increased by a three (3) percent interest allowance, and then added to an open balance due the United States. The parties hereto agree that the beginning balance due the United States is zero dollars. If the Permittee uses any road owned or controlled by the United States for the removal of forest products, the Permittee shall pay the United States a road use fee for such use at the rate of \$____per *M. bd. ft., provided, the Permittee shall have free use, except for pro rata maintenance expense, whenever the balance as provided herein has been paid in full. The parties hereto shall meet once a year, no later than _____, for the purpose of reconciling and agreeing upon the then current unpaid balance as determined herein and to determine if the rate of payment of *\$____ per M. bd. ft. is still reasonable considering the remaining tributary, merchantable timber of Permittee. It is understood that the agreement on a road use fee payment rate shall be consistent with the intent of both parties to amortize outstanding percentage shares with timber merchantable at the time of percentage share calculations.

[*NOTE: This rate is negotiated for each system fee agreement. See Section J.3., below, for discussion of establishment of road use fees associated with system fees.]

2. Exhibit B Provisions (U.S. Use)

The following provision needs to be included in the Exhibit A when there is a system fee arrangement in order to reference an Exhibit C map denoting the status of roads that have already been designated as free use and will remain free use to the permittee after the system fee has been established unless a capital improvement is made.

The United States shall have the right to use free of charge, except as provided in Paragraph ___ below, and except for pro rata maintenance expense, the road owned or controlled by the Permittee as shown by a dark dotted line (••••••••) [or whatever symbol is used] on Exhibit C.

Use the following to establish the system fee arrangement in lieu of road-by-road fees. This provision would be added to the Exhibit B and would apply in addition to the other provisions.

The United States' percentage share of roads owned or controlled by the Permittee as described in Paragraph ___ above, shall be calculated as provided in said Paragraph ___, increased by a three (3) percent interest allowance, and then added to an open balance due the Permittee. The United States' percentage share of future capital expenditures made by the Permittee on roads described in Paragraph ___ above, and roads described in Paragraph ___ of Exhibit B to Right-of-Way and Road Use Agreement ____, shall be calculated as provided in said paragraphs, increased by a three (3) percent interest allowance, and then added to an open balance due the Permittee. The parties hereto agree that the beginning balance due the Permittee is zero dollars. If the United States uses any road owned or controlled by the Permittee for the removal of forest products, the United States shall pay the Permittee a road use fee for such use at the rate of \$_____ per M. bd. ft. *, provided, the United States shall have free use, except for pro rata maintenance expense, whenever the balance as provided herein has been paid in full. The parties hereto shall meet once a year, not later than _____, for the purpose of reconciling and agreeing upon the then current unpaid balance as determined herein and to determine if the rate of payment of * \$_____ per M. bd. ft. is still reasonable considering remaining tributary, merchantable timber of the United States. It is understood that the agreement on a road use fee payment rate shall be consistent with the intent of both parties to amortize outstanding percentage shares with timber merchantable at the time of percentage share calculations.

[*NOTE: This rate is negotiated for each system fee agreement. See Section J.3. below for discussion of establishment of road use fees associated with system fees.]

3. Key Features of a System Fee Agreement

The key features or distinctions of a system fee agreement include:

1) The only difference between a system fee agreement and a typical semi-detailed agreement is the way in which determination and payment of road use (amortization) fees are made. In a system fee agreement the road use fee/MBF is a negotiated fee/MBF and that negotiated fee is charged for use of any and all roads in the reciprocal right-of-way agreement.

2) The negotiated road use fee may be changed by mutual consent of the parties by an amendment to the reciprocal right-of-way agreement since it is a part of a provision in a recorded document. This type of amendment would not be subject to NEPA. The system fee is intended to approximate an “average” of the road use fees that would be determined if the agreement utilized separate road use fees for individual road segments.

3) A system fee agreement and semi-detailed agreement are similar in that fee calculations are still completed to determine the proportionate share for each party in the replacement cost or improvement cost of road segments. Fee calculations are completed at time of first use exactly the same as in a semi-detailed agreement, except the final step of calculating the road use fee/MBF for the individual road segment is not done since the fee is already negotiated.

4) The negotiated road use fee/MBF is memorialized in a provision in the Exhibits A and B.

5) The road use fee to be paid by the deficit party is negotiated and stipulated in the reciprocal right-of-way agreement documents (Exhibits A and B) (see provisions above).

6) When a system fee agreement is established, after all road use fee calculations are completed and posted, all of the existing segment balances would be swapped out with one party (BLM or the permittee) having a final deficit balance, which would be the starting ledger balance for the system fee arrangement.

7) The accounting for system fee agreements is through the use of a ledger instead of individual road amortization records. When a new proportionate share is calculated and accepted by the using party, that deficit share amount is added to the using party's side of the system fee ledger for the particular reciprocal right-of-way agreement. The ledger is essentially a tabulation of debits and credits (of proportionate shares) and determines the “system balance” which is the net deficit share for the reciprocal right-of-way agreement as a whole. Each proportionate share that is calculated is a debit for the using party and a credit for the party who owns the road or improvement (see road ownership in glossary). When road use

fee payments are made, they are posted as a credit for the party making the payment.

8) Only one party at a time (either BLM or the permittee) has a deficit share balance greater than \$0.00 (i.e., the “system balance”), unless both parties are at \$0.00.

9) The party who has the system balance pays the system road use fee/MBF whenever it hauls timber over ANY system road in the reciprocal right-of-way agreement that is controlled by the other party until such time as its deficit balance is reduced to \$0.00. The balance may be reduced to \$0.00 by:

- payment of road use fees by the party with the deficit balance, or
- the other party sharing in a new road or capital improvement (thus creating a new proportionate share for them) and when that proportionate share is posted as a debit against that party, it exceeds the deficit party’s deficit balance. (In this case the deficit party would now be the party who had the new proportionate share calculated.

10) The party that has the \$0.00 deficit balance pays no road use fee when it uses any road or capital improvement in the reciprocal right-of-way agreement controlled by the other party, as long as the road or improvement has had amortization shares calculated.

11) If the party with the \$0.00 balance wishes to haul timber over a road or capital improvement controlled for the first time, which road or improvement is owned by the other party, the using party’s deficit share in that road or improvement must first be determined (see Chapter IX., section C.). The calculated deficit share is then added to the using party’s side of the system ledger. If that new calculated share is less than or equal to the remaining system balance held by the other party, use of the new road or improvement will be without payment of road use fees. If the new share exceeds the other party’s system balance, the user acquires the new “system balance” and must pay the system road use fee until such time as its system balance is reduced to \$0.00.

12) The system fee (\$) is charged per MBF of timber hauled. The mileage of roads used is immaterial.

The following sample agreement ledger is intended to illustrate the principles of a system fee agreement:

Date	Action	Amount	BLM Balance	Permittee Balance
1/15/2000	New System Fee Reciprocal Agreement approved or mass swap of fees under an existing semi-detailed Agreement and the Agreement is changed to system fee Agreement (usually one party will start off with a deficit balance after a mass swap out).	--	\$ 2,000.00	\$ 0.00
2/15/2000	Road Use Fee Calculation done to calculate BLM Share in Permittee Road A	\$ 21, 000.00	\$23,000.00	\$ 0.00
4/15/2000	BLM road use fee payment	\$ 5,000.00	\$18,000.00	\$ 0.00
6/19/2000	Road Use Fee Calculation done to calculate Permittee Share in BLM Road 1	\$ 7,000.00	\$11,000.00	\$ 0.00
12/10/2000	BLM road use fee payment	\$ 6,000.00	\$ 5,000.00	\$ 0.00
6/18/2001	Road Use Fee Calculation done to calculate Permittee share in BLM Road 2	\$ 7,000.00	\$ 0.00	\$2,000.00
10/12/2001	Permittee Road use fee payment	\$ 2,000.00	\$ 0.00	\$ 0.00
4/25/2002	Road Use Fee Calculation done to calculate BLM share in Permittee Road B	\$ 8,000.00	\$ 8,000.00	\$ 0.00
10/18/2002	BLM road use fee payment	\$ 3,000.00	\$ 5,000.00	\$ 0.00

4. Advantages of a System Fee Agreement

The advantages of a system fee agreement include:

- Full payment of each party's proportionate share is amortized at an expedited rate.
- For harvest planning efforts (including BLM timber sales), the road use fee to be paid is always known.
- Record keeping is significantly simplified and the workload is greatly reduced as it is no longer necessary to keep track of road use fees and deficits on a road-by-road basis. However, the records must reflect whether a road has been bought into it or not.
- Processing of Reports of Road Use is simplified because there is only one road use fee for all the roads used and the payment due for road use is based solely upon the volume of timber hauled (the length or roads used is immaterial). Once the ledger is verified that a proportionate share has been calculated, the payment can be made at the standard system fee rate.

5. Disadvantages of a System Fee Agreement

While there are advantages to system fee agreements, before the decision is made to convert to that type of accounting, the AO should understand the disadvantages as well. The disadvantages of a system fee agreement include:

- Fee calculations to determine proportionate share must be done promptly and the system fee ledger updated appropriately and timely.
- All previously calculated proportionate shares are usually swapped out when the system fee arrangement is first established, regardless of whether there is little likelihood of hauling over those roads.
- Under the old system, the using party pays as they go and deficit balance (and obligation to pay) is only on a road-by-road basis as the road is used. If one party has no plans to use a road, they may be giving away something of value.
- Upon an assignment of a Permit, many roads are free use to the assignee and the assignor may not benefit from or receive compensation for the roads swapped when they sell their land and have the rights assigned.

The BLM AO should give serious consideration whether or not it is in the government's best interest to change to a system fee arrangement. There is an incredible amount of work involved and the pros and cons of establishing a system fee arrangement should be seriously evaluating before undertaking such an effort.

6. Amendments to Convert to a System Fee Agreement

An existing semi-detailed agreement could be converted into a system fee agreement. This is accomplished by completing an amendment which adds the provisions found in Illustration V-5. However, an amendment to convert to this type of accounting for road amortization cannot be done unless all outstanding fee calculations are done, all road use reporting and payments are current, and all amortization records have been audited to ensure that the system fee arrangement starts with a clean slate.

Chapter XI. provides guidance in completing an amendment converting a semi-detailed agreement to a system fee agreement.

In addition, if the parties wish to change the negotiated road use fee, it must be accomplished with an amendment as well.

Illustration No. V-5 provides sample provisions to be used when amending a reciprocal right-of-way agreement to a system fee type of accounting.

7. Treatment of System Fee Agreements in Different Types of Assignments

Chapter XI. discusses the different types of assignments (full, mass, split, and partial). The effects of a system fee agreement are different in the various types of assignments.

When there is a full assignment of a system fee agreement, if the current ledger balance is owed by the permittee, the assignee becomes responsible for payment after the assignment. If the current ledger balance is owed by the BLM, payments by the BLM go to the assignee after the assignment.

Mass assignments are merely a set of full assignments assigned to the same individual but captured in one document for simplicity, so the effects of the system fee agreement are the same as that of a full assignment.

In the case of partial assignments, the assignor and assignee need to determine if one or both of them will either be entitled to receive payment from the BLM (if BLM has the current ledger balance) or if one or both will be responsible for a portion of the payment of the current ledger balance (if currently owed by the assignor). As part of the assignment process, the parties should enter into an accounting agreement (to be attached to the assignment document) which clearly indicates the decision. If there is either a joint payment by the BLM or a joint responsibility for payment by the assignor and assignee, a new ledger account with the agreed-upon split (or either the payments to be received or made) should be made for the new Permit created by partial assignment and an adjustment made to the ledger of the parent Permit being retained by the assignor. If they agree that the entire balance will be “owed to” (if a BLM balance) or “owed by” (if a permittee balance) one party or the other, it should so be noted in the assignment document and the account either left in place with the old Permit or transferred to the new Permit.

Split assignments occur when a permittee assigns all of their rights in a specific Permit to various entities, accomplished for the most part simultaneously or one after the other. This is basically a series of partial assignments so the guidance above for partial assignments would apply to each and every split.

K. Final Processing of a New Reciprocal Right-of-Way Agreement

1. Title Review and Clearance

Title clearance is required for the development of all new reciprocal right-of-way agreements, including those which replace existing reciprocal right-of-way agreements. The BLM AO is responsible for adhering to the procedures for title review and clearance found in BLM Acquisition Handbook H-2100-1.

See Chapter XII. Section D. for minimum requirement for title review and clearance when acquiring rights for the U.S. in a reciprocal agreement.

The district acquisition specialist should review title all lands or interests in lands being added to Schedule 2 of the Agreement and Permit to ensure that there is clear title which is sufficient to protect the rights and investments of the U.S. in the use and construction of roads or improvements.

At a minimum, the BLM should obtain current title evidence for the permittee lands or interests in lands proposed for addition to Schedule 2. All unacceptable title encumbrances will need to be subordinated because of the greater likelihood that forest land titles may be encumbered by mortgages, financial agreements, and other liabilities. Particular attention should also be paid to the inclusion of access easements granted to a permittee by third parties. The Regional Solicitor's Office should be consulted where questions concerning the use of a permittee easement by the U.S. are raised.

If appropriated funds are to be expended by the U.S. on permittee lands, a title opinion from the Regional Solicitor's Office is required. An exclusive easement must be obtained where construction on permittee lands involves a substantial investment by the U.S. Procedures for title review and clearance are found in BLM Acquisition Handbook H-2100-1.

2. Review and Approval

It is good practice to provide the applicant with a draft copy of the proposed reciprocal agreement documents for their review and acknowledgement that the documents are acceptable prior to routing the lands decision memo for approval by the AO.

When the applicant has responded that the draft reciprocal right-of-way agreement documents are acceptable, route the NEPA review document and lands decision memo for approval by the AO, attaching copies of the final Permit and Agreement.

After the NEPA document and lands decision memo have been approved, transmit the original Permit and Agreement, including all schedules and exhibits, to the applicant with a letter requesting that they be signed by an authorized official and returned to BLM.

When the Permit and Agreement document have been returned to the issuing office, take the following actions:

- Verify that the Permit and Agreement have been signed by the applicant and dated and that the person who signed has the authority to do so.
- Verify that the signatures on the Agreement and Permit (if it has been prepared in recordable form) have been properly notarized.
- If a signature is missing or the notarization is not properly executed, return the document to the applicant for corrective action.
- Verify that the applicant has submitted the required qualification documentation (see Chapter III., Section D.2.) or that it is already on file.

- Verify that the applicant has submitted a license agreement format acceptable to BLM. In practice, BLM often prepares the format and provides it to the applicant for their approval and submission to BLM. The version attached to the Form OR 2812-16 is recommended and approved for use.
- When the Agreement has been verified to be acceptable to BLM, enter the date it was executed by the applicant in the appropriate space on the first page of the Permit.
- When all the above items have been completed, the Permit can be approved by the AO (with proper notary if it was prepared in recordable form). Permits are approved by the appropriate Field Manager. If more than one Resource Area within a single district is involved, the Permit must be signed by the District Manager. If more than one District is involved all affected District Managers sign, unless one District Manager has been delegated special authority by the State Director to sign on behalf of all districts (see Oregon handbook supplement H-1203).

The Agreement must be recorded in all counties in which the Schedule 1 and Schedule 2 lands are located. Although the regulations at 43 CFR §2812.3-3 state that the applicant shall record the Agreement, BLM normally takes the responsibility and bears the expense of recording this document to ensure that the rights acquired by the U.S. are recorded as timely as possible. If the Agreement is not recorded for some reason and land listed on Schedule 2 is transferred to another owner, it could cause problems for the U.S. in having to defend the acquired access rights over the transferred lands. Unrecorded documents properly signed and notarized are still valid. Not having them recorded may just cause problems in exercising rights over the lands.

Once the Permit has been fully executed by BLM, a copy should be made and transmitted to the applicant (now permittee) along with a copy of the recorded Agreement. The original Permit copy (with original signatures) **MUST** be retained by BLM (along with the Agreement) and incorporated into the official BLM case file. Some districts utilize duplicate original copies of the Permit. In this case both copies must be signed by the applicant and returned to BLM. Following their approval by BLM, one original copy should be incorporated into the official BLM case file and the second original copy transmitted to the permittee along with a copy of the recorded Agreement.

Some permittees are now requesting that the Permit also be recorded. They may have the Permit recorded if they so desire; however, they need to be reminded that even if the Permit is recorded, it still must be assigned for a new landowner to exercise the rights therein.

3. Reporting Accomplishments and Updating LR2000

For the Permit, report a unit of accomplishment under the 6310 sub-activity and ER program element. For the Agreement, report a unit of accomplishment under the 6310 sub-activity and HN program element. Refer to Illustration VI-9. The “HN” program element is reported in acres.

Update LR2000 to reflect granting of the Permit and acquisition of the Agreement. If it has not been done previously, enter the reciprocal right-of-way agreement into LR2000.

For the Permit side, use the serial No. with an “FD” in the suffix field. Use Case Type 281230.

For the Agreement side, enter a separate record using the serial No. with a “PT” in the suffix field. Use Case Type 210003.

a. Data Entry for the Permit

- Determine and enter the appropriate legal descriptions and acreages for the lands, and interests in land where rights were granted to the permittee. These are the lands and interests in land included on Schedule 1.
- Determine if the permittee name/address will be used for both the permittee and billee. If there is a separate billee, get the correct name and address.
- Determine if there is already a Name ID in LR2000 for both the permittee name/address (and the new billee name/address if applicable). If not, request a Name ID for either/both.
- If the permittee is both the holder (permittee) and the billee, enter the Name ID for the new permittee and enter Code 65 (holder/billee) as the Relationship Code. If the permittee is only the holder (permittee) and there is a separate billee, enter Code 29 (holder) as the Relationship Code for the new permittee name, and Code 61 as the relationship code for the separate billee.
- Enter Action Code 387 (Case established). Use date the application was received or the case file otherwise established.
- Action 307 (Right-of-Way Granted). Use date the Permit was approved.
- Enter Action Code 404 (Title Recordation). Enter the recording information in remarks. Use the date the Permit was recorded (if it was). Repeat the entry for each County involved.
- Enter Action Code 501 (Reference No.). Enter the District Permit number in the remarks column (e.g., R-1000).

b. Data Entry for the Agreement

- Determine and enter the appropriate legal descriptions and acreages for the lands, and interests in land where rights were acquired by the U.S. These are the lands and interests in land included on Schedule 2.
- Determine if there is already a Name ID in LR2000 for the permittee name/address.
- If not, request a Name ID.
- Enter the Name ID for the new permittee and enter Code 33 (Grantor) as the Relationship Code.
- Enter the Name ID for the BLM district involved and enter Code 22 (Acquiring Agency) as the Relationship Code.
- Enter Action Code 387 (Case established). Use date the Permit application was received or the case file otherwise established.
- Enter Action 887 (Agreement signed). Use date the Agreement was executed by the permittee.
- Enter Action Code 404 (Title Recordation). Enter the recording information in remarks. Use the date the Agreement was recorded. Repeat the entry for each County involved.
- Enter Action Code 501 (Reference No.). Enter the District Permit number in the remarks column (e.g., R-1000).

CHAPTER V – Table of Illustrations

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Illustration V-1
 Comparison Chart – Agreement Vs. Permit
 Page 1 of 1

Reciprocal Right-of-Way Agreement Comparison between Agreement and Permit	
O&C Logging Road Right-of-Way Permit Permit Documents including special provisions and EEO provisions. (A component of Form OR 2812-16)	Right-of-Way and Road Use Agreement Agreement Documents including special provisions. (A component of Form OR 2812-16)
Exhibit A - identifies specific terms, conditions and stipulations pertaining to Permittee's rights. (A component of Form OR 2812-16)	Exhibit B - identifies specific terms, conditions and stipulations pertaining to United States' and/or Permittee's rights. (A component of Form OR 2812-16)
Exhibit C – Map of reciprocal right-of-way agreement area.	Exhibit C – Map of reciprocal right-of-way agreement area.
Exhibits D, E and F – Optional - not common, and not included in all RWA's; provisions that are tied to both the Exhibit A and B. For example: load diagrams, maximum road and spur road specifications, etc.	Exhibits D, E and F – Optional - not common, and not included in all RWA's; provisions that are tied to both the Exhibit A and B. For example: load diagrams, maximum road and spur road specifications, etc.
*Schedule 1 – listing of United States lands, roads or rights-of-way over which the permittee has been granted rights. (As described on Form OR 2812-15)	Schedule 1 - listing of United States lands, roads or rights-of-way over which the permittee has been granted rights. (As described on Form OR 2812-15)
Schedule 2 - listing of Permittee lands, roads or rights-of-way over which the United States has been granted rights. (As described on Form OR 2812-15)	*Schedule 2 - listing of Permittee lands, roads or rights-of-way over which the United States has been granted rights. (As described on Form OR 2812-15)
Schedule 3 – Optional – an additional listing of lands for specified purposes. (As described on Form OR 2812-15)	Schedule 3 – Optional - an additional listing of lands for specified purposes. (As described on Form OR 2812-15)
Exclusive Easement Form – Standard form – format the Permittee grants to the United States when constructing roads with appropriated funds. (A component of Form OR 2812-16)	License Agreement – A standard agreed upon format detailing the terms and conditions of the United States' timber sale purchasers use of Permittee roads and lands. (A component of Form OR 2812-16)

*While Schedules 1 & 2 are listed on both sides of the comparison chart because certain exhibits reference both schedules, it is extremely important to remember in which Schedule each party's rights lie as follows:
 SCHEDULE 1 – PERMITTEE RIGHTS OVER U.S. LANDS
 SCHEDULE 2 – U.S. RIGHTS OVER PERMITTEE LANDS.

Illustration V-2
Form OR 2812-16 – Reciprocal Right-of-Way Agreement
Page 1 of 44

After recording, return to:

RECORDING LABEL HERE
(Leave at least 4" at top right corner)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

O. AND C. LOGGING ROAD RIGHT-OF-WAY PERMIT

(Form OR 2812-16 – November 2008)

43 CFR Subpart 2812

Title V, P.L. 94-579; 90 Stat 2743.

Name of Permittee: _____
Address: _____

Permit No. _____

Serial No. _____

In accordance with and subject to the provisions of the above-noted regulations which are incorporated herein and made a part hereof and in consideration of a grant of the right to use roads and rights-of-way across the lands described in Schedule 2, attached hereto and made a part hereof, said grant to the United States having been made by the Permittee by Right-of-Way and Road Use Agreement No. _____ (serial No. _____), dated _____, the United States hereby grants to Permittee the right to use lands, roads and rights-of-way across the lands described in Schedule 1, attached hereto and made a part hereof, for the respective periods of time indicated on Schedule 1. The use of such lands, roads and rights-of-way by the Permittee shall be for the purpose of management and removal of timber, forest and mineral products from lands which are owned or controlled by Permittee as of the time of exercise by Permittee of the rights herein granted by the Government. Except as expressly provided in Exhibit A, attached hereto and made a part hereof, rights-of-way and road use fees shall be determined and paid in accordance with the above-identified regulations.

All rights of Permittee with respect to the use of roads and rights-of-way across the lands described in Schedule 1 shall hereafter be determined in accordance with this

Illustration V-2
 Form OR 2812-16 – Reciprocal Right-of-Way Agreement
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permit. All outstanding rights heretofore granted to the Permittee to use such roads and rights-of-way are hereby terminated.

The routes and construction specifications for roads to be constructed by the Permittee over the lands described in Schedule 1 shall be prepared in accordance with 43 CFR 2812.1-2(c) and filed with the Authorized Officer. No construction shall be commenced until such routes and specifications have been approved by the Authorized Officer. Upon receipt of such approval, unless the Authorized Officer shall otherwise direct, the Permittee shall forthwith, to the extent that conditions of weather permit, initiate construction of such roads in accordance with the approved route and construction specifications and diligently prosecute such construction to completion.

This permit is accepted subject to the regulations described herein, together with the conditions specified herein and in Exhibit A.

Any permanent easement which Permittee may grant pursuant to 43 CFR §2812.6-2(a)(11) shall be granted on the attached Exclusive Road Easement form.

This Permit is a nonexclusive license as described in 43 CFR §2812.2-1. If the Permittee disposes of any lands owned or controlled by him that are served by this Permit and the new landowner wishes to exercise any rights hereunder, the new landowner must apply for an assignment.

Signature Blocks If Individual

ACCEPTANCE OF PERMITTEE:

 Printed Name

 Signature

APPROVAL:

UNITED STATES OF AMERICA
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

 Signature (Field Manager) or (DM)
 Title: _____

 Name of Field Office (or Resource Area)

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 Form OR 2812-16 – Reciprocal Right-of-Way Agreement
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Signature Blocks If Partnership

ACCEPTANCE OF PERMITTEE:
 [Typed Name of Partnership]

APPROVAL:
 UNITED STATES OF AMERICA
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

 Name & Title of Managing Partner

 Signature

 Signature (Field Manager) or (DM)
 Title: _____

 Name of Field Office (or Resource Area)

Note: If one partner alone signs they must provide written evidence signed by ALL partners that they have authority to sign on behalf of the partnership. Otherwise, ALL, partners must sign so there needs to be enough signature blocks for each partner.

Signature Blocks If Corporation

ACCEPTED BY PERMITTEE:
 [Typed Name of Corporation]

APPROVAL:
 UNITED STATES OF AMERICA
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

By:

 Title:

 Signature (Field Manager) or (DM)
 Title: _____

Attest: _____
 Title: _____

 Name of Field Office (or Resource Area)

Illustration V-2
Form OR 2812-16 – Reciprocal Right-of-Way Agreement
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ACKNOWLEDGEMENT (NOTARY) BLOCKS - MANDATORY

**Acknowledgement If Individual
(Use multiple if more than one individual signor)**

STATE OF OREGON)
) ss:
COUNTY OF) **[ENTER COUNTY WHERE PERMITTEE WILL SIGN]**

On the _____ day of _____, 20____, personally came before me, a notary public in and for said County and State, the within-named _____, to me personally known to be the identical person(s) described in and who executed the within and foregoing instrument and acknowledged to me that (he/she) executed the same as his/her free and voluntary act and deed, and for the uses and purposes therein mentioned.

[SEAL]

Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

Illustration V-2
Form OR 2812-16 – Reciprocal Right-of-Way Agreement
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Acknowledgement If Partnership
(Use multiple if more than partner must sign)

STATE OF)
) ss:
COUNTY OF) **[ENTER COUNTY WHERE PERMITTEE WILL SIGN]**

On the ____ day of _____, 20____, personally came before me, the within-named _____, partner(s), to me personally known to be the identical person(s) (or whose identity was proven to me on the basis of satisfactory evidence) and who executed the within and foregoing instrument on behalf of _____, _____, a partnership, and acknowledged to me that he/she/they is/are authorized to execute said instrument, and he/she/they executed the foregoing instrument as the free and voluntary act and deed for the partnership firm.

[SEAL]

Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

Illustration V-2

Form OR 2812-16 – Reciprocal Right-of-Way Agreement

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SPECIAL PROVISIONS

EQUAL OPPORTUNITY CLAUSE. During the performance of this contract, the Permittee agrees as follows:

(1) The Permittee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Permittee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Permittee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting the provisions of this nondiscrimination clause.

(2) The Permittee will, in all solicitations or advertisements for employees placed by or on behalf of the Permittee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Permittee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Permittee's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Permittee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Permittee will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Permittee's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Permittee may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of

Illustration V-2

Form OR 2812-16 – Reciprocal Right-of-Way Agreement

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September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Permittee will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Permittee will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, HOWEVER, that in the event the Permittee becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Permittee may request the United States to enter into such litigations to protect the interests of the United States.

Illustration V-2

Form OR 2812-16 – Reciprocal Right-of-Way Agreement

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PERMIT NO. _____

OR: _____ FD

EXHIBIT A

1. Amortization Formula for Permittee Buy-In to Replacement Cost of U.S. Road. In the event that the Permittee should use roads owned or controlled by the United States which are constructed on lands described in Schedules 1 or 2, (and shown on Exhibit C, attached hereto and made a part hereof), the Permittee shall pay a road use fee computed as follows:

$$F = \frac{R}{T} + I \quad \text{in which}$$

F = Road use fee per M bd. ft.

R = Replacement cost (replacement cost of the road including extraordinary costs peculiar to the construction or acquisition of the road or right-of-way but excluding any capital investment made in the road by the Permittee.)

T = Tributary timber (the volume of timber which has been moved over the road and the volume of tributary timber currently merchantable which probably will be moved over the road)

I = .03 X $\frac{R}{T}$ (interest allowance)

The Permittee shall have free use except for pro rata maintenance expense, of any such road after the Permittee's percentage share of the replacement cost of the road has been paid. Such percentage share shall be the same as the Permittee's percentage share of the total volume of tributary timber. Replacement cost of a road shall be computed as of the date when the road is first used by the Permittee for the removal of forest products from Permittee's lands. If the parties hereto cannot agree on the replacement cost within thirty (30) days after written notice from either party, computation thereof shall be made by the United States Bureau of Land Management and its decision shall be final, provided that the right of the Permittee to appeal pursuant to the provisions of 43 CFR Part 4 shall not be affected.

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2. Amortization Formula for Permittee Buy-In to Cost of Improvement Placed by U.S. on U.S.-Controlled Roads. If the United States, or its licensees, makes any future capital expenditure on any road described in paragraph No. 1 above and the Permittee uses such road after the capital expenditure is made, the United States shall be entitled to charge an additional road use fee to be computed as follows:

$$F = \frac{E}{T} + I \quad \text{in which}$$

F = Road use fee per M bd. ft.

E = Amount of any future capital expenditure made by the United States or its licensees.

T = Total volume of merchantable timber at time of capital expenditure(s) which probably will be moved over the road after the capital expenditure is made.

$$I = .03 \times \frac{E}{T} \quad (\text{interest allowance})$$

The Permittee shall have free use, except for pro rata maintenance expenses, after the Permittee's percentage share of the capital expenditure has been paid. Such percentage share shall be the same as the Permittee's percentage share of the total volume of merchantable timber which probably will be moved over the road after the capital expenditure is made.

3. Amortization Formula for U.S. Buy-in to Cost of Improvement Placed by Permittee on U.S.. Controlled Road. If the Permittee, with the approval of the United States, makes any future capital expenditure upon a road described in paragraph No. 1 above, and the United States or its licensees uses such road after the capital expenditure is made, the Permittee may charge a road use fee to be computed as follows:

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$$F = \frac{E}{T} + I \text{ in which}$$

F = Road use fee per M bd. ft.

E = Amount of any future capital expenditure made by the Permittee.

T = Total volume of merchantable timber at time of capital expenditure(s) which probably will be moved over the road after the capital expenditure is made.

$$I = .03 \times \frac{E}{T} \text{ (interest allowance)}$$

The United States or its licensees shall have free use, except for pro rata maintenance expenses, after the United States' percentage share of the capital expenditure has been paid. Such percentage share shall be the same as the United States' percentage share of the total volume of merchantable timber which probably will be moved over the road after the capital expenditure is made.

4. Determination of Tributary Timber. In computing the formula set forth in paragraph(s) _____ above, the tributary timber shall be determined by multiplying the average stand volume per acre by the total acreage of timber tributary to any particular road or road segment. The average volume per acre to be used in this computation shall be the average volume per acre as shown on the current Bureau of Land Management Forest Management Inventory of the area. The tributary timber shall be determined after consultation between the parties hereto and after consideration of all available data furnished by either party. The data which either party desires to have considered shall be furnished the other party within thirty (30) days after written request therefore. If the parties cannot agree upon the tributary timber within thirty (30) days after the data is furnished, the determination thereof shall be made by the United States Bureau of Land Management, provided that the right of the Permittee to appeal pursuant to the provisions of 43 CFR Part 4 shall not be affected.

5. Permittee Report of Mineral Haul to U.S. Whenever the Permittee moves any mineral materials over a road owned or controlled by the United States, the Permittee shall furnish a certified statement to the United States showing the road that was used, and the number of cubic yards or tons of mineral material that was moved over such road. Road maintenance rock quantities associated with mineral material haul used for patch rock, pothole repair, culvert replacement, and bridge renovation and replacement will be exempt from this reporting requirement. Unless otherwise agreed upon, such certified statement shall be made biannually for the periods of June 30th and December

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31st of each calendar year and shall be submitted within 30 days after the end of the reporting period.

6. Bonding and Insurance Requirements for Permittee Use. When the Permittee exercises any rights granted by this permit, the United States may require the Permittee to furnish a performance bond in an amount of _____ [not to exceed \$10,000], in favor of the United States conditioned upon faithful performance of the terms and conditions of this permit. The United States may also require the Permittee to maintain the following types of insurance under this permit, in amounts not to exceed the following whenever it exercises any of the rights granted by this permit:

(a) Commercial General Liability covering all operations, including vehicles of the Permittee: (Bodily Injury: \$1,000,000 - for injury to any one person; \$1,000,000 - for any one occurrence);

(b) Property Damage in the amount of \$1,000,000 for any one occurrence, and

(c) Loggers Broad Form B - \$1,000,000 - for any one occurrence.

The Permittee shall deliver to the United States a certificate from the insurer stating that such insurance is in force and that the insurer will give the United States thirty (30) days' notice prior to any intended or proposed cancellation or modification of such policies.

7. Permittee Report of Road Use to U.S. Whenever the Permittee moves any timber or other forest products over a road described in paragraph ___ above, the Permittee shall furnish a certified statement to the United States showing the land from which the timber was removed, the road that was used, and the number of M bd. ft. that was moved over such road. Such certified statement shall be furnished quarterly on the current approved "Report of Road Use" form. The Permittee shall submit a Report of Road Use indicating no hauling has occurred on a quarterly basis also. If the Permittee determines it will not haul for extended periods of time, they may notify the Authorized Office of the estimated period of inactivity and request that this reporting requirement be waived for such period. At the request of the Authorized Officer, the Permittee may be required to furnish copies of certified scale reports to validate haul.

8. Allocation of Costs (Deductions in Replacement and Improvement Costs for Recreational Use) In the event the Congress of the United States should appropriate money for the purpose of constructing, improving, or maintaining roads owned or controlled by the United States for the benefit of recreationists or other classes of road users (e.g., haulers of sand, gravel and mineral or petroleum products), then, in either of these events, in computing the road use fees and maintenance expenses to be paid by the Permittee, the replacement cost, the cost of future capital expenditures and the maintenance expense on roads covered by this permit shall exclude those amounts allocated, appropriated and expended for the benefit of recreationists and other classes of road users. In the determination of replacement costs or future capital expenditures in this permit where such road is subject to recreational and other authorized uses (other than hauling of forest products) an allowance representing a reasonable

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allocation of such uses shall be deducted from the replacement costs by the Authorized Officer pursuant to the provisions of 43 CFR §2812.5-2(b).

9. Request for Terms and Conditions of Use. Prior to using any road owned or controlled by the United States, the Permittee shall submit a request for terms and conditions of use in order for the United States to establish the road rules for such use. The request shall include, as a minimum: 1) the road Nos. and segments to be used, 2) the estimated period hauling will commence, 3) the estimated duration of the haul.

10. Compliance with Environmental Laws.

The Permittee agrees that in all operations under this permit, during the life of this permit he shall comply with:

A. All provisions of the State and Federal Water Quality Standards as they may apply to any waterway, stream, lake or reservoir, on or near the permit area, together with all applicable State and Federal laws and regulations. The Permittee shall also undertake every reasonable measure to minimize damage to waterways, streams, lakes or reservoirs on or near the permit area in connection with any operations under this permit.

B. All applicable state and federal laws and regulations concerning the use of poisonous substances including insecticides, herbicides, fungicides, rodenticides and other similar substances. Prior to the use of such substances on or near the right-of-way, the Permittee shall obtain from the Authorized Officer approval of a written plan for such use. The plan shall state the type and quantity of material to be used, the pest to be controlled, the method of application and such other information as the Authorized Officer may require. All use of such substances on or near the right-of-way shall be in accordance with the approved plan. If the use of a poison is prohibited by the Secretary of the Interior, it shall not be used. If use of a poisonous substance is limited by the Secretary of the Interior, it shall be used only in accordance with that limitation.

C. If in connection with his operations under this permit, across the lands of the United States, the Permittee encounters or becomes aware of any objects or sites of cultural value, such as historical or pre-historical ruins, graves, grave markers, fossils or artifacts, the Permittee shall immediately suspend all operations in the vicinity of the cultural value and notify the Authorized Officer of the findings. The Permittee's operations may resume at the discovery site upon receipt of written instructions and authorization by the Authorized Officer.

D. All other applicable state and federal environmental laws, regulations and standards.

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The Permittee shall immediately discontinue all construction or other operations under this permit upon receipt of written notice from the Authorized Officer that such operations or any part thereof are in violation on this provision.

11. Rebuttable Presumption of Abandonment. Failure of the Permittee to use any right-of-way for the purpose for which it was granted for any continuous five-year period shall constitute a rebuttable presumption of abandonment of that right-of-way.

12. Reservation for Compatible Uses. There is hereby reserved to the Secretary of the Interior or his lawful delegate the right to grant additional rights-of-way for compatible uses on, over, under or adjacent to the land involved in this grant.

13. Construction Location Approved. The United States hereby approves the construction of _____ Road No. _____ by the Permittee along the approximate route shown on Exhibit _____, attached hereto and made a part hereof.

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RE-_-____
OR _____

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

EXCLUSIVE ROAD EASEMENT

For and in consideration of the sum of \$ _____,
(name)

hereinafter called Grantor, whether one or more, does hereby grant to the UNITED STATES OF AMERICA, and its assigns, a perpetual exclusive easement to locate, construct, use, control, maintain, improve, relocate, and repair a road over and across the following-described real property situated in the County of _____, State of Oregon, to wit:

The parcel of land to which the above description applies contains _____ acres, more or less.

A plat showing the easement described above is attached hereto and made a part hereof.

The easement herein granted is for the full use of the above described property as a road by the UNITED STATES OF AMERICA, it's licensees and permittees, including the right of access for the people of the UNITED STATES OF AMERICA generally to lands owned, administered, or controlled by the UNITED STATES OF AMERICA for all lawful and proper purposes subject to reasonable rules and regulations of the Secretary of the Interior. Grantor reserves the right of ingress and egress over and across the road for all lawful purposes; PROVIDED, that such use shall not interfere with the easement granted herein:

PROVIDED, FURTHER, that the use of the road by Grantor for any commercial use or any ancillary use thereto shall be subject to Title V of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743-2794) and regulations issued hereunder.

The grant of easement herein made is subject to the effect of reservations and leases, if any of oil, gas, and minerals in and under said land.

The acquiring federal agency is the Bureau of Land Management, U.S. Department of the Interior.

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TO HAVE AND TO HOLD said easement unto the UNITED STATES OF AMERICA and its assigns forever.

Grantor covenants and warrants that the Grantor is lawfully seized and possessed of the land aforesaid and has the full right, power and authority to execute this conveyance, and that said land is free and clear of liens, claims or encumbrances, except as shown above, and that the Grantor will defend the title to the easement conveyed herein and quiet enjoyment thereof against the lawful claims and demands of all persons.

Accepted subject to approval of title
by the Department of Justice.

Dated this ___ day of _____, 20__.

Authorized Officer

Grantor

Note: This form is an attachment to the Permit
Use the following Acknowledgement Blocks for Grantor as appropriate.

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CORPORATE ACKNOWLEDGEMENT

STATE OF OREGON)
) ss:
COUNTY OF)

On this ____ day of _____, 20____, before me personally appeared _____, whose identify is personally known to me (or proved to me on the basis of satisfactory evidence), and who by me being duly sworn (or affirmed) , did say that he/she is the _____ (title) _____ of _____ [name of corporation] and that said document was signed by him/her on behalf of said corporation by authority of its bylaws (or of a Resolution of its Board of Directors), and he/she acknowledged to me that said corporation executed the same.

[SEAL]

Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF OREGON)
) ss:
COUNTY OF)

On the ____ day of _____, 20____, personally came before me, a notary public in and for said County and State, the within-named _____, to me personally known to be the identical person(s) described in and who executed the within and foregoing instrument and acknowledged to me that he/she_ executed the same as his/her free and voluntary act and deed, and for the uses and purposes therein mentioned.

[SEAL]

Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

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After Recording, return to:

RECORDING LABEL HERE
(Leave at least 4" at top right corner)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

RIGHT-OF-WAY AND ROAD USE AGREEMENT
43 CFR Subpart 2812

Date of Right-of-Way Application: _____
Right-of-Way (Permit) No. _____
Serial No. _____

Name of Permittee:

1. For and in consideration of the granting of the right-of-way applied for on the above-mentioned date, the Permittee hereby grants:

a. To the United States, pursuant to 43 CFR §2812.3-1(a), rights-of-way across the following-described lands for use by the United States, its licensees and permittees, for the following specified periods of time:

All that certain real property on Schedule 2 Perpetual
which is attached hereto and made a part hereof by
reference as though fully set out herein.

b. To the United States and its licensees, pursuant to 43 CFR §2812.3-1(b), the rights to use the roads and rights-of-way owned or controlled by the Permittee across the hereinafter described lands for the management and removal of timber and other and mineral forest products from lands of the United States:

All that certain real property on Schedule 2 Perpetual
which is attached hereto and made a part hereof
by reference as though fully set out herein.

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2. Permittee covenants and warrants that he is lawfully seized and possessed of the land described in section 1(a) and has the full right, power, and authority to grant the rights in section 1(b), and that he will defend the title to all of the rights conveyed herein and the quiet enjoyment thereof against any claims and demands of all persons whomsoever.

3. If the United States, or its licensees, constructs a road across the lands described in section 1(a), the United States shall be entitled to establish road rules for such road. It shall also be entitled to issue licenses and permits for the use of such road and to charge a road use fee in accordance with 43 CFR §2812.5-2(b). The Permittee may not issue licenses or permits for the use of such road and may not use the road for the transportation of forest products except upon payment of the road use fee established pursuant to 43 CFR §2812.5-2(b).

4. This agreement is subject to and made in accordance with the applicable regulations of the Department of the Interior (43 CFR Subpart 2812), including but not limited to the provisions thereof relating to the compensation to be paid by the United States and its licensees for the use of the roads, rights-of-way, and lands described under section 1(b) hereof. In any respect in which this agreement may conflict with such regulations, such regulations shall prevail, except that the terms and conditions specified on Exhibit B, attached hereto and made a part hereof, have been agreed upon pursuant to the authority granted the Authorized Officer under 43 CFR §2812.3-7(a).

Signature Blocks If Individual

PERMITTEE APPROVAL:

ACCEPTED BY THE
 UNITED STATES OF AMERICA
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

 Printed Permittee Name

 Signature

 Signature (Field Manager) or (DM)
 Title: _____

 Resource Area

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Signature Blocks If Partnership

PERMITTEE APPROVAL:
 [Typed Name of Partnership]

ACCEPTED BY THE
 UNITED STATES OF AMERICA
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

 Name & Title of Managing Partner

 Signature

 Signature (Field Manager) or (DM)
 Title: _____

 Resource Area

Note: If one partner alone signs they must provide written evidence signed by ALL partners that they have authority to sign on behalf of the partnership. Otherwise, ALL, partners must sign so there needs to be enough signature blocks for each and every partner.

Signature Blocks If Corporation

PERMITTEE APPROVAL:
 [Typed Name of Corporation]

ACCEPTED BY THE
 UNITED STATES OF AMERICA
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

By:

 Title:

 Signature (Field Manager) or (DM)
 Title: _____

Attest:

 Title:

 Resource Area)

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ACKNOWLEDGEMENT (NOTARY) BLOCKS - MANDATORY

Acknowledgement If Individual
(Use multiple if more than one individual signor)

STATE OF OREGON)
) ss:
COUNTY OF) **[ENTER COUNTY WHERE PERMITTEE WILL SIGN]**

On the _____ day of _____, 20____, personally came before me, a notary public in and for said County and State, the within-named _____, to me personally known to be the identical person(s) described in and who executed the within and foregoing instrument and acknowledged to me that (he/she) executed the same as his/her free and voluntary act and deed, and for the uses and purposes therein mentioned.

[SEAL]

Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

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Acknowledgement If Partnership
(Use multiple if more than partner must sign)

STATE OF)
) ss:
COUNTY OF) **[ENTER COUNTY WHERE PERMITTEE WILL SIGN]**

On the ____ day of _____, 20____, personally came before me, the within-named _____, partner(s), to me personally known to be the identical person(s) (or whose identity was proven to me on the basis of satisfactory evidence) who executed the within and foregoing instrument on behalf of _____, a partnership, and acknowledged to me that (he)(she) (they) is/are authorized to execute said instrument, and he/she/they executed the foregoing instrument as the free and voluntary act and deed for the partnership firm.

[SEAL]

Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

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Agreement No. _____

Serial No. _____ PT

EXHIBIT B

PARAGRAPHS WOULD BE NUMBERED SEQUENTIALLY IN THE FINAL AGREEMENT. NUMBERS ARE ATTACHED HERE FOR REFERENCE IN CHAPTER PARAGRAPHS.

1. Amortization Formula for U.S. Buy-In to Replacement Cost of Permittee Road. In the event the United States or its licensees should use any road owned or controlled by the Permittee which are constructed on lands described in Schedules 1 or 2, (and shown on Exhibit C, attached hereto and made a part hereof), the United States or its licensees shall pay a road use fee, to be computed as follows:

$$F = \frac{R}{T} + I \quad \text{in which}$$

F = Road use fee per M bd. ft.

R = Replacement cost (replacement cost of the road including extraordinary costs peculiar to the construction or acquisition of the road or right-of-way but excluding any capital investment made in the road by the United States or its licensees.)

T = Tributary timber (the volume of timber which has been moved over the road and the volume of tributary timber currently merchantable which probably will be moved over the road)

$$I = .03 \times \frac{R}{T} \quad \text{(interest allowance)}$$

The United States and its licensees shall have free use, except for pro rata maintenance expense, of any such road after the United States' percentage share of the replacement cost of the road has been paid by either the United States or its licensees. The United States' percentage share of the replacement cost of a road shall be the same as the United States' percentage share of the total volume of tributary timber. Replacement cost of any such road shall be computed as of the date when the road is first used by the United States or its licensees for the removal of forest products from land of the United States. If the parties hereto cannot agree on the amount of the replacement cost within thirty (30) days after written notice from either party, computation thereof shall be made by the United States Bureau of Land Management

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and its decision shall be final, provided that the right of Permittee to appeal pursuant to the provisions of 43 CFR Part 4 shall not be affected.

2. Amortization Formula for U.S. Buy-In to Cost of Improvement Placed by Permittee on Permittee-Controlled Road. If the Permittee makes any future capital expenditure on a road described in paragraph ___ above, and the United States or its licensees, uses such road after the capital expenditure is made, the Permittee shall be entitled to charge an additional road use fee to be computed as follows:

$$F = \frac{E}{T} + I \quad \text{in which}$$

F = Road use fee per M bd. ft.

E = Amount of any future capital expenditure made by the Permittee.

T = Total volume of merchantable timber at time of capital expenditure(s) which probably will be moved over the road after the capital expenditure is made.

$$I = .03 \times \frac{E}{T} \quad (\text{interest allowance})$$

The United States or its licensees shall have free use of the improvement, except for pro rata maintenance expense, after the United States' percentage share of the capital expenditure has been paid. Such percentage share shall be the same as the United States' percentage share of the total volume of merchantable timber which probably will be moved over the road after the capital expenditure is made.

3. Amortization Formula for Permittee Buy-In to Cost of Improvement Placed by U.S. on Permittee-Controlled Road If the United States or its licensees, with the approval of the Permittee, makes any future capital expenditures upon a road described in paragraph(s) ___ above, and the Permittee uses such road after the capital expenditure is made, the United States may charge a road use fee to be computed as follows:

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$$F = \frac{E}{T} + I \quad \text{in which}$$

F = Road use fee per M bd. ft.

E = Amount of any future capital expenditure made by the United States or its Licensees.

T = Total volume of merchantable timber at time of capital expenditure(s) which probably will be moved over the road after the capital expenditure is made.

$$I = .03 \times \frac{E}{T} \quad (\text{interest allowance})$$

The Permittee shall have free use, except for pro rata maintenance expense, after the Permittee's percentage share of the capital expenditure has been paid. Such percentage share shall be the same as the Permittee's percentage share of the total volume of merchantable timber which probably will move over the road after the capital expenditure is made.

4. Determination of Tributary Timber. In computing the formulas set forth in paragraph(s) No(s). _____ above, the tributary timber shall be determined by multiplying the average stand volume per acre by the total acreage of timber tributary to any particular road or road segment. The average volume per acre to be used in this computation shall be the average volume per acre as shown on the current Bureau of Land Management Forest Management Inventory of the area. The tributary timber shall be determined after consultation between the parties hereto and after consideration of all available data furnished by either party. The data which either party desires to have considered shall be furnished the other party within thirty (30) days after written request therefore. If the parties cannot agree upon the tributary timber within thirty (30) days after the data is furnished, the determination thereof shall be made by the United States, provided that the right of Permittee to appeal pursuant to the provisions of 43 CFR Part 4 shall not be affected.

5. U.S. Report of Mineral Haul to Permittee. Whenever the United States itself (not through its licensees) moves any mineral materials over a road owned or controlled by the Permittee with the exception of mineral haul performed under timber sales, the United States shall furnish a certified statement to the Permittee showing the road that was used, and the number of cubic yards or tons of mineral material that was moved

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over such road. Road maintenance rock quantities associated with mineral material haul used for patch rock, pothole repair, culvert replacement, and bridge renovation and replacement will be exempt from this reporting requirement. Unless otherwise agreed upon, the reporting is biannually for the periods of June 30th and December 31st of each calendar year and the reports shall be submitted within 30 days after the end of each reporting period.

6. BLM Licensee Use of Permittee Roads (And Licensee Bonding and Insurance Requirements). When a Licensee of the United States uses any road which is owned or controlled by the Permittee, located on the lands described in Schedules 1 or 2, or severs Licensor's timber in the construction of a road or roads the Licensee shall enter into an agreement with the Permittee. The form of such agreement has heretofore been submitted by the permittee to the United States. Such form shall is attached hereto and made a part hereof and shall not be changed unless the change is approved in writing by the Authorized Officer. Since the License Agreement is a part of this recorded document, any changes thereto must be made by a recorded amendment to this instrument. The Permittee may also require such Licensee to obtain a performance bond in the amount of \$ [Not to exceed \$10,000], in favor of the Permittee, conditioned upon faithful performance of such agreement. The Permittee may also require the Licensee of the United States to maintain the following types of insurance under this permit, in amounts not to exceed the following whenever it exercises any of the rights granted by this permit:

(a) Commercial General Liability covering all operations, including vehicles of the Licensee: (Bodily Injury: \$1,000,000.00 - for injury to any one person; \$1,000,000.00 - for any one occurrence);

(b) Property Damage in the amount of \$1,000,000 for any one occurrence, and

(c) Loggers Broad Form B - \$1,000,000.00 - for any one occurrence.

The Licensee shall deliver to the Permittee a certificate from the insurer stating that such insurance is in force and that the insurer will give the Permittee thirty (30) days notice prior to any intended or proposed cancellation or modification of such policies.

7. Payment of Road Use Fees by BLM Licensees. For United States use of Permittee roads by BLM licensees, payment of fees shall be made in advance or as specified under terms of the License Agreement. If the Permittee is the purchaser of United States' timber which is removed over any roads described in paragraph ____ above, the United States shall receive credit for the amount of road use fee as prescribed therein. When the Permittee is entitled to collect a road use fee from a licensee of the United States, the total amount of the fee shall be determined by multiplying the road use fee as established by this agreement by the number of M bd. ft. shown on the licensee's timber sale contract with the United States.

8. Annual Meetings and Road owner First Right to Maintain (Applies to U.S. and Permittee). Representatives of the United States and Permittee will meet annually for

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the purpose of discussing matters relating to this Agreement, unless otherwise agreed upon. The party who owns or controls any road across the lands in Schedules 1 or 2 shall have first opportunity to perform maintenance on such road. If the party who owns or controls the road is not maintaining it and fails to maintain it promptly upon request by the other party, the other party may proceed to perform the maintenance. The party who performs the maintenance shall be entitled to recover pro rata maintenance expense from others who use the road for the removal of forest products. Maintenance expense (for purposes of calculating pro-rata maintenance expenses) shall include all expenditures necessary to place a road in satisfactory condition for log hauling, to keep it in such condition and to reasonably protect the road from winter weather. Catastrophic maintenance or bridge replacement shall be treated as a capital expenditure under paragraph _____ above.

9. Party Maintaining Road Has Rights to Collect Pro Rata Maintenance (Applies to U.S. and Permittee). The party who performs the maintenance shall be entitled to receive from each road user a certified statement of the number of M bd. ft. of forest products moved over the road by such user. Such certified statement shall be submitted quarterly and shall show the M bd. ft. hauled over the road during the previous month. Unless otherwise agreed upon, payment for maintenance shall be made within thirty (30) days following the billing. Either party to the Agreement shall be entitled to examine the records of the other party relating to expenses for maintaining the roads covered by this agreement and the records relating to the collections of maintenance fees from road users. If the United States performs the maintenance of a road owned or controlled by it, and the Permittee pays the United States therefore, the Permittee shall be relieved of the maintenance requirements of 43 CFR §2812.6-2(b)(1) and (2).

10. Right-of-Way Plat Filing Requirements (Applies to U.S. and Permittee). Prior to the construction of a road on the lands of the other party, a map shall be filed with the landowner. Such map shall be prepared in accordance with 43 CFR §2812.1-2(c) and shall show the route and specifications of the road intended to be constructed. Construction may be commenced after the expiration of a thirty (30) day period following the filing of such map unless in the intervening period the landowner shall object to such construction. The landowner may object to the proposed construction only if: (1) it does not constitute the most reasonably direct route for the removal of forest products from the lands of the road builder, taking into account the topography of the area, the cost of road construction and the safety of use of such road; (2) the proposed road will substantially interfere with planned or existing facilities or improvements on the lands of the landowner; (3) would result in excessive erosion to lands of the landowner; (4) an existing road is available and suitable for removal of timber tributary to the proposed road; or (5) may affect a species listed as threatened or endangered under the Endangered Species Act. In the event an objection is made on the basis that a threatened or endangered species is affected, construction of the road will be delayed until consultation with the U.S. Fish and Wildlife Service (USFWS) or

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National Oceanic and Atmospheric Administration (NOAA) Fisheries) under Section 7 of the Endangered Species Act has been completed on the proposed road. Based on the Biological Opinion received from the U.S. Fish and Wildlife Service (USFWS) or the National Oceanic and Atmospheric Administration, the objection may be withdrawn, modified, conditioned, or continued.

11. Payment and Disposal of Right-of-Way Timber (Applies to U.S. and Permittee). Prior to the construction of a road on the lands of the other party, the timber on the right-of-way shall be cruised and paid for; provided, however, that if the right-of-way is across lands belonging to the Permittee, the Permittee may elect to retain title to the right-of-way timber and have such timber decked along the right-of-way by giving written notice of such election to the United States. Such notice shall be given within thirty (30) days after the map described in paragraph ___ is filed with Permittee. If Permittee elects to retain title to the right-of-way timber, it shall remove such timber within six (6) months after the road to be constructed becomes usable. When right-of-way timber is to be paid for, it shall be cruised and appraised in accordance with the standard procedures for cruising and appraising O&C timber.

12. Traffic Regulations (Applies to U.S. and Permittee). The party who owns or controls a road may issue reasonable traffic regulations for the use of the road. Such regulations shall be uniformly applicable to all users, including the party who owns or controls a road.

13. Newly Acquired Lands (Applies to U.S. and Permittee). If either party to this agreement acquires any additional lands which are identified as “Third Party Lands” on Exhibit __, the acquiring party agrees to grant to the other party rights-of-way and rights of road use across their newly acquired lands under the same terms and conditions as contained in this agreement.

14. Newly Acquired Roads or Rights-of-Way (Applies to U.S. and Permittee). If either party to this agreement acquires the ownership or control of any roads or rights-of-way across any lands identified as “Third Party Lands” on Exhibit __, the acquiring party shall grant to the other party the right to use their newly acquired roads or rights-of-way under the same terms and conditions as contained in this agreement, but subject to the terms and conditions contained in the instruments by which such ownership or control is obtained; provided, however, that in the negotiation for additional roads or rights-of-way, each party shall attempt in good faith to obtain rights that can be used by the other party.

15. Adjustment to Proportionate Share for Acreage of Tributary Timber Greater than 2% (Applies to U.S. and Permittee). If either party to this agreement should hereafter

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acquire or dispose of any of the lands (shown on the attached Exhibit ____), the percentage share of replacement costs of the roads shall be proportionately increased or decreased to reflect timber tributary to a particular road. Such adjustment shall be made effective on January 1 following such acquisition or disposal; provided, however, that no adjustment shall be made in the percentage share until one of the parties has acquired or disposed of acreage which contains merchantable timber which equals two percent (2%) or more of the total tributary timber as previously established under paragraph __ above.

16. Release of Rights for Lands More Valuable for Non-Timber Uses (Applies to U.S. and Permittee). Some of the lands covered by this agreement are potentially valuable for uses other than growing timber. In the event that either party determines that any of its lands are so valuable, upon mutual agreement, the parties hereto shall execute an amendment to this agreement removing such lands from the descriptions contained on Schedules 1 or 2 provided that no rights shall be released which affect the right to use existing roads and rights-of-way necessary for the administration of public lands.

17. Road Crossings (Applies to U.S. and Permittee). Neither party shall charge the other for crossing any roads located on the lands described in Schedules 1 or 2, except for maintenance expense resulting from such crossing. Such crossing shall not unduly interfere with the use of the road crossed and shall not, in any event, require the use of more than one-eighth (1/8) mile of road.

18. Definition of Thousand Board Feet (M bd. Ft.). (Applies to U.S. and Permittee). It is agreed that the term "M bd. ft." as used in this agreement shall be interpreted to mean thousand board feet Scribner Decimal C log scale with taper allowance for logs longer than sixteen (16) feet, or a reasonable conversion thereof.

19. Compliance with Environmental Laws. In the use of any road under the authority of this agreement, a Licensee or Permittee of the United States shall be required to comply with all applicable State and Federal environmental laws, regulations and standards.

20. Binding on Successors. This agreement shall inure to the benefit of and shall be binding on the successors in interest of the parties hereto.

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 Form OR 2812-16 – Reciprocal Right-of-Way Agreement
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BLM Timber Sale Name: _____
 BLM Timber Sale No.: _____
 Term of Timber Sale: _____ [Years][Months]
 R/W Agreement No.: _____
 Serial No.: OR _____PT

LICENSE AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 20____, by and between _____, hereinafter called "Licensor", and _____, hereinafter called "Licensee,"

WITNESSETH:

WHEREAS, Licensee (BLM timber sale purchaser) has purchased from the United States, acting through the Bureau of Land Management (BLM), certain timber located in _____ County, Oregon as follows:

Township	Range	Section	Subdivision

Said timber purchased under contract No. _____ dated _____, which Contract is administered by the _____ District Office of the Bureau of Land Management.

WHEREAS, Licensor has entered into a Reciprocal O&C Logging Road Right-of-Way Permit and Right-of-Way and Road Use Agreement No. _____, Serial No. OR _____ with the United States; and

WHEREAS, Licensee desires access across lands of the Licensor in order to remove timber from the above lands; and

WHEREAS, Licensor is willing to grant said access to Licensee subject to the terms and conditions set forth herein.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

Illustration V-2
 Form OR 2812-16 – Reciprocal Right-of-Way Agreement
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1. Road Use Authorization, Road Use Fees and Maintenance Responsibility. Licensor hereby grants to Licensee a non-exclusive license to use the existing road(s) numbered as shown below (as identified on the Exhibit A map attached hereto), and Licensee agrees to pay road use fees to Licensor for the right to use such roads, as follows:

Table 1A

Road No.	Seg. No.	Vol (MBF)	Road Use Fee per MBF	Total Road Use Fees (\$)	If Checked, Licensee is Responsible for Maintenance	Remarks
TOTAL ROAD USE FEES:						

2. Road Maintenance Responsibility.

Check all that apply regarding Road Maintenance:

- [] **Licensee shall maintain the roads marked with an “X” in Table 1A above.** For these roads, Licensee shall maintain them and shall be entitled to recover pro rata maintenance expense from others who use such road for the removal of forest products. Expense for maintenance shall include all expenditures reasonably necessary to place such road in a satisfactory condition for log hauling, to keep it in such condition and to reasonably protect such road from winter weather. If Licensee is responsible for maintenance and Licensee fails to perform the maintenance, Licensor reserves the right to perform the maintenance and charge Licensee the maintenance rates base upon the BLM state-wide maintenance fee schedules which are in effect at the time the maintenance is performed by Licensor.

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 Form OR 2812-16 – Reciprocal Right-of-Way Agreement
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[] **Licensor shall maintain the roads NOT marked with an “X” in Table 1A above** and will charge Licensee maintenance and/or surface replacement fees as shown below.

For those roads not being maintained by Licensee, the following maintenance (and/or surface replacement) fees will apply:

Table 2A - Maintenance and/or Surface Replacement Fees for Timber Hauling									
Road No.	Seg. No.	Surface Type	Length to be Used	Volume (MBF)	Maintenance Fee/MBF	Total Maint. Fees	Surface Replacement Fee/MBF	Total Surface Repl. Fees	Remarks
TOTAL MAINTENANCE AND SURFACE REPLACEMENT FEES FOR TIMBER HAUL						\$		\$	

Table 2B - Maintenance and/or Surface Replacement Fees for Chip Hauling									
Road No.	Seg. No.	Surface Type	Length to be Used	No. of Vehicles	Maintenance Fee Per Vehicle Mile	Total Maint. Fees	Surface Replacement Fee/Vehic. Mile	Total Surface Repl. Fees	Remarks
TOTAL MAINTENANCE AND SURFACE REPLACEMENT FEES FOR CHIP HAUL									

Table 2C - Maintenance and/or Surface Replacement Fees for Mineral Hauling									
Road No.	Seg. No.	Surface Type	Length to be Used	Volume (CY)	Maintenance Fee/CY	Total Maint. Fees	Surface Replacement Fee/CY	Total Surface Repl. Fees	Remarks
TOTAL MAINTENANCE AND SURFACE REPLACEMENT FEES FOR MINERAL HAUL									

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Form OR 2812-16 – Reciprocal Right-of-Way Agreement

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In lieu of payment of surface replacement fees, the Licensee shall place the rock on the following roads as surface replacement as shown below:

_____.

3. When Fees are Payable.

Any fees identified in **Tables 1A, 2A, 2B, or 2C** above to be payable as follows:

At the time of execution of this License Agreement.

Other: _____

4. Timber Sale Modifications:

All fees identified in **Tables 1A, 2A, 2B, or 2C** above are payable for timber, chip or mineral volumes as estimated and advertised by the BLM for the above-referenced timber sale contract and does not include timber sale modification volume.

Any fees associated with additional volume based on timber sale modifications will be based on the fees in effect at the time of the modification and are payable:

At time of timber sale modification.

Other: _____

5. Road Regulations. When using such road(s) above, Licensee shall comply with all reasonable road regulations posted by Licensor. Such regulations shall be uniformly applicable to all users of such road, including Licensor.6. Equipment Maintained. All of Licensee's equipment operating upon such road shall be maintained in a good and safe operating condition and shall be operated cautiously so as to minimize accident hazards.7. Road Rules: May Suspend if Use Like to Endanger Timber, Road or Other Property of Licensor. In the event that use of the road would endanger or be likely to endanger the timber, road, or other property of the Licensor, Licensor may suspend the use of such road by Licensee during the period of danger or potential danger. Such suspension shall be based on reasonable grounds which may include, but need not be limited to:

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- (a) Weather conditions resulting in fire closure of the area or extreme fire hazard; or
- (b) Road conditions wherein continued use would result in excessive damage to such road; or
- (c) Traffic conditions where continued use would create extreme danger to lives or property.

Such suspension shall be effective by Licensor by delivering to Licensee and the above-mentioned office written notice thereof specifying the reasons for the suspension. Such suspension shall also apply to the use of the road by Licensor.

8. No Landings to be Constructed Without Permission. Licensee shall not construct landings for loading logs nor yard along or on such road without express written permission from Licensor. Licensee shall not permit slash or debris from its operations to fill in or close the ditches or culverts of such road.
9. Disposal of Right-of-Way Timber. In the construction of the road(s) across Licensor's lands as shown on Exhibit B of this License Agreement, attached hereto, any right-of-way timber cut by Licensee in connection with such road construction shall be disposed of as follows:

() Timber shall remain the property of Licensor and Licensee agrees to fall all timber and buck all logs suitable for conversion into forest products, into lengths designated by Licensor, and shall deck logs at reasonable places along the right-of-way, as designated by Licensor, all without expense to Licensor. Licensee agrees that any such proposed road shall be constructed so that it will be possible for Licensor to remove such logs within twelve (12) months after being felled. Licensee shall be liable for any damage or injury to such logs resulting from any negligent or unlawful act of Licensee.

() Timber shall be cruised and appraised and payment made to Licensor under terms of the BLM timber sale contract prior to cutting.

The above provision would also apply to any future road construction approved by the Licensor.

10. Compliance with Laws. Whenever Licensee exercises any rights granted herein, it shall comply with all applicable laws, rules, and regulations of governmental authority relating to logging operations, log hauling and transportation, snag falling, fire prevention, fire suppression and control, and shall take every reasonable precaution to safeguard timber, immature forests, and other property of Licensor from fire. Licensee shall also take adequate precaution to prevent forest, brush, and

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Form OR 2812-16 – Reciprocal Right-of-Way Agreement

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grass fires; endeavor with all available personnel to suppress any fire originating on or threatening the right-of-way on which a road is being used or constructed by Licensee or any fire caused by Licensee; do no burning on or near the right-of-way without State permit during the seasons that permits are required, and in no event set fire on or near the right-of-way that will result in damage to any natural resource or improvement.

11. Insurance Requirements. Prior to exercising any rights granted herein, Licensee shall first obtain insurance in the types and amounts* as shown below:
- a) Commercial General Liability covering all operations, including vehicles of the Licensee: (Bodily Injury: \$1,000,000 - for injury to any one person; \$1,000,000 - for any one occurrence);
 - (b) Property Damage in the amount of \$1,000,000 for any one occurrence, and
 - (c) Loggers Broad Form B - \$1,000,000 - for any one occurrence.
- The Licensee shall deliver to the Licensor a certificate from the insurer stating that such insurance is in force and that the insurer will give the Licensor thirty (30) days' notice of any intended or proposed cancellation or modification of such policies.
12. Performance Bond. Licensee shall also obtain a performance bond (cash or surety) in an amount not less than *\$_____ in favor of the Licensor conditioned upon Licensee's faithful performance of this Agreement. Such insurance policies and performance bond shall be obtained from insurance and bonding companies who are duly authorized to do business in the State of Oregon and registered pursuant to Oregon Statutes. Before exercising any of the rights granted herein, Licensee shall deliver said bond to Licensor All such insurance policies shall bear an endorsement requiring the insurer to give ten (10) days prior written notice to Licensor of any intended or proposed cancellation or modification of such policies.

*NOTE: INSURANCE AND BOND AMOUNTS CANNOT EXCEED THE LIMITS FOUND IN EXHIBIT B OF THE RIGHT-OF-WAY AND ROAD USE AGREEMENT.

13. Clean Up After Use. Within _____ (_____) months (not less than 2 nor more than 8) after Licensee has ceased to use a road or right-of-way under the authority of this agreement, Licensee shall clean up and remove from such road or right-of-way all debris, refuse, and waste material which may have resulted from its use or operations, and shall repair any damage to Licensor's road resulting directly or indirectly from Licensee's use thereof; provided, that when Licensor is performing the maintenance of such road Licensee shall not be required to repair any damage resulting from normal use of the road for the removal of forest products; provided further, that when Licensee is performing the maintenance, it shall leave the road in as good of a condition as when it first began to maintain it.

Illustration V-2
Form OR 2812-16 – Reciprocal Right-of-Way Agreement
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- 14. Hold Harmless. When using or constructing any road or segment of road under the authority of this Agreement, Licensee shall save and hold harmless Licensor and its employees from every claim, cost, damage, or expense of any kind or nature arising or growing out of any negligent or wrongful act or omission of Licensee, including, but not limited to, any obligation incurred by or imposed upon Licensor under the provisions of ORS 447.068.
- 15. Notification of Commencement and Suspension of Operations. Before commencing operations under this License Agreement for the first time or after a shutdown of 14 or more days, the Licensee shall notify the Licensor in writing of the date he plans to begin operations. This written notification must be received by the Licensor no less than 14 days prior to the date the Licensee plans to begin or resume operations. The Licensee shall also notify the Licensor in writing if he intends to cease operations for any period of 10 or more days. Prior to commencement of use for the first time, Licensee shall discuss with Licensor location of right-of-way boundaries, disposition of right-of-way timber and right-of-way debris, if any, log lengths and decking practices, and such other common operating problems as may be appropriate.
- 16. Not Assignable. The rights granted hereunder are not assignable without the prior written consent of Licensor.
- 18. Term of License Agreement to Coincide with Timber Sale. This License Agreement shall remain in effect for the life of the above-described timber sale contract; including extensions or modifications thereto, and until such time as the Licensor has certified that all the terms and conditions specified therein have been met.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate originals on the date and year first above written.

LICENSOR: ENTER NAME EXACTLY AS FOUND ON THE PERMIT

BY: _____

TITLE: _____

LICENSEE: [ENTER NAME OF LICENSEE]

BY: _____

TITLE: _____

Illustration V-4
 Form OR 2812-15 – Schedule of Land Samples
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SAMPLE SCHEDULE 1
To List Rights for Permittee over
EXISTING U.S. ROADS ON U.S. LAND

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

SCHEDULE 1 – U.S. LANDS

RIGHT-OF-WAY LAND DESCRIPTION

This schedule to be attached to Right-of-Way
 Number XX

Permittee Name: XX

Meridian: Willamette County: [Complete separate schedule for each County]

The existing U.S. roads (as shown by a line designated as “●●●●●” [OR WHATEVER SYMBOL THE DISTICT USES] on the attached Exhibit C map) over the following described U.S. lands

TOWNSHIP	RANGE	SECTION	SUBDIVISION	Road & Segment No.	PERIOD OF TIME
35 S.	3 W.	12	SW¼SW¼	35-3W-12.-3, Segment A	Perpetual
36 S.	4 W.	16	NE¼NW¼SW¼	Portion of Segment B, Road No. 36-4W-15.04	Perpetual

Illustration V-4
 Form OR 2812-15 – Schedule of Land Samples
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SAMPLE SCHEDULE 1
To List Rights for Permittee Over
U.S. ROADS CONTROLLED BY THE U.S. VIA AN EXCLUSIVE EASEMENT

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

SCHEDULE 1 – U.S. LANDS.

RIGHT-OF-WAY LAND DESCRIPTION

This schedule to be attached to Right-of-Way
 Number XX

Permittee Name: XX

Meridian: Willamette County: [Complete separate schedule for each County]

The rights-of-way acquired by the United States **under exclusive easement(s)** (as shown by "←←←←" [or whatever symbol the district uses] on the attached Exhibit C map), over the following described lands, said easements being recorded in the _____ County {Deed}[Official] Records as shown below.

TOWN-SHIP	RGE	SEC-TION	SUB-DIVISION	Road & Segment No.	Easement No.	Serial No.	Recording Information	PERIOD OF TIME**
35 S.	3 W.	10	SW¼SW¼	35-3W-10.1, Segment B	RE-R-____	OR 55555	Recorded at Book ____, Page ____ on [date]	Perpetual
36 S.	4 W.	18	S½NW¼S W¼	36-4W-18.05, Portion of Segment C	RE-R-____	OR 55556		Perpetual*

**Note: If the easement is not perpetual, make sure that the period of time shown matches the easement expiration date.

Make sure the U.S. has sufficient rights to grant to Permittees.

Illustration V-4
 Form OR 2812-15 – Schedule of Land Samples
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SAMPLE SCHEDULE 1
To List Rights for Permittee Over
U.S. ROADS CONTROLLED BY U.S. VIA AN O&C RECIPROCAL AGREEMENT WITH
A 3RD PARTY PERMITTEE

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

SCHEDULE 1 – U.S. LANDS

RIGHT-OF-WAY LAND DESCRIPTION

This schedule to be attached to Right-of-Way
 Number XX

Permittee Name: XX

Meridian: Willamette County: [Complete separate schedule for each County]

The rights-of-way acquired by the United States under the following O&C Right-of-Way and Road Use Agreement(s) (as shown by "|||||||", on the attached Exhibit C-XX map), over the following described U.S. lands, said Agreement(s) being recorded in the Records of _____ County as shown below.

TOWN-SHIP	RGE	SEC-TION	SUB-DIVISION	Road & Segment No.	O&C Agmt No.	Serial No.	Recording Information**	PERIOD OF TIME**
35 S.	3 W.	10	SW¼SW¼	35-3W-10.1, Segment B	E-____	OR 55555	Recorded at Book ____, Page ____ on [date]	Perpetual
36 S.	4 W.	18	S½NW¼S W¼	36-4W-18.05, Portion of Segment C	E-____	OR 55556		Perpetual*

**Make sure the recording information contains the recording information for the actual document wherein the rights were acquired (the correct amendment, etc.).

Illustration V-4
 Form OR 2812-15 – Schedule of Land Samples
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SAMPLE SCHEDULE 1
To List Rights for Permittee Over
3RD PARTY PERMITTEE-CONSTRUCTED ROAD ON U.S. LANDS

U.S. CONTROLS ROAD (AUTHORIZES USE OF U.S. LANDS), SUBJECT TO THE THIRD PARTY WHO CONSTRUCTED THE ROAD SETTING TERMS AND CONDITIONS OF USE).

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

SCHEDULE 1 – U.S. LANDS

RIGHT-OF-WAY LAND DESCRIPTION

This schedule to be attached to Right-of-Way Number XX

Permittee Name: XX

Meridian: Willamette County: [Complete separate schedule for each County]

The existing roads on U.S. lands which were constructed by a third party (as shown by a line designated as "======" [OR WHATEVER SYMBOL THE DISTICT USES] on the attached Exhibit C map) over the following described U.S. lands. **The use of these roads IS subject to terms and conditions of use being established by a third party permittee.**

TOWNSHIP	RANGE	SECTION	SUBDIVISION	Road & Segment No.	PERIOD OF TIME
35 S.	3 W.	12	SW $\frac{1}{4}$ SW $\frac{1}{4}$	35-3W-12.-3, Segment A	Perpetual
36 S.	4 W.	16	NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$	36-4W-15.04, Portion of Segment B	Perpetual

Illustration V-4
 Form OR 2812-15 – Schedule of Land Samples
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SAMPLE SCHEDULE 2
To List Rights for the U.S. over
EXISTING PERMITTEE ROADS ON PERMITTEE LANDS

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

SCHEDULE 2 – PERMITTEE LANDS

RIGHT-OF-WAY LAND DESCRIPTION

This schedule to be attached to Right-of-Way
 Number XX

Permittee Name: XX

Meridian: Willamette County: [Complete separate schedule for each County]

The existing Permittee-controlled roads (as shown by a line designated as "#####" [OR WHATEVER SYMBOL THE DISTICT USES] on the attached Exhibit C map) over the following described Permittee lands:

TOWNSHIP	RANGE	SECTION	SUBDIVISION	Road & Segment No.	PERIOD OF TIME
35 S.	3 W.	10	SW $\frac{1}{4}$ SW $\frac{1}{4}$	35-3W-10.1, Segment B	Perpetual
36 S.	4 W.	18	S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$	36-4W-18.05, Portion of Segment C	Perpetual

Illustration V-4
 Form OR 2812-15 – Schedule of Land Samples
 Page 8 of 8

SAMPLE SCHEDULE 2
To List Rights for the U.S. over
PERMITTEE ROADS CONTROLLED BY PERMITEE VIA AN EXCLUSIVE EASEMENT
ON 3RD PARTY LANDS

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

SCHEDULE 2 – PERMITEE LANDS

RIGHT-OF-WAY LAND DESCRIPTION This schedule to be attached to Right-of-Way
 Number XX

Permittee Name: XX

Meridian: Willamette County: [Complete separate schedule for each County]

The rights-of-way acquired by [Permittee Name] under exclusive Access Road Easement(s) (as shown by "➤➤➤➤➤➤" [or whatever symbol the district uses] on the attached Exhibit C map), over the following described lands, said easements being recorded in the Official Records [or however the specific county records are described] for _____ County Deed records as shown.

TOWN-SHIP	RGE	SEC-TION	SUB-DIVISION	Road & Segment No.	Recording Information	PERIOD OF TIME**
35 S.	3 W.	10	SW¼SW¼	35-3W-10.1, Segment B	Recorded at Book ____, Page ____ on [date]	Perpetual
36 S.	4 W.	18	S½NW¼S W¼	36-4W-18.05, Portion of Segment C		Perpetual*

**Note: If the easement is not perpetual, make sure that the period of time shown matches the easement expiration date.

Also, review the easement document to ensure that it contains sufficient rights for the Permittee to control the road and grant rights to the U.S.

Illustration V-5

Sample Exhibit A Stipulations Related to a System Fee Agreement

Page 1 of 1

NOTE: This illustration provides sample paragraphs that would be included in any “system fee” agreement. Any reciprocal right-of-way agreement could be converted to a “system fee: agreement by amending it to add the following paragraphs.

[Permit No.]
Exhibit A
Amendment

Use the following to identify which roads on a map have already been swapped out.

Permittee shall have the right to use free of charge, except as provided in Paragraph 3 below and except for pro rata maintenance expense, the road owned or controlled by the United States as shown by a cross-hatched line () on Exhibit C.

Use the following to establish the system fee arrangement in lieu of road –by-road fees. This stipulation would be added to the Exhibit A or B and would apply in addition to the other stipulations.

The Permittee’s percentage share of roads owned or controlled by the United States as described in Paragraph 2 above, shall be calculated as provided in said Paragraph 2, increased by a three (3) percent interest allowance, and then added to an open balance due the United States. The Permittee’s percentage share of future capital expenditures made by the United States or its Licensee’s on roads described in Paragraph 3 above, and roads described in Paragraph 4 of Exhibit B to Right-of-Way and Road Use Agreement No. _____, shall be calculated as provided in said paragraphs, increased by a three (3) percent interest allowance, and then added to an open balance due the United States. The parties hereto agree that the beginning balance due the United States is zero dollars. If the Permittee uses any road owned or controlled by the United States for the removal of forest products, the Permittee shall pay the United States a road use fee for such use at the rate of \$____per M. bd. ft., provided, the Permittee shall have free use, except for pro rata maintenance expense, whenever the balance as provided herein has been paid in full. **[NOTE: This rate is negotiated for each system fee agreement. The rate remains the same no matter who is deficient or what roads are used].** The parties hereto shall meet once a year, not later than June 30th, for the purpose of reconciling and agreeing upon the then current unpaid balance as determined herein and rate of payment if \$____ per M. bd. ft. is not reasonable considering remaining tributary, merchantable timber of Permittee. It is understood that the agreement on a road use fee payment rate shall be consistent with the intent of both parties to amortize outstanding percentage shares with timber merchantable at the time of percentage share calculations.

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Chapter VI - Table of Contents

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VI. POST AUTHORIZATION ADMINISTRATION

A. Purpose

This chapter provides direction on various types of post-authorization actions associated with the administration of reciprocal right-of-way agreements and unilateral permits. It also provides guidance for dealing with noncompliance (Section B. below).

Post-authorization administration is necessary to ensure that the actions of the parties are consistent with the terms and conditions of the granting documents and the regulations at 43 CFR §2812. Certain post-authorization actions can also streamline the administration of reciprocal right-of-way agreements for the benefit of the parties. Most reciprocal right-of-way agreements involve perpetual rights which require the U.S. or the permittee to undertake a wide variety of administrative actions on a routine basis.

The goal is to provide consistency in the interpretation of reciprocal right-of-way agreements and unilateral permits to avoid potential misunderstandings and disagreements regarding the exercise of rights by both the permittee and the U.S.

The most common and complex of these post-authorization actions have been detailed in separate handbook chapters as shown below:

- Bonding and Insurance (see Chapter VII.).
- Road Use, Monitoring and Billing (see Chapter VIII.).
- Supplements (Right-of-Way Plats and Fee Calculations) (see Chapter IX.).
- Land Transfers and Associated Right-of-Way Actions (see Chapter X.).
- Assignments (see Chapter XI.).
- Amendments (see Chapter XII.).
- Decisions and Appeals (see Chapter XIII.).
- Road Use Trespass (see Chapter XIV.).
- Road Maintenance and Transportation Management (See Chapter XV.).

Other post-authorization actions which occur less frequently are also covered in this chapter.

B. Noncompliance

Both BLM and permittees may encounter issues of noncompliance on the part of either the permittee or BLM timber sale purchasers (licensee).

1. Permittee Noncompliance

BLM may be required to formally address and resolve issues of noncompliance in the administration of unilateral permits or reciprocal right-of-way agreements.

The O&C regulations address “cause for termination of permittee’s rights” based on noncompliance as shown below:

§ 2812.8 Cause for termination of permittee's rights.

§ 2812.8-1 Notice of termination.

(a) The authorized officer in his discretion may elect upon 30 days' notice to terminate any permit or right-of-way issued under this paragraph if:

(1) In connection with the application made therefor, the applicant represented any material fact knowing the same to be false or made such representation in reckless disregard of the truth; or

(2) A permittee, subsequent to the issuance of a permit or right-of-way to him, represents any material fact to the Bureau, in accordance with any requirement of such permit or this paragraph, knowing such representation to be false, or makes such representation in reckless disregard of the truth.

(b) The authorized officer in his discretion may elect to terminate any permit or right-of-way issued under this paragraph, if the permittee shall fail to comply with any of the provisions of such regulations or make defaults in the performance or obligation of any of the conditions of the permit, and such failure or default shall continue for 60 days after service of written notice thereof by the authorized officer.

(c) Notice of such termination shall be served personally or by registered mail upon the permittee, shall specify the misrepresentation, failure or default involved, and shall be final, subject, however, to the permittee's right of appeal.

(d) Termination of the permit and of the right-of-way under this section shall not operate to terminate any right granted to the United States pursuant to this paragraph, nor shall it affect the right of the permittee, after the termination of his permit and right-of-way to receive compensation and to establish road operating rules with respect to roads controlled by him which the United States has the right to use and to permit its licensees to use; nor shall it relieve the permittee of his duty under this paragraph, to submit to and be bound by arbitration pursuant to §§ 2812.4-1, 2812.4-3, and 2812.4-4.

Noncompliance is distinguished from trespass in that noncompliance results in situations where a permittee has failed to comply with specific terms and conditions of a unilateral or reciprocal permit. Trespass, on the other hand, occurs when a party is using the U.S. lands or roads without authorization at all--there is no permit.

Some examples of a permittee noncompliance with the terms and conditions of a permit may include, but are not limited to:

- failure to report road use as required by the permit,
- under-reporting of timber volume hauled (or not reporting volume hauled),
- failure to request terms and conditions of first use before hauling,
- non-performance of road maintenance requirements,
- failure to mitigate logging damage on public lands used for landings, etc.,
- failure to complete required rehabilitation work,
- failure to observe bonding and insurance requirements,
- nonpayment of fees for authorized hauling,
- failure to comply with environmental provisions if they exist in the permit, or
- failure to build a road to standards set in a specific amendment.

Violation of or failure to perform under any term or condition in a permit could result in a determination of noncompliance by the BLM AO.

a. Initiation of Noncompliance Action

When a condition of noncompliance is identified, the AO must immediately notify the permittee verbally of the noncompliance action(s) and document the conversation in the official case file. The verbal notification should include a discussion of what the permittee needs to do in order to resolve the issue of noncompliance.

If the permittee fails to voluntarily remedy the situation after the verbal notification, the AO must follow up with an official written Notice of Noncompliance (see Illustration VI-1) signed by the AO and transmitted to the permittee via certified mail.

The transmittal should specifically identify:

- the permit or permits involved,

- the noncompliance issues (be specific and cite the provision involved),
- the corrective actions necessary to bring the permittee into compliance with the permit, and
- a reasonable period of time allowed for corrective action based on the specific noncompliance issue.

The issues must be tied to specific provisions in the permit and/or regulations. Temporary suspension of operations under the permit may be necessary where the continuation of noncompliance actions would result in further degradation of public land resources or facilities owned by the U.S. Failure of a permittee to suspend operations following the discovery of cultural artifacts is an example where suspension of their operations would be warranted.

b. Documentation Requirements

A thoroughly documented administrative record is vital to support the agency's findings and actions in the discovery and resolution of noncompliance under a permit. A complete record is necessary if failure to resolve noncompliance becomes the basis for termination of a permit or if BLM's decision is appealed to the Interior Board of Land Appeals (IBLA).

In addition to BLM's correspondence, the official case file should include on-site and evidentiary documentation such as photographs, mill receipts, engineer's reports, road maintenance records, etc. All documentation must include a date, time, author or source name, and signature, if applicable.

If noncompliance continues following the initial written notice, the BLM must prepare a second notice letter to the permittee referencing and repeating the same items included in the initial letter (Section B.1.a. above). However, this notice must also include a specified time period within which full corrective action must be taken (see Illustration VI-2). This notice must be transmitted via certified mail. A copy of the notice must also be provided to the permittee's surety company.

The above actions should correct most noncompliance situations. However, if the noncompliance is not resolved within 60 days, the BLM may consider proceeding with actions to terminate the permit in accordance with 43 CFR §2812.8-1(b), which states:

The Authorized Officer in his discretion may elect to terminate any permit or right-of-way issued under this paragraph, if the permittee shall fail to comply with any of the provisions of such regulations or make defaults in the performance or obligation of any of the conditions of the permit, and such failure or default shall continue for 60 days after service of written notice thereof by the Authorized Officer.

Terminations are final agency actions and, therefore, must be accomplished with a formal Decision which includes the permittee's right of administrative appeal to IBLA. The Regional Solicitor's Office should be consulted if the BLM is considering the termination of a permit for cause. See Illustration VI-3 for a sample decision to terminate.

If the noncompliance is not resolved, BLM may attach the permittee's performance bond to collect any unpaid fees or to reimburse BLM for the cost it incurs to correct the situation itself, either before or after permit termination. See BLM Manual 2805.12.D. for direction on attaching performance bonds. See also Chapter VII. of this handbook.

c. Closure or Completion of Compliance Actions

Once noncompliance issues are resolved, the permittee must be notified and the resolution properly documented in the case file. The AO's acceptance of the resolution should be documented in a letter to the permittee transmitted via certified mail (see Illustration VI-4). A copy should be provided to the surety company.

2. Noncompliance by United States' Licensee

The regulations at 43 CFR2812.8-2 specify the responsibility of the U.S. when its licensees fail to perform under the terms of a license agreement:

(a) No licensee of the United States will be authorized to use the roads of a permittee except under the terms of a timber sale contract or a cooperative agreement with the United States which will require the licensee to comply with all the applicable provisions of this paragraph, and any agreements or awards made pursuant thereto. If a licensee fails to comply with the regulations, agreements, or awards, the authorized officer will take such action as may be appropriate under the provisions of the timber sale contract or cooperative agreement.

(b) A permittee who believes that a licensee is violating the provisions of such a timber sale contract or cooperative agreement pertaining to use of the permittee's roads, rights-of-way, or lands, may petition the authorized officer, setting forth the grounds for his belief, to take such action against the licensee as may be appropriate under the contract or the cooperative agreement. In such event the permittee shall be bound by the decision of the authorized officer, subject, however, to a right of appeal pursuant to § 2812.9 and subject, further, to the general provisions of law respecting review of administrative determinations. In the alternative, a permittee who believes that a licensee has violated the terms of the timber sale contract or cooperative agreement respecting the use of the permittee's roads

may proceed against the licensee in any court of competent jurisdiction to obtain such relief as may be appropriate in the premises.

These regulations set forth two methods by which a permittee can seek recourse in the event of non-compliance by a BLM timber sale purchaser with the terms and conditions of a license agreement.

- The Licensor (permittee) can petition the BLM AO in writing, specifying the grounds for their belief that the licensee is in noncompliance and what actions they are requesting the AO to take to resolve the matter. The AO must give to the permittee a decision on the final adjudication of the matter with the rights of appeal included. The permittee is bound by the decision of the AO, subject to the permittee's right of appeal pursuant to 43 CFR §2812.9.
- A second option in the regulations is to proceed with a court action to obtain relief.

In addition to the options outlined above, if the permittee required a performance bond as a requirement of the license agreement, the bond can be seized by the permittee (licensor) for noncompliance. If a permittee wishes to have a bond in place to ensure performance, they must require a separate performance bond from the timber sale bond, as the timber sale bond names the United States as the beneficiary.

At the time the licensee brings the license agreement to the permittee (licensor) to be executed, the permittee (licensor) should make sure that the licensee understands the terms and conditions of the license agreement at the time of signing.

See Chapter VII., Section D. for a discussion of performance bonds required by the permittee of U.S. licensees.

C. Arbitration Agreements

Chapter I. addresses older arbitration type agreements (1950's & 1960's vintage), which do not include detailed terms and conditions in Exhibits A and B or other operational aspects of the reciprocal right-of-way agreement. Because of these ambiguities, these early documents are difficult to administer when compared to more modern semi-detailed reciprocal right-of-way agreements. For example: 1) there is no formula for determination of road amortization and associated road use fees prior to use, and 2) there is no language to identify the ownership or control of roads constructed on the other party's lands. If a disagreement arises over such matters, the parties must resolve the issue by resorting to the arbitration procedures identified in the regulations (43 CFR §2812.4). Continuation of these older "arbitration agreements" is not recommended as some actions of the U.S., such as

road construction over permittee lands, are prohibited under current BLM policy without amendatory provisions.

Most of these arbitration agreements have been superseded by detailed or semi-detailed agreements. The few that remain must be administered as they are written and in accordance with the applicable regulations. Difficulties in the post-authorization administration are often encountered with arbitration-type reciprocal right-of-way agreements because the parties are unfamiliar with the interpretation of the documents. Questions concerning administration of arbitration-type reciprocal right-of-way agreements should be directed to the Oregon State Office. As noted in Chapter XI., since most arbitration-type agreements are not in conformance with the current 2812 regulations, these types of reciprocal right-of-way agreements cannot be assigned without first seeking advice from the BLM Oregon State Office and/or Regional Solicitor on how to bring the permit current with the regulations.

D. Road Amortization Record Keeping and Swap Outs

A road amortization record is established when a road use fee calculation is completed (see Chapter IX., Section C.). An individual record, Road Amortization and Fee Record (Form OR 2812-19, see Illustration VI-5), hereafter called amortization record, is established each time a road use fee is calculated for a new road segment. The BLM AO is responsible for ensuring that an amortization record is prepared and maintained for each road or road segment amortized.

The amortization record is used to record 1) deficit shares, 2) calculated road use fees for individual road segments and improvements, 3) payments, and 4) current balances owed. Or, in the case of system fees, a “system” ledger is maintained. The system fee ledger contains two columns: 1) the deficit balance owed by the U.S. to a permittee, and 2) the deficit balance owed by a permittee to the U.S. In system fee ledgers there will only be one deficit party at any given time.

The road amortization records contain vital accounting data and should be kept in a secure and centralized location for easy access. An automated program has been developed and is being used by some Districts. There is also an effort underway to include a road amortization record element in CBS. Districts using automated programs should also print and maintain hard copies of all road amortization records for easy access and historical record.

The information in Section D.1., below, covers the process for reciprocal right-of-way agreements which have not been converted to a “system-fee” agreement. If a reciprocal right-of-way agreement is not a “system fee” agreement, the accounting is done on a road-by-road basis.

Section D.2., below, provides guidance for system fee agreements.

1. Amortization Record Keeping (Road-by-Road Agreements)

Whether the district is using an automated system and/or still maintains hard copy records, it is important that the personnel posting the records understand what should be posted and when it gets posted. The following provides guidance on posting.

When a road use fee calculation is approved (by the road owner) and accepted (by the using party), a new road amortization record is established. The initial road data (items 1-3 on Illustration VI-5) are entered. This information is obtained from the road record file, the road appraisal, or other sources.

Updating of the information on the road amortization record form is critical to providing a complete and current accounting record. Entries on the form should be made as timely as possible (as road use fees are collected or paid) to avoid overpayment.

a. Amortization Record Details

The following items are numbered to correspond to the numbers on Illustration VI-5. The block in the upper right hand corner of the form is for basic road information. The road and segment number, road name, and surface type can be obtained from the official road record file.

1) Length of Segment to Be Used

Enter the length of the segment in miles and tenths of miles. This is not necessarily the current road segment length shown in the road record file. Use the length of the road or improvement used (as appraised for the fee calculation), as shown on Form OR 2812-18 (see Illustration IX-15).

2) Funding Status for Road Constructed by U.S.

The information is found in the official road record file. This field has historically been used to identify the original owner or source of construction of the road is the party who owns the road.

3) Road Control

The form refers to "Road Control" and in this case is really the owner of the road (or improvement and the party who is entitled to collect fees for use of a road.) (See Chapter II. – Glossary definition for road ownership). In the case of a road improvement, one party may control the base road and another party may have placed a capital improvement for which they are entitled to collect fees. Clearly identify in this field the party who "owns" the road or improvement (and is entitled to collect fees from the other party to amortize its investment).

4) Road User (Deficit Party)

Enter only the deficit party in this block. While the Form OR 2812-18 (Road Use Fee Calculation, Illustration IX-15) identifies all of the landowners who have tributary timber, there is typically one party for whom that fee calculation is completed, and thus only ONE deficit party identified on the amortization record. Part D. of Form OR 2812-18 (Illustration IX-15) identifies exactly what is posted. Do not include information for other landowners whose tributary areas were used to arrive at the percentage share for the deficit party on the road amortization record. This can cause errors later in posting. Until a particular landowner has a share calculated for its use of the road and has “accepted” the share and fee, there is no posting for that landowner.

5) Deficit Share

Enter the percentage share in dollars on Form OR 2812-18 only for the party that “accepted” the fee calculation. The percentage share to be posted is found in Part E.4. last column to the right of Form OR 2812-18.

6) Road Use Fee (without Interest)

This is the calculated road use fee BEFORE the 3% interest is added. Enter the figure in Part E.3. column 2 of Form OR 2812-18.

7) Road Use Fee

This is the actual fee per MBF that will be paid (which includes 3% interest). The figure is found in column 4 of Part E.3. on Form OR 2812-18.

8) Date

The initial entry for this column is the date that the fee calculated was “accepted” by the deficit party (see signature block). For all subsequent entries, this is the date of any road use fee payment made (by BLM) or received (from the permittee) or the date of any swap out of shares agreed to by both parties.

9) Accounting Reference

Enter the source of the line item (initial fee calculation, road use fee payment or receipt, swap out, etc.). For the initial posting, a reference to “fee calculation-original road” or “fee calculation-road improvement” should be entered.

10) Volume Hauled (M.bd.Ft.)

Nothing is posted in this column, until hauling has actually occurred. Information for posting of timber haul and road use fees paid by the permittee comes from the Report of Road Use (Form OR 2812-6, Illustration VIII-8). As discussed in

Chapter VIII., it is common practice to “pencil post” the hauling information once the report has been verified and then finalize the posting once the payment is received. This is to ensure that there is no overpayment of fees. For example, there could be a pending payment which will pay off a deficit investment and if it is not pencil posted first, another haul report could be received and the permittee could be billed for road use fees they don’t owe.

Post BLM timber haul and road use fees paid to the permittee by BLM’s timber sale purchaser based on the allowances from the BLM timber sale contract and any subsequent contract modifications. It is also common practice to “pencil post” this information as well when the contract is awarded or the modification approved and then finalize it when payment to the permittee has been verified at the end of the timber sale.

As addressed in Chapter VIII., the BLM Timber Sale Contract Administrator shall provide an executed copy of the license agreement to the amortization accounting staff immediately after it is executed (signed by both the licensor and licensee). In addition, a copy of any timber sale modifications should be provided as soon as possible.

11) Rate

The rate column refers to the calculated road use fee **with interest** as calculated in Part E. 3., column 4 on the Road Use Fee Calculation Sheet (Form OR 2812-18). Road use reports must reflect the proper rate including interest. This column is only used for volume reported, not for initial entry of the fee calculation or for swap outs.

12) Amount Paid (Total)

In this column, enter the total road use fees paid. This is the total of the volume hauled times the road use fee (with interest) from the columns to the left and should match the actual payment from permittee or allowance in the timber sale (and match the amounts in the license agreement).

13) Amount Paid (Principal)

This is portion of the total amount of a payment that is attributable to principal (approximately 97% since the 3% is simple interest).

14) Amount Paid (Interest)

This is the portion of the total amount of a payment that is attributable to interest (3% of the total payment).

15) Deficit Investment

For the initial posting following an accepted fee calculation, enter the percentage (deficit) share of the party for whom the share was calculated (Form 2812-18, Item E.4. (last column to right).

If there are road use fees calculated for multiple parties at the same time, they can be posted in the other columns. If fees were calculated at different times, it is best to maintain separate records.

Once the initial deficit investment is posted, all subsequent payments and swap outs are then deducted until this deficit investment is paid off. The party's use of the road thereafter would be free of road use fees (but not maintenance fees).

At that point, no further road use fees would be charged the deficit party until there is a capital improvement that is bought into and has a new deficit investment calculated.

b. Swap Out of Deficit Balances (Road by Road)

In addition to posting initial road use fee calculations and payments, there are often "swap outs" of deficit investment balances between the permittee and the U.S. A swap out is an accounting agreement which documents the exchange of deficit shares between the U.S. and a permittee as provided for in 43 CFR 2812.5-2(b), which states in part:

That where the United States is entitled to charge a fee for the use of a road, the authorized officer may waive such fee if the Permittee grants to the United States and its licensees the right to use, without charge, permittee's roads of approximately equal value as determined under the methods provided in this subdivision and §2812.4-1(b), as may be applicable.

A swap out is a methodology developed to eliminate cumbersome bookkeeping for active haul roads. In a swap out, one party's deficit balance in one or more roads is swapped out against the other party's deficit balance in one or more roads (or capital improvements). For example:

U. S. owes permittee for Road X	\$100,000
Swap out of:	
Permittee owes U.S. for Road Y (Permittee now has free use on Road Y)	<u>\$ 75,000</u>
U.S. now owes permittee for Road X	\$ 25,000

Swap outs can occur on a road-by-road basis; or, some reciprocal right-of-way agreements have established system-wide swap outs.

In a road-by-road swap out, one road is traded against another as in the above example. A swap out letter (or accounting agreement) is signed by both parties (see Illustration VI-6) and the resulting swap out amounts and new balances are posted to the amortization records for all the roads involved.

When completing swap out letters of agreement, the letter should be routed through the accounting technician for validation and surname to ensure the accuracy of the data. The total amount of deficit balances to be swapped by both parties **MUST** be equal. The letter should contain an accounting table (can be an attachment) that includes all of the information shown in Illustration VI-6: The deficit balance on individual roads shall be shown. The net result of typical swap outs is that most roads will have a free use status with the exception of one road with a remaining balance.

2. Amortization Record Keeping for System Fee Agreements

This section provides guidance for maintaining proper accounting in a system-fee agreement (see glossary). See Chapter V., Section J.4. and 5., for a discussion of the advantages and disadvantages of system fee agreements. The above referenced handbook section includes a sample system fee ledger which is duplicated below. Illustration VI-7 is a sample road amortization record that illustrates how a system fee ledger is maintained.

Date	Action	Amount	BLM Balance	Permittee Balance
1/15/2000	New System Fee Reciprocal Agreement approved or mass swap of fees under an existing semi-detailed Agreement and the Agreement is changed to system fee Agreement (usually one party will start off with a deficit balance after a mass swap out).	--	\$ 2,000.00	\$ 0.00
2/15/2000	Road Use Fee Calculation done to calculate BLM Share in Permittee Road A	\$21,000.00	\$23,000.00	\$ 0.00
4/15/2000	BLM road use fee payment	\$ 5,000.00	\$18,000.00	\$ 0.00
6/19/2000	Road Use Fee Calculation done to calculate Permittee Share in BLM Road 1	\$ 7,000.00	\$11,000.00	\$ 0.00
12/10/2000	BLM road use fee payment	\$ 6,000.00	\$ 5,000.00	\$ 0.00
6/18/2001	Road Use Fee Calculation done to calculate Permittee share in BLM Road 2	\$ 7,000.00	\$ 0.00	\$ 2,000.00
10/12/2001	Permittee Road use fee payment	\$ 2,000.00	\$ 0.00	\$ 0.00
4/25/2002	Road Use Fee Calculation done to calculate BLM share in Permittee Road B	\$ 8,000.00	\$ 8,000.00	\$ 0.00
10/18/2002	BLM road use fee payment	\$ 3,000.00	\$ 5,000.00	\$ 0.00

Chapter V., Section J.6., also provides guidance in converting a reciprocal right-of-way agreement from a road-by-road accounting system to a system-fee ledger account system. The following sections outline the accounting steps for system-fee agreements.

a. Mass Swap Out of All Deficit Shares to Establish System Fee Ledger

In a system-fee agreement the first accounting step is the creation of a system fee ledger, which accomplishes a mass swap out of **all** of the outstanding deficit shares for both the U.S. and permittee within a specific reciprocal right-of-way agreement. This mass swap out would include all current deficit shares for either road replacement costs or capital improvements.

This step is accomplished by creating a system fee ledger which posts all current deficit balances contained in individual road amortization records. The posting is done in one of two columns: 1) BLM deficit balances, and 2) permittee deficit balances. Each party's deficit balances are then totaled and the lesser total is subtracted from the greater, leaving a net deficit balance for only one party.

b. Close out of Individual Road Amortization Records for Historical Purposes

The districts should strongly consider making notation to the individual road amortization records that have been brought forward into the system fee ledger, indicating that the remaining deficit balances have been transferred to the system fee ledger as of the date the system fee ledger was established. If a district has an automated system, making this posting will make it easier to determine whether any individual road was brought forward into the system fee ledger without having to search through the entire system ledger one line at a time. Illustration VI-8, page 1, is a sample record to accomplish this.

c. Determination of System Road Use Fee (per MBF)-- Applicable to All Roads or Improvements

The next step is to establish (negotiate) a reasonable road use fee which would be applicable to both parties and for any road or improvement used by either party. The fee is negotiated and is usually: 1) based on the average road use fees within the system-fee area, and 2) is adequate to pay off the remaining deficit balance in a reasonable period of time. Once the road use fee is agreed upon by both parties, the fee is applicable for all hauling, unless the parties negotiate a new fee.

d. Posting of Road Use in System Ledger

In a system-fee agreement, since only one party has a deficit balance at any given time, only the party with the deficit balance at their time of haul would pay this negotiated system road use fee per MBF. This fee would be paid by the deficit party for all hauling over any system roads until either: 1) the deficit party has paid their deficit balance down to zero, or 2) the other party has a first use fee calculation and the resulting deficit share for that party exceeds the remaining system deficit balance (hence, the deficit party would change to the other party).

In the case of haul over permittee roads by BLM's licensees, if BLM is the deficit party at the time the timber sale is advertised (and an allowance for the appropriate road use fees is made), this use would be pencil posted at the time of contract award or timber sale modification approval with a final verification of posting at the close out of the timber sale. If the BLM is not the system deficit party at the time the timber sale is advertised, no posting is done.

In the case of haul by permittee over U.S. roads, if the permittee is the deficit party at the time the report of road use is filed, the negotiated road use fee would be applicable and the payment for haul period (road use fee/MBF times the volume hauled) would be deducted from the permittee's deficit balance. If the permittee is not the system deficit party at the time of their haul, no posting of road use is done.

However, both parties need to be sure that the specific roads or improvements being used are definitely included in the system-fee ledger and have previously been amortized as shown in the following section.

Illustration VI-7 shows samples of posting of road use under a system ledger.

e. Posting of New Deficit Shares for Roads or Improvements Not Previously Amortized

Once a deficit party's system ledger deficit balance has been paid off, all roads in the road system are free use to that party (unless they have first use on a road or improvement for which a fee calculation was never completed). The creation of the system fee ledger only brings forward those roads or improvements which were previously bought into at the time the system ledger was created. It should never be assumed that just because there is a system ledger that every road or improvement in a specific reciprocal right-of-way agreement is included in the system ledger.

In a system fee arrangement, road use fee calculations are still completed for roads or improvements not previously amortized, but only for the purpose of determining the using party's deficit share in a road (or improvement). The road use fee/MBF is not calculated since the system road use fee is already established. The process of completing these fee calculations is the same as that identified in Chapter IX., Section C., except no road use fee/MBF is calculated.

When new percentage shares are calculated for roads or improvements, the new deficit shares are posted to the system ledger. The new share would be "added to" the balance of the using party. The net result may either reduce the deficit share of the other party or bring the other's party's deficit share balance to zero (if the new calculated deficit share exceeds the other party's balance), thus switching the deficit party to the one with the new calculated share.

Illustration VI-7 includes samples of posting to the system ledger of new deficit shares for individual roads.

f. Posting of New Calculated Shares to Individual Road Amortization Records (Optional)

Under a system fee arrangement, while individual road amortization records are not utilized to track hauling and payments, it may be wise to create individual amortization records to: 1) show that fee calculations have been completed for the specific road (or segment) as a reference, and 2) indicate that the deficit share has been established, and 3) zero out the new deficit share calculated for that road to indicate it was transferred to the system fee ledger. If a district maintains automated records, this additional tracking method will make it easier to tell if individual roads have been bought into and added to the system fee ledger by searching for an individual road

segment. Without making this tracking record, it may take longer to go through a system ledger line by line to determine if an individual road has been cost shared.

Illustration VI-8, page 2 includes samples of individual road amortization records for roads associated with a system fee agreement. These are the optional postings on individual roads to show that deficit shares have been calculated by individual road segment then the deficit share is immediately zeroed out and transferred to the system ledger.

E. Annual Meetings

Standard language in most reciprocal right-of-way agreements provides for an annual meeting between the parties for the purpose of discussing access needs and other matters relating to the administration of the Permit and Agreement. Important items which should be included on the annual meeting agenda are:

- anticipated right-of-way plats and/or first use requests,
- future road projects that may cause closures or delays in operations,
- planned timber harvest schedules,
- road decommissioning proposals,
- potential cost share opportunities (including swap outs),
- land ownership changes,
- assignment/amendment actions required,
- accounting Agreement updates,
- road closures and other access considerations, and
- recent resource or administrative policy changes.

Minutes from the annual meeting should be taken and copies provided to both parties. A copy should be placed in the appropriate reciprocal right-of-way agreement files involved. Annual meeting planning should be coordinated with each permittee and adjacent BLM District offices to avoid scheduling conflicts and to consolidate meetings where practical.

If the meeting minutes only capture information sharing such as hauling plans, special projects, introducing new employees, etc., they do not necessarily need to be signed. Minutes should still be reviewed by both parties before they are considered final. However, if there are any specific agreements made at the meeting, these agreements should either be memorialized by signed minutes (with

signatures of authorized officials of both the permittee and the BLM). Or, the minutes may reflect “an agreement” to follow up with a separate document. For example, if the parties wish to modify certain forms (such as the license agreement), this modification may need to be done by means of a recorded amendment if the license agreement form is an exhibit that is part of a recorded document.

If the wording in the specific reciprocal right-of-way agreement would allow for modification of license agreements by written approval of the authorized officer (instead of by recorded amendment), minutes could be used for this purpose as long as both parties sign the minutes and the new license agreement is attached to the minutes and memorialized in the record. Follow guidance in Chapter XII. and Chapter V. regarding modification of agreement documents.

With the implementation of the BLM's road maintenance organization (MO), the BLM will develop annual Road Maintenance Operations Plans (RMOP's) (on a fiscal year basis) to plan out the road maintenance needs. Traditionally, annual meetings have been held in the early spring and maintenance needs for the following haul season (summer) are brought forward by the permittees at that time. However, since the fiscal year for the BLM begins in October, and the RMOP is assembled at that time, it may be prudent to schedule meetings just prior to or early in the fiscal year in order to build the permittee maintenance needs into the RMOP early.

F. Transfer (Assignment) of U.S. Rights in the Agreement

Chapter XI. - Assignments, does not address the assignment of U.S. rights in an Agreement because that situation is extremely rare. However, there may be a situation in which the U.S. lands that are served by the Agreement may transfer out of federal ownership. The new landowner may request that the U.S. transfer those rights to provide access for the management and removal of timber and forest products from the transferred lands.

An opinion from the Regional Solicitor's Office indicates that the rights acquired by the U.S. in an Agreement are in gross and may be assigned, as there is no language in the Agreement to indicate otherwise. Although the standard Agreement form does not refer to "assigns" of the U.S. in the granting clause, it does state that "the Agreement shall inure to the benefit of and shall be binding on the successors in interest of the parties thereto." This language sufficiently demonstrates that the parties to a reciprocal right-of-way agreement intended the Agreement rights to be transferable, and are not personal to the U.S. The ability of the U.S. to assign the interest acquired under an Agreement is supported by the fact that the reciprocal rights held by the permittee under the associated permit are assignable under 43 CFR §2812.7. However, Agreement rights will not transfer automatically upon the disposal of the federal land served by the Agreement and must be transferred through a separate conveyance. This conveyance may be in the form of a release of the Agreement to the new landowner. See Chapter XII. for Agreement release guidance.

Most public lands in western Oregon are involved in a reciprocal right-of-way agreement and subject to a permit or permits. It is a responsibility of the BLM to make the transferee of U.S. land fully aware of the rights in any Agreement and their responsibilities in administration of any permit(s) that may be involved. In most cases, the new landowner and permittee will elect to release their respective rights in the reciprocal Agreement and Permit and negotiate a private access arrangement. BLM should encourage this approach to avoid potential problems for the new landowner and the permittee in the interpretation and use of a reciprocal right-of-way agreement.

G. Road Records

The BLM maintains records for individual roads or road segments to document items including road construction, control, capitalization, improvements, road maintenance and transportation management information. Road records also form an essential component of the U.S. accounting for amortization of roads and capital expenditures as provided for under the 43 CFR §2812, including road use fees, deficit shares, road maintenance expenditures and collections. The BLM in western Oregon has identified, at a minimum, certain information which must be maintained by the agency to adequately manage a road records system and to provide administrative support and accountability to the O&C logging road right-of-way program. This information is divided into three main components: Maps, Road Record Support Files, and the Accounting System.

Each BLM district is encouraged to implement the road records system described below, which provides a concise and complete system for road records. Conformance to this record-keeping system will also ease the conversion to any future automated data processing system. See Chapter XV. for guidance in matters related to the Transportation Management System (TMP).

1. Maps

Maps are an essential part of road record information and administration of reciprocal right-of-way agreements. Each BLM District should develop a map or maps of the road transportation system within their jurisdiction. Road and road segment information shown on the map should include:

- road number and segment,
- road control, and
- land ownership and public land status (Public Domain, O&C, Coos Bay Wagon Road, other).

It is suggested that the BLM District Transportation Plan Map be used as a base map for the road network. The development and utilization of Geographic

Information System (GIS) capabilities and existing road database and land status information will improve the capability of the information to be modified or added to over time as the transportation system and land status change. Computer-based mapping will also provide for ease in sharing this information with permittees or incorporation into BLM's land use planning efforts in the future. Hardcopy maps should be prepared in black and white to expedite conversion to an automated system.

2. Road Record Support File

A road record support file should be prepared for each road or road segment within the BLM's transportation system, and contain the following information as a minimum:

- Road Number
- Segment
- Name
- Control
- Length
- Land Status
- County
- Resource Area
- Origin
- Road Value
- Surfacing Capitalization
- Date surveyed or marked on ground
- History of construction and improvement

Supplemental documentation in the road record support file should also include engineering appraisals, the Exhibit C from a BLM timber sale contract, right-of-way reservation, easement deed, road plan and profile and/or a road survey and location map.

The following formatting suggestions for setting up a road record may not be applicable to all roads in a particular BLM district or resource area, but they are

included as an acceptable method of setting up a road record support file. Each folder for a road (system or segment) should contain:

- File tab which shows: Road number, road name (if applicable), road owner or controller, and whether the road was constructed by timber sale (TS) or constructed or purchased with appropriated timber access road funds (ACC). Example: Rd. 20-11-15 Little Cr. BLM (TS).
- A checklist for road records processing.
- All Journal vouchers pertaining to that particular road (system or segment).
- An estimate of road replacement cost summary or road appraisal summary.
- Detailed road replacement costs.
- The tributary area calculation (to be computed only at the time of first use by a permittee).
- A map at a scale not less than two inches to the mile.
- The road system or segment.
- The tributary area and ownership of land and road (to be completed at the time of first use).
- A narrative history showing: Road Number, Road name (if applicable), Road length (in miles and tenths or feet), Beginning point of road, Ending point of road, Road history, Date road completed, Date and description of improvements.

A road record support file for a road or road segment in which amortization fees have or are to be established and collected will require the following additional information:

- A narrative description and history of the segment. This should include the name and permit number if constructed under a permit.
- Computation of tributary volumes.
- A map showing tributary area, road segments, and road number.
- Computation of road replacement costs with summary including allocation, if appropriate.

Where it is necessary to secure permittee approval of road use fee calculations for permittee use of U.S. roads, the road record will not be established until a

permittee's accepted copies of these computations are received by the BLM. The file may then become part of the official BLM road record system.

H. Reporting Units of Accomplishment and Data Entry for LR2000

There is large amount work associated with the administration of reciprocal right-of-way program. In the past there has not been a consistent approach to recognizing this work and reporting units of accomplishment. The table found at Illustration VI-9 has been developed to provide a consistent way of reporting units of accomplishment associated with O&C reciprocal right-of-way work. This illustration also covers actions associated with cooperative agreements with the U.S. Forest Service and the State of Oregon.

The sub-activities that usually fund this work are also shown in the chart. This table also provides LR2000 action codes that must be entered for each type of action. These come from the Lands Data Standards.

Illustration VI-10 was developed as a tool for abstracting all required data in an existing reciprocal file. This will aid in guiding new employees through the process of abstracting data from existing files.

I. Case File Organization, Management and Retention

Each District has historically utilized its own system for organizing unilateral permit and reciprocal right-of-way agreement case files. This section is intended to provide guidance regarding case files for reciprocal right-of-way agreements.

Since most reciprocal right-of-way agreements are perpetual, their case files can become voluminous with time. It is vital that the key documents needed for long-term management be securely preserved in a manner that assures they will continue to be available even if the reciprocal right-of-way agreement case file is damaged or destroyed. The vital reciprocal right-of-way agreement records include the original signed copies of the following:

- Permit,
- Agreement,
- amendments,
- assignments,
- right-of-way plat supplements (construction, improvements, tramway, tailholds, etc.),
- road use fee calculation supplements,

- swap out letters or accounting agreements, and
- letters of agreement regarding mutually agreed upon changes to items not requiring an amendment.
- Road use reporting, billing and receipts

In order to facilitate access to the records typically needed by a number of personnel working on different aspects of post-authorization administration, a system for reciprocal right-of-way agreement case file management should ideally incorporate the following features:

- The Permit and Agreement documents, amendments, assignments, and any other documents establishing or changing the lands, roads, terms and conditions included in the reciprocal right-of-way agreement should be filed in a separate section. For security purposes, the original legal documents with original signatures may be filed in a separate file and working copies placed in the case file used in day-to-day management of the reciprocal right-of-way agreement.
- Reports of Road Use, along with copies of billing notices and receipts should be filed in a separate section.
- Supplements (right-of-way plats and fee calculations) should be filed separately with each supplement placed in its own clearly-labeled section.
- Correspondence should be filed chronologically in a separate section.

Records management personnel in each District should be consulted in developing a plan to securely retain these vital records. The plan should include provisions that these vital records be copied and at least one set of copies stored off-site at a secure location. These documents should ideally be scanned and preserved electronically and updated on an annual or semi-annual basis. Paper copies may be utilized until scanning can be completed.

Reciprocal right-of-way agreement case files should be retained in the appropriate District or Resource Area office until both the Permit and Agreement have expired and been closed or otherwise terminated. The case file should then generally be transferred to the OSO. When a reciprocal right-of-way agreement has been superseded by a new reciprocal right-of-way agreement, certain portions of the superseded case file (such as right-of-way plat supplements) may continue to be needed periodically in administering the new reciprocal right-of-way agreement. In this situation it may be advisable to retain the superseded case file in the District or Resource Area, or to incorporate copies of the relevant portions of the case file into the case file of the successor reciprocal right-of-way agreement.

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Illustration VI-1
Notice of Noncompliance
Page 1 of 1



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Eugene District Office
P.O. Box 10226
Eugene, Oregon 97440-2226

IN REPLY REFER TO:
2812(ORG CODE)
[PERMIT/SERIAL NO.]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

March 1, 2004

Attn: : O&C Logging Road
Permittee : Right-of-Way Permit
Address : OR099999 (E0006)
City, Oregon 97000 :

NOTICE OF NONCOMPLIANCE

Dear Permittee:

Under the terms of Paragraph 11, Exhibit A of your O&C Logging Road Right-of-Way Permit E-0006, whenever you move any timber over a BLM-controlled road included in your permit, you are required to provide to the BLM a certified report of such timber haul by the 15th of the month following the end of the quarter in which the haul occurred. Personnel from this office have documentation that, in November and December, 2003, your trucks were transporting timber from your ownership in Section ____, T. ____ S., R. ____ W., W.M. over BLM Road No. _____. A certified report of road use was thus due in this office by January 15, 2004. No such report has been received.

Failure to submit a certified report of road use when you have moved timber over a BLM-controlled road constitutes noncompliance with the terms of your O&C Right-of-Way and Road Use Permit E-0006. In order to remedy this noncompliance, a certified report of road use for the 4th Quarter of 2003 must be received in this office by March 30, 2004.

Sincerely,

Field Manager
Field Office

Illustration VI-2

2ND Notice of Noncompliance with Remedy Sought and Potential Adverse Actions if Continued Noncompliance

Page 1 of 2



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Eugene District Office

P.O. Box 10226

Eugene, Oregon 97440-2226

IN REPLY REFER TO:
2812(ORG CODE)
[Permit/serial No.]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Date

Attn:	:	O&C Logging Road
Permittee	:	Right-of-Way Permit
Address	:	OR099999 (E0006)
City, Oregon 97000	:	

CERTIFIED REPORT OF ROAD USE REQUIRED
PERMIT HELD FOR TERMINATION

Dear Permittee:

By letter dated March 1, 2004, we notified you that you were in noncompliance with the terms and conditions of your O&C Logging Road Right-of-Way Permit No. _____ for failure to submit a certified report of road use for the 4th Quarter of 2003. Such report was due no later than March 30, 2004, but has not been received.

The regulations at 43 CFR 2812.8-1(b) state that “the Authorized Officer in his discretion may elect to terminate any permit or right-of-way issued under this paragraph, if the permittee shall fail to comply with any of the provisions of such regulations or make defaults in performance or obligation of any of the conditions of the permit, and such failure or default shall continue for 60 days after service of written notice thereof by the Authorized Officer.”

Illustration VI-2

2ND Notice of Noncompliance with Remedy Sought and Potential Adverse Actions if Continued Noncompliance

Page 2 of 2

You are hereby notified that if a certified report of road use for the 4th Quarter of 2003 is not received in this office within 30 days of your receipt of this decision, this office will issue a decision terminating your O&C Logging Road Right-of-Way Permit No. _____. We will then determine road use and maintenance fees due and collect them from your Surety Bond No.

Sincerely,

Field Manager
Field Office

cc: Bonding Company

Illustration VI-3

Final Decision to Terminate and Attach Bond for Continued Noncompliance

Page 1 of 2

IN REPLY REFER TO:

2812[org code]

[Permit/Serial Nos.]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 15, 2004

Attn: : O&C Logging Road
 Permittee : Right-of-Way Permit
 Address : OR099999 (E0006)
 City, Oregon 97000 :

FINAL DECISION:
TERMINATION OF PERMIT E-0006
AND SEIZURE OF BOND FOR NON-PAYMENT

Dear Permittee:

By letters dated March 1, 2004, and May 10, 2004 we notified you that you were in noncompliance with the terms and conditions of your O&C Logging Road Right-of-Way Permit E-0006 for failure to submit a certified report of road use for the 4th Quarter of 2003. Such report was due no later than March 30, 2004, but has not been received.

The regulations at 43 CFR 2812.8-1(b) state that “the authorized officer in his discretion may elect to terminate any permit or right-of-way issued under this paragraph, if the permittee shall fail to comply with any of the provisions of such regulations or make defaults in the performance or obligation of any of the conditions of the permit, and such failure or default shall continue for 60 days after service of written notice thereof by the Authorized Officer.”

On _____ you were sent a notice that if your certified report of road use for the 4th Quarter of 20__ was not received in this office within 30 days of your receipt of the letter, your O&C Logging Road Right-of-Way Permit No. _____ would be terminated. You have failed to provide the requested report of road use. Therefore, your O&C Logging road right-of-Way Permit No. _____ is hereby terminated. We will determine the amount of any road use and maintenance fees (including surface replacement fees) due and collect them from your Surety Bond No. _____.

The termination of this permit constitutes a final decision by the Bureau of Land Management in this matter. 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 (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error. This decision shall remain effective, pending appeal, pursuant to 43 CFR 2801.10(a).

Illustration VI-3

Final Decision to Terminate and Attach Bond for Continued Noncompliance

Page 2 of 2

If you wish to file a petition (pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) for a stay 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 appropriate Office of the Solicitor (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.

Sincerely,

Field Manager
Field Office

cc: Bonding Company (with bond number reference)

Illustration VI-4
Notice of Noncompliance Resolved
Page 1 of 1



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Eugene District Office
P.O. Box 10226
Eugene, Oregon 97440-2226

IN REPLY REFER TO:
2812

NOTICE OF NONCOMPLIANCE RESOLUTION

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Date

Attn: : O&C Logging Road
Permittee : Right-of-Way Permit
Address : OR099999 (E0006)
City, Oregon 97000 :

Dear Permittee:

We have received the certified report of road use for the 4th Quarter of 2003 that was the subject of our Notice of Noncompliance and follow up letter, dated March 1, 2004, and May10, 2004, respectively. The report was received in this office on June 22, 2004. Receipt of the report resolves the noncompliance issue. Thank you for your cooperation.

Sincerely,

Field Manager
Field Office

cc: Bonding Company (with bond number reference)

Illustration VI-6
 Sample Road Use Fee Swap Out Letter
 Page 1 of 2

2812 {Org Code}
 [Permit No.]
 [Serial No.]

Ms. Rita Wright
 We Wanna Log II, LLC

Dear _____:

Under the terms of O&C Logging Road Right-of-Way Agreement and Permit No. _____, you requested a swap out of certain road deficit balances of the United States and [name of Permittee].

This letter confirms our agreement to a swap out of deficit shares as shown below.

Road No.	Seg	Road or Improvement Owner	Permittee Deficit Balances and Swaps			BLM Deficit Balances and Swaps		
			Permittee Deficit Balance Prior to Swap	Amount of Swap Out	Permittee Deficit Balance After Swap	BLM Deficit Balance Prior to Swap	Amount of Swap Out	BLM Deficit Balance After Swap
XX-XX-01.00	A	Permittee				\$2905.60	\$2905.60	\$0.00
XX-xx-03.01		Permittee				\$9389.06	\$9389.06	\$0.00
XX-xx-03.02		Permittee				\$944.71	\$944.71	\$0.00
XX-xx-15.00	A	Permittee				\$1637.09	\$1637.09	\$0.00
XX-xx-15.00	B	Permittee				\$3419.85	\$3419.85	\$0.00
XX-xx-15.01	A	BLM	\$2055.13	\$2055.13	\$0.00			
XX-xx-15.01	B	BLM	\$5193.98	\$5193.98	\$0.00			
XX-xx-15.01	C	BLM	\$218.67	\$218.67	\$0.00			
XX-xx-18.01	B	BLM	\$642.99	\$642.99	\$0.00			
XX-xx-19.04	A	BLM	\$647.13	\$647.13	\$0.00			
XX-xx-19.05	C	BLM Imp	\$1037.35	\$1037.35	\$0.00			
XX-xx-21.00	D1	BLM Imp	\$1833.73	\$1833.73	\$0.00			
XX-11-22.02		BLM	\$2499.41	\$2499.41	\$0.00			
XX-xx-23.01	A	BLM	\$6734.23	\$4167.92	\$2566.31			
Total Amounts Swapped				\$18,296.31			\$18,296.31	
Handbook note: These two amounts should be equal.				↑			↑	

Illustration VI-6
Sample Road Use Fee Swap-Out Letter
Page 2 of 2

If you have any questions, please call _____ at (____)____ - _____. If you concur with this exchange of deficit shares, please sign below and return one copy of this letter to the attention of _____ at the above address.

Sincerely,

Field [or District] Manager
_____ [Resource Area or District]

[Permittee Name] Concurrence:

I concur with the exchange of deficit shares as identified above.

Signature Date

Title: _____

cc: Accounting Technician

Illustration VI-7
 Road Amortization Ledger for System Fee Agreement
 Page 1 of 1

Example – System Fee Balance Sheet

UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT		Road User	Share*	Road Use	Sys	Int./M	* Amount includes interest		Segment
ROAD AMORTIZATION AND FEE RECORD		System Fee	% \$	Fee/M*	Fee/M		BLM Buy-In	BLM Balance	Permittee Buy-In
Date	Accounting Reference	Vol	Rate	BLM	Permittee	BLM Buy-In	BLM Balance	Permittee Buy-In	Permittee Balance
1/1/2000	Amendment 1 to E-101		\$2.00				\$5,000.00		0.00
2/1/2000	BLM Buy-in Rd 18-7-1 A (Supp A)	T.S. Name				100.00	5,100.00		0.00
3/1/2000	Permittee Buy-in Rd. 18-7-10 A-G (Supp 1)						1,100.00	4,000.00	0.00
4/15/2000	BLM Purchaser Haul 2000 Q1 (T.S. Name)	500	\$2.00	1,000.00	0.00		100.00	500.00	0.00
5/1/2000	Permittee Buy-in Rd 18-7-10.1 (Supp 2)						0.00		400.00
7/15/2000	Permittee Haul 2000 Q2	50	\$2.00	0.00	100.00		0.00		300.00

How this works:
 The tricky thing to remember is that the balances are deficient balances (like on a credit card bill, the positive numbers reflect what's owed). The running balance columns are split to show who carries the balance (rather than relying on determining liability based on positive or negative numbers in a grand total column).
 There are two sets of balances that are being watched on this sheet (BLM Balance & Permittee Balance). One party always carries the balance (unless the balance is \$0.00 for both parties). If a transaction exceeds one party's debt, then the excess becomes the other party's debt (eg. an overpayment of road fees by the permittee becomes a debt that the BLM owes the permittee).
 A "Buy-in" will increase the debt of the party buying into the road, just as payment for road use will reduce that debt. Whatever increases the debt for the BLM will reduce the permittee's debt & vice-versa.

Illustration VI-9

Guide for Units of Accomplishment, LR2000 & Time Coding

Page 1 of 5

GUIDE FOR REPORTING UNITS OF ACCOMPLISHMENT AND TIME CODING For O&C Rights-of-Way, BLM/State of Oregon Cooperative Agreement, and BLM/Forest Service Interagency Agreement						
(Page 1 of 5)						
Action	Sub-Activity	Case Type	PE	LR 2000 Action Code	Action Code Defined	Remarks
UNILATERAL PERMITS						
Unilateral Permit Authorized	6310	281210	ER	307	ROW Granted-Issued	
Unilateral Permit Application Denied/Rejected	6310	281210	ER	125	Application Rejected-Denied	
Unilateral Permit Amended	6310	281210	ER	304	Authorization Amend/Modified	Includes adding/deleting lands or stips or modifying stips, etc. Enter amendment No. in remarks.
Unilateral Permit Assigned (Full)	6310	281210	FP	139	Assignment Approved	Retains same Serial No./Permit No.
Unilateral Permit Assigned (Partial)	6310	281210	FP	553	Case Created by Assignment	New case created by partial assignment gets new serial No. AND new local permit No.
Unilateral Permit Extended/Renewed	6310	281210	ER	308	ROW Renewed	
Unilateral Permit Case Closure	6310	281210	FP	244, 970	Terminated/Case Closed	Need to use both 244 and 970 to have case disposition changed to "closed."
Unilateral Permit Application Withdrawn	6310	281210	FP	130	Application Withdrawn	
Unilateral Permit Monitor of Haul, construction, etc.	6310	281210	NH	950	Compliance Report Approved	
Tri-Partite Agreement between BLM and the Permittee's TS purchaser and the Permittee	6310	281210	FP	887	Agreement Signed	Enter Permittee's TS purchaser (3rd party) in comments.
				410	Bond Rejected	
Expired	6310	281210	FP	234	Expired	
				970	Case Closed	

Illustration VI-9

Guide for Units of Accomplishment, LR2000 & Time Coding

Page 2 of 5

GUIDE FOR REPORTING UNITS OF ACCOMPLISHMENT AND TIME CODING For O&C Rights-of-Way, BLM/State of Oregon Cooperative Agreement, and BLM/Forest Service Interagency Agreement						
(Page 2 of 5)						
RECIPROCAL PERMITS (Permittee Use)						
Reciprocal ROW Permit Authorized	6310	281230	ER	307	ROW Granted-Issued	Must use "FD" suffix after Serial No.
Reciprocal ROW Permit Amended	6310	281230	ER	304	Authorization Amend/Modified	Must use "FD" suffix after Serial No.
Reciprocal ROW Permit Assigned (Full)	6310	281230	FP	139	Assignment Approved	Retains same Serial No.
Reciprocal ROW Permit Assigned (Partial)	6310	281230	FP	553	Case Created by Assignment	New case created by partial assignment gets new serial No. AND local permit No.
Supplements to Reciprocal ROW Permits (includes: 1) crossing Plat (including construction, improvement plats, and tailhold/guyline requests), 2) fee calculations, 3) swap-outs and 4) terms and conditions of use.	6310	281230	FP	393	Decision Issued	Enter supplement Nos. if applicable, in comments.
Compliance exam approved – Review of Hauling Reports (including after-haul road condition exams) and construction inspection	6310	281230	NH	950	Compliance Report Approved	
Reciprocal Permit Case Closure	6310	281230	FP	244, 970	Terminated/Case Closed	Need to use both 244 and 970 to have case disposition changed to "closed."
Tri-Partite Agreement between BLM, Permittee's TS purchaser and the Permittee	6310	281230	FP	887	Agreement Signed	Enter Permittee's TS purchaser (3rd party) in comments.
Expired	6310	281210	FP	234	Expired	

Illustration VI-9

Guide for Units of Accomplishment, LR2000 & Time Coding

Page 3 of 5

GUIDE FOR REPORTING UNITS OF ACCOMPLISHMENT AND TIME CODING For O&C Rights-of-Way, BLM/State of Oregon Cooperative Agreement, and BLM/Forest Service Interagency Agreement (Page 3 of 5)						
RECIPROCAL AGREEMENTS (BLM Use)						
Reciprocal ROW Agreement Acquired (new Agreement?)	6310	210003	HN*	345,404	Easement Issued/Title Recordation	Enter Recording info in 404 action remarks.*
Reciprocal ROW Agreement Amended (to add rights (lands, etc.) for U.S.)	6310	210003	HN*	304,404	Authorization amend/modified & Title Recordation.	Enter Recording info in 404 action remarks. This includes adding/deleting lands in Schedules or adding/deleting/modifying stipulations.
Supplements to Reciprocal ROW Agreement: (includes: 1) right-of-way plat(including construction, improvement plats, and tailhold/guyline requests), 2) fee calculations, 3) swap-outs and 4) terms and conditions of use;	6310	210003	FP	950	Compliance approved	Enter supplement number in comments.
License Agreements for BLM TS.	6310	210003	FP	950	Compliance approved	Enter BLM's timber sale purchaser in comments.
Reciprocal ROW Agreement - Release of Rights	6310	210003	FR	620,404	QCD-Disclaimer Issued/Title Recordation	This is for release of the agreement in its entirety.
Reciprocal ROW Agreement – Release of Road Control to Permittee	6310	210003	FR	620,404	QCD-Disclaimer Issued/Title Recordation	Enter Road/Segment and transferee's name in comments.

*HN is reported in acres. The acres added or deleted should be updated in the total acreage portion of LR2000. Additionally the remarks section should include a reference to the modification number and the number of acres added or deleted by that modification.

Illustration VI-9

Guide for Units of Accomplishment, LR2000 & Time Coding

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GUIDE FOR REPORTING UNITS OF ACCOMPLISHMENT AND TIME CODING						
For O&C Rights-of-Way, BLM/State of Oregon Cooperative, and BLM/Forest Service Interagency Agreement						
(Page 4 of 5)						
BLM/State of Oregon Cooperative Agreement						
Road Agreement with State, County, Etc. (Parent Agreement)	6310, 1430	281400	ER	887	Agreement Signed	Enter state/county agency or department
License Agreements for, State, County, etc. use of BLM roads under cooperative agreements	6310	281400	ER	887	Agreement Signed	Issue a "suffix" to the serial number for each license agreement.
Right-of-Way Permit (Exhibit __) for construction by State, County on BLM land under Cooperative Agreements	6310	281400	ER	307	ROW Granted-Issued	Issue a "suffix" to the serial number for each permit.
License Agreement for use of State, county roads for BLM TS purposes.	6310	210007	FP	887	Agreement Signed	Issue a "suffix" to the serial number for each license agreement.
Right-of-Way Permit (Exhibit __) for construction by BLM on State or County land and under Cooperative Agreements	6310	210007	HN	345, 404	Easement Issued/Title Recordation	Issue a "suffix" to the serial number for each permit.
BLM/Forest Service Interagency Agreement						
Interagency Agreements with USFS/BLM (Parent Agreement)	6310	281007	ER	307	ROW Granted-Issued	Enter name of Forest in remarks. Enter separate serial number for each Forest.
License Agreements for USDA-FS use of BLM roads under interagency agreement (their TS purchaser)	6310	281007	ER	887	Agreement Signed	Issue a "suffix" to the serial number for each license agreement.
ROW Reservation for USDA-FS Road construction on BLM under Cooperative Agreement (Exhibit C)	6310	281007	ER	307	ROW Granted-issued	Issue a "suffix" to the serial number for each ROW reservation.
License Agreement for BLM use of USDA-FS roads for BLM TS purposes.	6310	210013	FP	887	Agreement Signed	Issue a "suffix" to the serial number for each license agreement.
Right-of-Way Application/Reservation (Exhibit C) for construction by BLM on USDA-FS land.	6310	210013	HN	345	Easement Issued	Issue a "suffix" to the serial number for each ROW reservation.

Illustration VI-9
 Guide for Units of Accomplishment, LR2000 & Time Coding
 Page 5 of 5

GUIDE FOR REPORTING UNITS OF ACCOMPLISHMENT AND TIME CODING For O&C Rights-of-Way, BLM/State of Oregon Cooperative Agreement, and BLM/Forest Service Interagency Agreement						
						(Page 5 of 5)
Easements						
Release of Easement (partial or complete)	6140, 6310	210013	FR	620, 404	QCD-Disclaimer Issued/Title Recordation	
Trespass – Including Road Use						
Process Trespass/Unauthorized Use Cases	6310	281009	NJ	018	Trespass Resolved	Report when all fees are paid and/or all damage is repaired.
Process Trespass/Unauthorized Use Cases	6310	281009	NJ	402	Trespass Unresolved	Use if we can't identify/locate the trespasser or if it is uncollectible.

Illustration VI-10

Data Abstracting Guide for O&C Reciprocal Rights-of-Way

Page 1 of 12

**DATA ABSTRACTING INSTRUCTIONS FOR
O. & C. RECIPROCAL RIGHT-OF-WAY AGREEMENTS AND PERMITS**

1. Master Title Plat

Print a copy of the Master Title plat (MTP) for reference in validating legal descriptions contained within the reciprocal right-of-way agreement.

2. Completing Data Entry Sheets:

For new cases, whether the data is entered into LR2000 by the personnel who processed the action, or an employee assigned data entry duties, it is necessary to complete some form of data entry sheet. There is too much information to enter the data directly from the document. An example of a data entry sheet is provided on page 11 of this illustration. The headings on the data entry sheet correspond to the screen names in LR2000 for easy entry. Shaded boxes are not entered in the system.

For files already entered into the system, start with the Serial Register Page (SRP). Minor changes may be marked in red and entered from there, or it may be given to the data entry person to correct. For significant changes complete a data entry sheet or. In the case of lengthy legal descriptions, a data entry sheet for just location details is on page 12 of this illustration.

Completely go through the file to abstract all necessary data and fill in the data entry sheet. Start with the permit and then repeat the entire process for the agreement.

Existing cases will be entered in View Case Recordation and new cases will be entered in New Case Recordation.

Illustration VI-10

Data Abstracting Guide for O&C Reciprocal Rights-of-Way

Page 2 of 12

PERMIT SIDE (FD)**A. Serial Number:**

When a case is not in the system, a serial number will be generated by the system. All new cases are assigned OR for both Geo State and Land Office and no prefix is used. The suffix FD (federal lands/ Schedule 1) needs to be added after the number is generated before the case is saved. The following is an example of a Serial Number entry.

Serial Number

Geo	Land	Prefi	Serial #	Suffix
OR	A. O		099999	B.

When a case is in the system, make sure the number is entered correctly and it contains the correct suffix. Older cases in the system may be numbered as follows:

<u>Geo State</u>	<u>OR</u>
Land Office	OR
or	ORE
<u>or</u>	<u>R</u>

Prefix Blank if the Land Office is OR

0 if the Land Office is ORE, L, P or R

Serial No. six digit number beginning with zero

B. Case Header Details Screen

Case type: **281230** (reciprocal permits)
281210 (unilaterals)

Acres: enter once the total acreage is known or calculated for each line of legal descriptions on the Location Details section.

Commodity code: **971** (permit)

The following is an example of a Case Header Details entry:

Case Header Details

Case Type	Acres	Commodity
C. 28	D.	E. 971

C. Customer Details Screen:

If all the names are already in an existing SRP, check the relationship codes and percentage of interest for correctness as shown below. If not, the missing names need to be entered in the new Customer Name Update Screen outside of New or View Case Recordation.

Illustration VI-10

Data Abstracting Guide for O&C Reciprocal Rights-of-Way

Page 3 of 12

1. Proprietor Name Screen:

Start with the original permittee. List all names in the chain of title. Check in LR2000 to verify each name is in the system. If the name is already in the system the address will auto-fill when the customer is selected in Lookup.

2. Interest Relationship:

Current 2800 case group Data Entry Standards require using either 65 or 61 and 29 for the current grant holder. The same should apply to 2812 cases. Use ONLY these codes:

99 = Previous Int. party (for a previous Assignor or orig. if it has changed)

65 = Holder/Billee (current holder if they would also receive the bill)

29 = Current Holder (Only if bill goes to another party)

61 = Billee (if other than Holder)

19 = Administrative Management Agency (BLM)

3. Percentage of Interest:

For only one permittee, enter 100%. If it is a joint permit, it will usually be 50% in each block, but check to make sure they each hold 50%. If other multiple parties, check the file to determine what percentage each of them own.

For the BLM, always enter 0% for the permit.

The following is an example of Customer Details entries:

Customer Details

Proprietor Name	Int Rel	Pct Int	Address	City	State	Zip
WE WANNA LOG II	65	100.00	155 Loggers Lane	Roseburg	OR	97470
CAVE MAN LOGGING LLC	99	0.00	PO Box 555	Reedsport	OR	97467
BLM-COOS BAY DO	19	0.00	1300 Airport Lane	North Bend	OR	97459

D. Location Details (Legal Descriptions):

Starting with the original permit and working forward, enter each legal description in Schedule 1 – U.S. Lands (or amendments thereto). Note below how to enter easements, etc. If there is not enough room on the main form, use additional “Location Detail” data entry sheets (see page 12 of this illustration).

Check all legal descriptions against the MTP to verify the description and determine the acreage.

For amendments that deleted lands, enter a 7 in the Sec. column in the first position of the three-digit section number to indicate the legal was deleted. For example, if a legal in Sec. 2 was deleted the section column would read as “702”.

As each legal description is entered, include the acreage, county and field office in the shaded columns. Total the acres by field office and county. These totals will also be entered in the

Illustration VI-10
Data Abstracting Guide for O&C Reciprocal Rights-of-Way
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Jurisdiction Acreage screen. The county and field office is not entered here; the system will fill these in.

If there is a parcel that has been released, identify those lands as such so that the acreage will not be added to the total.

1. Meridian (Mer)

Always 33 (Willamette Meridian).

2. Township

Enter 3-digit Township with a leading zero. (e.g., 024 for 24) followed by 0W (for West) or 0E (for East).

3. Range

Enter a 3-digit Range (use leading zeros)—(005 for 5), followed by 0W (for West) or 0E (for East).

4. Section (Sec)

Enter 3 digits for Section Number (use a leading zero).

5. Survey Type-No.

Don't mix description types on one line. Refer to the Data Element Dictionary (DED) 3131 or use the Lookup button if necessary, but the following codes should be sufficient for the reciprocals and entered on each line:

A (Aliquot Part)

L (Lot – For government lots as shown on Master Title Plat)

1 (Free format – use this for easements and metes and bounds descriptions).

6. Subdivisions:

Enter as many subdivisions as you can fit for a given section on one line. If there are too many for one line, use another line and repeat the section information. See instructions below for separation of aliquot part and lot descriptions if more than one is entered on each line.

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 Data Abstracting Guide for O&C Reciprocal Rights-of-Way
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a. Aliquot Parts:

When entering quarters, do not use ¼; for example, enter the SW¼SW¼ as SWSW. When entering half, do not use ½, enter these as a 2; for example N½N½ is entered as N2N2. Enter aliquot parts one after the other with a comma between each description (no space) and a semi-colon at the end of each line.

b. Lots:

Lots must be entered on separate line from aliquot parts. List lot #'s one after the other separated by a comma (no space) and a semi colon at the end of each line.

c. Free Format Descriptions:

For easements, enter as Esmt RER-###; OR###; Vol###,Pg###;

For metes & bounds enter: M&B in (list aliquot part)

7. Agency Administrative Area:

Refer to DED 2929 or use the Lookup button if additional codes are needed. The following are the most common used:

21000000	BLM
60	Private

Location Details

Mer	Twp	Rang	Sec	Type	Nu	Suf	Subdivision	Agency	Acres	Co	FO
33	0210	0090	015	A			E2NE;	21000000	80	OR019	U
33	0210	0090	010	L			2,3;	21000000	77.94	OR019	U
33	0260	0120	001	1			M&B IN LOT 1;	21000000	6.4	OR011	U
	0370	0140	009	L			2;	21000000	37.96	OR015	M

E. Action Details

Enter all mandatory codes as identified in the Lands Data Standards for this case type. Start in back of the file (oldest) and work forward:

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Data Abstracting Guide for O&C Reciprocal Rights-of-Way

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Code	Remarks
MANDATORY	
387	CASE ESTABLISHED. This will usually be the date of the first piece of correspondence or memo in the file since most of the permits did not have a formal application. (Don't need to write "Case established" as the computer will fill this in—only need to enter the code. Note: If there is a formal application, use "124"
124	APLN RECD (this is rare that there is actually an application)
846	EXEMPT FROM COST RECOVERY (use date of application or case established above)
501	REFERENCE NUMBER (Enter Permit number such as R-1022, followed by a semi-colon)
307	ROW GRANTED-ISSUED (Use date executed by BLM)
503	LENGTH IN MILES (In "Remarks" column enter "UNK;")(Use approval date by BLM).
504	WIDTH IN FEET (In "Remarks" column enter "VAR;") (Use date executed by BLM)
763	EXPIRES (If perpetual, enter "01/01/9999" as date)
234	EXPIRED (if permit has already expired). Enter the date the permit actually expired by its own terms.
244, 970	CASE CLOSED (if case has been closed). Enter the date the case was officially closed.
MANDATORY IF THESE EXIST IN FILE	
140	ASGN FILED (Enter date the assignment was applied for and "From [name of Assignor];" in remarks. This needs to be done for each and every assignment.)
139	ASGN APPROVED (Enter date the assignment was approved and "To [name of Assignee];" in remarks. This needs to be done for each and every assignment.)
304	AUTHORIZATION AMENDED/MODIFIED (Enter each amendment with the date the amendment was approved by the BLM and "Amend No. _;" in remarks. This needs to be done for each and every amendment.)
404	TITLE RECORDATION (Enter recordation information for any amendment (if recorded)).
940	NAME CHANGE RECOGNIZED (If there was a corporate name change without an assignment, enter the date the new name was recognized and enter "To [new corporate name];") (Make sure there is a name entry in the "Customer Details" section for each name here).
393	FEE CALCULATION ACCEPTED BY PERMITTEE. Enter Code 393 (Decision issued) and the date the fee calculation was "accepted" by the Permittee. Enter "FC" and the Road No. in the remarks column (or supplement No. if the district maintains supplement registers).
393	CROSSING PLAT SIGNED (Permittee over BLM). Enter code 393 (Decision issued) and the date the Plat was signed by the BLM Authorized Officer. In the remarks column enter "XPLAT" and the road No. (or the supplement No. if the district maintains supplement registers).

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Data Abstracting Guide for O&C Reciprocal Rights-of-Way

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FOR PARTIAL ASSIGNMENTS – NEWLY CREATED PERMIT FILE	
387	[Case Established] In newly created file use date Parent case was established.
307	[Row Grant issued] In newly created file use date Parent case was approved.
553	[Case created by assignment] Enter date the partial assignment was approved. In remarks enter serial No. of parent permit (and R-## if room)..
501	Enter new district permit No. in remarks column. (In general remarks section below enter: "This file was a partial assignment of R-_____ from _____ to _____".

FOR PARTIAL ASSIGNMENTS – PARENT (RESIDUAL) PERMIT FILE	
570	[Case created by partial assignment] Use date the partial assignment is approved . In the remarks column enter the serial number of the new permit (and the "R-" No. if room).
	Note: Use the "700" code in the "Location Details" screen (legal descriptions) to delete from the parent SRP any legals which have been included in the assignment once the assignment is approved. NOTE: IF THE ASSIGNMENT IS "IN COMMON," DO NOT DELETE THE LEGALS

F. Remarks

Enter further explanation for anything above. This should include as a minimum the following statements:

"Reciprocal O&C Logging Road ROW Permit authorizes use of public land for [purposes described in permit]."

And

"Acreage is not a calculated acreage."

G. Jurisdiction Acreage

Fill in all of the following acreages/codes:

<u>Type</u>	<u>Code</u>	<u>Acreage</u>
Agncy	21000000 (for BLM)	manually calculate & enter here
Cnty	OR019 (for Douglas)	manually calculate & enter here
Dist	OR10 (for Roseburg)	manually calculate & enter here
Dist	OR1048 [Res Area Code]	manually calculate & enter here
Dist	OR1058 [Res Area Code]	manually calculate & enter here

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Data Abstracting Guide for O&C Reciprocal Rights-of-Way

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AGREEMENT SIDE (PT)

Repeat the process and complete same sections of data entry sheets as for Permit, following same process except as noted below:

A. Serial Number:

Complete serial number section the same as for the permit **except use PT** (private lands) for the suffix.

B. Case Header Details Screen:

Case type: **210003** for Agreements executed prior to FLPMA--1976
 210013 for Agreements executed post-FLPMA-1976

Commodity code: **964 always for the agreement**

C. Customer Details Screen:

1. Interest Relationship:

22 = Acquiring Agency (BLM).

33 = Grantor (original party that granted the rights to the U.S)

26 = Owner (current landowner)

If there are multiple owners set up a separate serial register page for each owner and enter a 01, 02, 03 in the suffix field to separate out the Schedule 2 lands that are now owned by separate owners.

2. Percentage of Interest:

Enter 100% for the BLM interest. For all Grantors and Owners enter a 0%.

D. Location Details (Legal Descriptions):

Starting with the original Agreement and working forward, enter each legal description in Schedule 2 – Permittee Lands (and amendments thereto).

Use same instructions as those provided for the Permit.

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Data Abstracting Guide for O&C Reciprocal Rights-of-Way

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E. Action Details

Enter all mandatory codes for the agreement as identified in the Lands Data Standards for this case type (as shown below). Start with the oldest documents and work forward. The mandatory codes for the agreement are different than the permit.

Code	Remarks
MANDATORY	
387	CASE ESTABLISHED. This will usually be the date of the first piece of correspondence or memo in the file since most of the permits did not have a formal application. (Don't need to write "Case established" as the computer will fill this in—only need to enter the code. Note: If there is a formal application, use "124"
501	REFERENCE NUMBER (Enter Permit number such as R-1022, followed by a semi-colon)
887	AGREEMENT SIGNED (Enter the date executed by BLM).
503	LENGTH IN MILES (In "Remarks" column enter "UNK;")(Use approval date by BLM).
504	WIDTH IN FEET (In "Remarks" column enter "VAR;") (Use date executed by BLM)
763	EXPIRES (If perpetual, enter "01/01/9999" as date)
404	TITLE RECORDATION. (Enter vol., book & page or reception # in action column. There should be a separate entry for every amendment that was recorded.)
MANDATORY IF THESE EXIST IN FILE	
103	AMENDED/MODIFIED (Enter each amendment with the date the amendment was approved by the BLM and "Amend No. _;" in remarks. This needs to be done for each and every amendment.)
211	FEE CALCULATION ACCEPTED BY BLM. Enter Code 393 (Decision Issued) and the date the fee calculation was "accepted" by the BLM. Enter the Road No. in the remarks column (or supplement No. if the district maintains supplement registers).
211	CROSSING PLAT SIGNED (Permittee over BLM). Enter code 393 (Decision Issued) and the date the Plat was signed by the Permittee. In the remarks column enter the road No. (or the supplement No. if the district maintains supplement registers).
211	EXECUTED LICENSE AGREEMENT. Enter code 887 (Agreement Signed) and the date the License Agreement was executed by the Licensor (Permittee) and our TS purchaser. In the remarks enter the name of the TS and the year (if indicated).

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Data Abstracting Guide for O&C Reciprocal Rights-of-Way

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MANDATORY FOR THE SEPARATE BUT EQUAL “AGREEMENT” CREATED BY PARTIAL ASSIGNMENT (PT)	
Create a new Serial Register Page using the Serial Number from the Original Agreement, but adding an alpha-suffix in place of the “PT” (E.g., if the parent agreement was OR 22222 PT, and this is the new agreement associated with the permit M-500A, then the new serial number would be OR 22222 A.	
387	[Case Established] Enter the date the new agreement file was established.
307	[Row Grant issued] In newly created Agreement file, USE THE DATE THAT THE AGREEMENT WAS FIRST ESTABLISHED—recording date (not the date the permit file was established). The rights of the U.S. continue from the date they were originally recorded.
553	[Case created by assignment] Enter date the partial assignment was approved (and thus which date caused the establishment of a separate “Agreement” file). In remarks enter serial No. of parent AGREEMENT (and R-## if room)..
501	REFERENCE NUMBER (Enter Agreement number such as R-1022, followed by a semi-colon)
887	AGREEMENT SIGNED (Enter the date originally executed by BLM).
503	LENGTH IN MILES (In “Remarks” column enter “UNK;”)(Use approval date by BLM).
504	WIDTH IN FEET (In “Remarks” column enter “VAR;”)(Use date executed by BLM)
763	EXPIRES (If perpetual, enter “01/01/9999” as date)
404	TITLE RECORDATION. (Enter vol., book & page or reception # in action column for the date the ORIGINAL AGREEMENT was recorded..)
404	TITLE RECORDATION (Enter also the recording information for the partial assignment (if it was recorded).)
Enter all of the legal descriptions now owned by the Assignee (new Permittee). These are found in the new Schedule 2 included in the partial assignment.	

Remarks

F. Remarks

The same as for the permit.

G. Jurisdiction Acreage

All of the land in the agreement is going to be private land.

<u>Type</u>	<u>Code</u>	<u>Acreage</u>
60	Private	calculate and enter here

Sometimes there will be state, county, or other federal agency land. Refer to DED 2929 or use the Lookup button to find and select the property.

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Data Abstracting Guide for O&C Reciprocal Rights-of-Way

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Serial Number					Case Header Details		
Geo	Land Office Prefix	Serial #	Suffix	Case Type	Acres	Commodity	

Customer Details							
Proprietor Name	Int Rel	Pct Int	Address	City	State	Zip	

Location Details											
Mer	Twp	Rge	Sec	Type	Num	Suf	Subdivision	Agency	Acres	Co	FO
33											
33											
33											
33											
33											
33											
33											
33											
33											

Action Details		
Action Date	Code	Action Remark

Remarks	
Line #	Remarks
0001	
0002	

Jurisdiction Acreage		
Type	Code	Acreage
DIST		
DIST		
CNTY		
AGNCY		

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VII. BONDING AND INSURANCE

A. Purpose

This chapter covers the bonding and insurance requirements and guidance for proper administration of bonds and insurance associated with O&C reciprocal right-of-way agreements and unilateral permits.

B. Authorities

43 CFR 2812.

BLM Manual Handbook H-2801-3 – Rights-of-Way Bonds.

C. Need for Performance Bonds

A performance bond is a document (backed by monetary securities) filed under the terms of a reciprocal right-of-way agreement or unilateral permit which provides assurance to the landowner that the using party will perform under the terms of a permit or reciprocal right-of-way agreement. If the permittee or BLM licensee does not comply with terms and conditions of the unilateral permit or reciprocal right-of-way agreement and fails to correct the noncompliance within a reasonable time, the landowner may attach the bond to recover any unpaid costs (such as to repair damage to roads, unpaid road use, maintenance or surface replacement fees, etc.)

Performance bonds are provided to BLM by a permittee under the terms of a reciprocal Permit or unilateral permit. The permittee can also require that the BLM licensee (timber sale purchaser) file a bond to ensure performance under the license agreement during the life of the timber sale.

Section D. below provides guidance on the right of the permittee to require bonds of BLM's licensees.

Sections E. – G. provide detailed guidance for the issuance, acceptance and attachment of performance bonds filed with the BLM by permittees.

D. Bond Requirements for BLM Licensee Use of Permittee Roads

In connection with most Agreements, the following or similar clause is found in the Exhibit B. The following is found in the standard reciprocal right-of-way template (Form OR 2812-16, Exhibit B, provision No. 6. (page 34)—
Illustration V-2):

6. BLM Licensee Use of Permittee Roads (And Licensee Bonding and Insurance Requirements). When a Licensee of the United States uses any road which is owned or controlled by the Permittee, located on the lands described in Schedules 1 or 2, or severs Licensor's timber in the construction of a road or roads, the Licensee shall enter into an agreement with the Permittee. The Permittee may also require such Licensee to obtain a performance bond in the amount of \$ [Not to exceed \$10,000], in favor of the Permittee, conditioned upon faithful performance of such agreement.

Thus, the permittee (licensor) may require a bond of BLM's licensee as a requirement of the license agreement. The amount of bond that can be required of BLM's licensees is limited by the amount found in this provision for the specific Agreement. This amount is negotiated as part of the reciprocal right-of-way agreement and is the same amount as BLM requires of permittees.

Any modifications to this maximum amount would need to be accomplished by an amendment since the amounts are part of a provision of a recorded document.

However, some reciprocal right-of-way agreements may state something similar to "the amount will be reviewed regularly against the standards of the industry and may be changed by mutual agreement." In this case, the "mutual agreement" should be documented in a letter or other written document (signed by both the BLM AO and the permittee). The agreement should then be filed in the section of the reciprocal right-of-way agreement file where the bonds are filed and a copy is also placed in the amendment section so it won't get lost in the general correspondence section. If this wording is not present, then an amendment is required to change bond amounts. If any wording regarding type of insurance, etc., is desired, an amendment is definitely required.

Chapter VIII., Section E., covers the BLM's use of permittee roads and the process for requesting terms and conditions of use for BLM timber sales. The following items highlight the permittee's responsibilities and rights:

- A performance bond can be required of any BLM licensee up to the maximum amount identified in the Exhibit B.
- The requirement for the bond and the requested bond amount must be disclosed by the permittee at the time the request for terms and conditions of use are provided to the BLM prior to timber sale advertisement.

- The licensor (permittee) can withhold signing the license agreement until the licensee has satisfied the bond filing requirement.
- The bond is filed in favor of the licensor. The bond is filed directly with the licensor and is a separate bond from the timber sale bond the licensee (timber sale purchaser) files with the BLM.
- The permittee deals directly with the licensee and bonding company if the licensee fails to perform under the terms of the license agreement and the permittee wishes to attach a bond. However, before attaching a bond the licensor should first seek remedy of noncompliance by the licensee through the process as identified in the regulations and discussed in Chapter VI., Section B.2.
- Permittee should promptly release the bond upon satisfactory performance under the license agreement.

E. BLM Direct Use of Permittee Roads (No Bond Required)

If the BLM directly uses permittee roads for commercial haul (not through its licensees), the regulations at 43 CFR §2812.4-2 state, in part:

. . . Provided, however, That no bond or other security or liability insurance is to be required of the U.S.

F. Bond Requirements for Permittee Use of U.S. Roads

The regulations found at 43 CFR §2812.5-3 require permittees to file performance bonds in connection with their use of U.S. roads or lands as follows:

. . . a permittee desiring to use an existing road owned or controlled by the U.S. shall prior to such use post a bond on a form prescribed by the Director. The amount of the bond shall be determined by the authorized officer but in no event less than five hundred dollars (\$500) per mile or fraction thereof. The bond shall be executed by an approved corporate surety, or the permittee may deposit an equivalent amount in cash or negotiable securities of the U.S. and the bond shall be conditioned upon compliance with subpart 2812 and the terms and conditions of the permit.
[Underline added.]

The “fraction thereof” refers to the fraction of a mile, not a fraction of the \$500. The fraction of a mile is always rounded up to the next mile. For example, if the total length of road to be used is 1.2 miles, then the minimum bond amount would be determined as follows:

1.2 miles is rounded up to 2.0 miles

2 (miles) x \$500/mile = \$1,000 minimum bond amount

Therefore, every permit is required to have a bond with the minimum amounts described in the regulations above (no less than \$500 per mile (or fraction of a mile)), unless the AO waives the bond in connection with a 12-week permit as described in Section F.2., below.

While the regulations specify minimum bond amounts, the AO may require a larger bond if they determine it to be appropriate and in the public interest. However, in no case can the bond amount in a reciprocal right-of-way agreement exceed the amount specified in the Exhibit A or B.

1. Bonds for Unilateral Permits

The following is the standard bonding provision found on page 3 of Form OR 2812-3 (O&C Logging Road Right-of-Way Permit)—Illustration IV-1 (as provision No. 2 in the boilerplate):

2. PERFORMANCE BOND - Permittee shall obtain a performance bond in an amount not less than \$ _____, [minimum of \$500/mile or fraction thereof] in favor of the United States, conditioned upon faithful performance of the terms and conditions of this permit. If this permit is extended, the Authorized Officer may modify the bond amount.

The AO can require a bond higher than the minimum amount, but in no case shall the bond amount be less than the minimum specified above (\$500 per mile or fraction thereof, but in no case less than \$500), unless the permittee qualifies for a bond waiver as shown below.

2. Waiver of Bond for Short Term (12-Week) Permits

The regulations at 43 CFR §2812.6-1(b) allow for a waiver of the bond requirement in certain circumstances:

The authorized officer may waive the requirements of . . . 43 CFR §2812.5-3 in the case of a natural person who applies for a right-of-way for not to exceed a period of twelve weeks. Not more than one such waiver shall be allowed in each consecutive twelve calendar months on behalf of or for the benefit of the same person.

[Underline added.]

Before the AO decides to waive a bond, the applicant should request the waiver in writing. The BLM permit administrator should then ascertain the answers to

the following questions in order to provide the AO with complete information necessary to make a decision regarding a bond waiver:

- Is the applicant a natural person (not a sole proprietor, corporation, partnership, LLC, etc.)?
- Has the applicant held any permits in the previous 12 months (provide list to AO), and if so, was there a bond waiver for any of them (list permits)?
- What amount of bond is being waived (what is the minimum required by regulation based on length of road in permit)?
- What has been the past performance record of the applicant: 1) Did they leave the roads in good condition? 2) Did they pay their required fees, etc.?
- What is the term (duration) of the permit being considered for waiver (only permits of 12 weeks or less qualify for waiver)?
- What time of year will the haul occur? Is there a greater potential for damage during the planned season of haul?
- What roads (by segment) are to be used and what is the surfacing type?

If a permittee requests a waiver, they should be told there is no guarantee that it will be approved and that no activities can occur on the permit until the AO makes a decision on the waiver in writing.

If the AO determines the applicant is qualified for the waiver and the AO is willing to grant such waiver, the waiver may be authorized by the AO merely checking and initialing after the following paragraph in the permit (which is the second part of provision No. 2 in the boilerplate of Form OR 2812-3 (Illustration IV-1):

Or, if the permit is less than 12 weeks and the Permittee is a natural person, the bonding requirement is hereby waived if the following box is checked and initialed by the Authorized Officer.
 _____ (initial of AO).

3. Bonds for Reciprocal Permits

The following or similar provision is found in the Exhibit A of most reciprocal right-of-way agreements regarding bonding of permittees. This is found as part of Form OR 2812-16 on Exhibit A (Provision No. 6, page 14--Illustration V-2):

6. Bonding and Insurance Requirements for Permittee Use. When the Permittee exercises any rights granted by this permit, the

United States may require the Permittee to furnish a performance bond in an amount of _____ [not to exceed \$10,000], in favor of the United States conditioned upon faithful performance of the terms and conditions of this permit . . .

G. Types of Performance Bonds (Blanket or Individual)

A permittee has options for satisfying the bonding requirements set forth in specific permits: 1) a permittee must first decide whether to file an individual or blanket bond, and 2) they must then decide whether the form of the bond will be a personal (cash) bond or surety bond, and 3) if a personal bond is chosen, the permittee must decide how the monetary requirements will be fulfilled . These options are described below.

1. Individual Bonds Defined

Individual bonds cover one permit. Individual bonds are usually filed when a permittee has only one or two permits. Individual bonds are filed with and accepted by the Field Manager (or the District Manager if the bond covers more than one resource area in a district). See Chapter I., Section H. for delegations of authority. The official bond form required for filing is discussed in sections below.

2. Blanket Bonds Defined

Blanket bonds are utilized when a permittee has several permits and desires to consolidate multiple bonding requirements into a single bond. Blanket bonds cover all of a permittee's operations (permits) within a field office, district or even state-wide.

If the blanket bond covers permits in only one resource area, the Field Manager can accept the bond.

If the blanket bond covers more than one field office within a district, it must be accepted by the District Manager.

If a blanket bond covers permits in more than one district, it must be approved by the Oregon State Office (see Oregon/Washington 1203 Delegation of Authority Manual Supplement, Appendix 1, page 34).

H. Form of Bond (Surety or Personal (Cash))

Once the permittee opts for either blanket or individual bond coverage, they must then decide whether to fulfill the bonding requirement with a surety bond or personal (cash) bond. These options are discussed below.

1. Surety Bonds

A surety bond is one that is secured (or underwritten) by an insurance company or other government-approved underwriter. There are two parties identified on a surety bond: 1) The “Principal” (BLM’s permittee), and 2) the “surety” (the bonding agent or company who underwrites the bond). Three copies of the bond should be submitted so that BLM, the permittee and the surety all get an original accepted copy. If only one copy is submitted, BLM shall keep the original and copies go to the permittee and surety.

a. Required Forms for Surety Bonds

Individual surety bonds must be filed on Form OR 2812-12 (see Illustration VII-1).

Blanket surety bonds must be filed on Form OR 2812-13 (see Illustration VII-2).

b. Adjudicating and Processing Surety Bonds

Once the bond and the appropriate BLM form are filed with the BLM, the checklist found at Illustration VII-3 should be completed. It follows the process identified below for adjudicating the bond.

- The bond should be date/time stamped.
- Update LR2000 with Action Code 376 (bond filed). Put the dollar amount of the bond in the remarks column.

The bond should be reviewed to answer the following questions:

- Is the bond filed on the proper form (Form OR 2812-12 for individual bonds, or Form OR 2812-13 for blanket bonds)?
- Is It clear which permit(s) are covered? If the bond covers a single permit and the Serial Number (and/or local permit No.) does not appear on the bond or is wrong, the bond should be rejected and returned to the permittee for correction. If the bond has wording indicating it is a blanket-type bond that covers all of their permits, no permit or serial number is required.
- Does the bond cover all permits held by the Principal (or is it an individual bond)?
- Are the names of the permittee and surety company correct and shown in the proper location on the bond?

- Is the portion of the bond form calling for a bond number completed? If no number has been filled in, the bond may be referred to as an “Unnumbered bond.” However, all subsequent correspondence should refer to “the bond numbered,” or “an unnumbered bond dated . . .”
- Is the execution date filled in and does it precede the filing of the bond with BLM? If the date of execution is not shown, the bond must be returned for correction.

Note: Often parties will attempt to file a bond to be effective at some future date. While it is permissible for a bond to be executed with a future effective date, the method sometimes used of postdating the execution date can make the bond unacceptable. Parties signing for either the holder and/or surety may be incapable of acting for those parties on the indicated future date either as a result of death or revocation of their authority. Postdated bonds shall be rejected. The parties should be advised that the bond may be executed with a provision that it will become effective at some later date, but that the execution date must precede the date of filing.

- Is the surety on the list of approved companies (Department of Treasury Circular 570, published annually on or about July 1 in the *Federal Register*)? Copies of this may be obtained from: Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20226. The list can also be accessed via the internet at:

<http://www.fms.treas.gov/c570/c570.html#certified>

A bond from a corporate surety who is not on the approved Treasury list cannot be accepted. The footnotes following the name of the surety should also be checked to ensure that they are authorized to issue bonds in Oregon.

- Is the name and address of the Principal on the bond the exact same name as the permittee name?
- Does the person signing on behalf of the permittee have proper authority to do so (see Chapter III.)?
- Is the bond issued in the correct minimum amount (\$500/mile, or fraction thereof with a minimum of \$500, or a higher amount determined by the AO—check against length in permit)? If it is a reciprocal Permit, is it in an amount that does not exceed the maximum amount? For reciprocal Permits, the requirements are found in Exhibit A. For unilateral permits,

the requirements are usually found in the front-page boilerplate (or may be in the special provisions).

- Is the bond amount spelled out in words (e.g., “Ten Thousand and no/100ths dollars”) and expressed in numerals (e.g., “\$10,000.00”)? Do both amounts match? If the correctly spelled out amount is included but not the numeric amount, the bond may be accepted; however, if only the numeric amount is expressed, the bond should be returned for correction.
- Is the bond properly executed by the surety, and is it dated? The seal of the corporate surety must be affixed to the bond form. Signatures for the corporate surety must be accompanied by proof that the person who signed the bond has authority to execute (such as through a power of attorney) such a document as of the date the bond was signed.
- If an “attorney-in-fact” (or someone with power of attorney for the surety) signs the bond, the bond should include a certified attachment by the surety that authorizes power-of-attorney to individuals who can execute bonds on its behalf. The following should then be verified:
 - Verify that the attorney-in-fact is authorized as such.
 - Assure that the effective date of the power-of-attorney authorization predates the bond date.
 - Verify that the date of the power-of-attorney authorization is still valid by assuring that the certification date is the same as the bond date or a few days after (but not before).
 - The authorization may indicate that special conditions apply to the power-of-attorney’s authority (e.g., limitations of bond amount). Verify that the bond meets these conditions.
- If an individual signs the bond and that person is not authorized through a power-of-attorney, verify that they have the delegated authority to do so.
- If the power of attorney indicates that special conditions must exist for the bond to be considered valid (such as a particular colored margin around the power of attorney or a limitation as to the dollar amount or type of bond that the attorney-in-fact or surety officer may sign), the power of attorney and bond must be examined carefully to ensure that the conditions are met. The power of attorney must pre-date the bond and must still be valid on the date the bond was executed; if not, the bond should be returned to the holder by certified mail for correction.

c. Accepting Surety Bonds

No activities under a new permit or assignment should be allowed until it is determined that the bond can be accepted.

If the bond is in order per the above, the original bond should be routed to the AO for acceptance, along with the completed checklist (Illustration VII-3) signed by the person adjudicating the bond, indicating that the bond has been reviewed and meets all requirements.

If the bond covers more than one district, the approval authority lies with the Deputy State Director.

If the bond covers more than one resource area within a district, the approval authority lies with the District Manager.

If the bond covers a single resource area, the approval authority lies with the Field Manager.

When the bond has been signed by the AO, two copies should be made and the original placed in a locked safe and transmitted with the approved permit. A sample decision letter accepting the bond is included as Illustration VII-4. This decision includes transmittal of the approved permit as well. The decision letter should include a statement that the bond is effective as follows:

- If a replacement bond, the effective date indicated on the bond. This would normally occur only with a replacement bond where the permittee and surety want the acceptance to coincide with a bond premium date. In no case should a replacement bond be effective after the bond it is replacing expires (there should be no gap in bond coverage dates.)
- If a new bond, it should be effective on or before the date the permit or assignment is approved (but not after). (If the bond is required before approving an assignment, the effective date of both the assignment and the bond should be the same.)

If three original copies of the bond are submitted and signed by the AO, one of the originals gets placed in the case file (after the other two are sent to the surety and the permittee). EXCEPT, ILC's and AFSP's should not go into the case file—they should be kept in a locked safe or cabinet to safeguard the proprietary bank information. If only one copy was submitted, the BLM retains the original. The original is placed in the safe and a copy is made and placed in the case file.

LR2000 should be updated to indicate that the bond has been accepted (action code 909). Use date of decision letter.

d. Rejecting Surety Bonds

If the bond is determined to be unacceptable for one of the above reasons, the permit should not be signed by the AO. Before a formal decision is sent, the permittee should be contacted and defects pointed out to provide them an opportunity to have the defects corrected and a new bond submitted. If this can be accomplished by phone or having the permittee come in person to explain the deficiencies, there is no need to write a formal letter. If the permittee cannot be reached or if they fail to submit a corrected bond within a reasonable period of time, a “Notice of Defective Surety Bond” should be sent. A sample “Notice of Defective Surety Bond” is included as Illustration VII-5.

If the permittee does not voluntarily file a corrected bond after sending the above Notice of Defective Surety Bond, a Final Decision Rejecting Bond and Closing Case File (which includes rights of appeal) should be sent to the permittee. A sample “Final Decision Rejecting Bond and Closing Case File” is included as Illustration VII-6.

LR2000 should be updated with Action Code 410 (Bond Unacceptable) and Action Code 970 (Case closed), using the date of Final Decision. Also, a unit of accomplishment should be reported in MIS with an “ER” program element and a 6310 subactivity.

2. Personal (Cash) Bonds

A personal (or cash) bond may be filed in lieu of a surety bond. In this form of bond, the permittee personally provides the cash or negotiable securities to guarantee performance. The following sections provide guidance for the various options in which a personal bond can be filed.

a. Required Form for All Personal Bonds (OR 2812-9)

Regardless of the monetary form of a personal bond (i.e., 1) cash (or cash equivalent), 2) Irrevocable Letter of Credit (ILC), or 3) Assignment of Funds for Surety of Performance (AFSP) as described below) and whether the bond is individual or a blanket bond, the monetary deposit must be accompanied by the Personal (Cash) Individual Road Use Bond (Form OR 2812-9). This form can be found on the Oregon Form Register (on the BLM Oregon State intranet site). This form is included as Illustration VII-7.

b. Options for Fulfilling the Monetary Requirements for Personal Bonds

The monetary requirements for personal (cash) bonds may be satisfied several different ways, as shown below, as long as the monetary fulfillment is accompanied by Form OR 2812-9.

1) Cash (or Cash Equivalent)

BLM Manual Section 1372 – Collections (Section .31.A. Forms of Payment), lists the following as acceptable payments: 1) U.S. coin or currency, 2) U. S. postal money orders, 3) bank money orders, 4) bank certified checks (or bank cashier's checks), 3) personal checks, and 4) commercial money orders.

While all of the above are “acceptable” forms of payments to the U.S., before a permit is approved the AO must verify that the funds are available. Some forms of cash equivalent funds may impact the final approval of the permit. The following is provided as further guidance when accepting certain forms of cash equivalent payments in fulfillment of bond requirements.

2) Personal Checks

If an applicant insists on fulfilling their bonding requirement with a personal check, the applicant should be notified that it may take up to 45 days to verify that the personal check has cleared and no permit activity can be authorized until proof of funds is verified. The AO should not approve a permit until proof of availability of funds is verified.

3) Certified (or Bank) Check or Money Orders

Certified checks, bank checks, and money orders are considered to be proof of funds when received. All of these shall be made payable to “Department of Interior – BLM,” The check or money order must be accompanied by Form OR 2812-9

4) Irrevocable Letter of Credit (ILC)

This type of document (see Illustration VII-9) is issued to the BLM by a bank (or other financial institution) in an amount equal to the penal sum of the bond. An ILC is similar to a cash deposit. In case of default, the BLM may draw on the issuing bank up to the amount stated in the ILC. The bank could issue an ILC based on collateral other than cash offered to the bank by the account holder. For example, banks have issued ILC's when an applicant has offered up equipment, etc. for collateral. This type of bond should be kept in a locked safe or cabinet, separate from the permit because it contains proprietary information

about bank accounts. It is not subject to release under Freedom of Information Act (FOIA) requests.

5) Assignment of Funds for Surety of Performance (AFSP)

With this form of personal bond (see Illustration VII-10), the permittee assigns to the U.S. their right, title and interest in a bank account (certificates of deposit, savings, etc.) in an amount not less than the required bond amount. The funds are held by the bank in trust for the U.S. in case of default of the permit. This type of bond should also be kept in a locked safe or cabinet, separate from the permit because it contains proprietary information about bank accounts. It also is not subject to release under Freedom of Information Act (FOIA) requests.

c. Receipt and Deposit of Cash (or Equivalent) Funds

If a personal bond is submitted with Form OR 2812-9 and accompanied by cash or a certified check made payable to the BLM, the funds must be immediately deposited by the BLM with an indication that the remittance is a cash bond. The funds cannot be held in a safe. Once deposited, a receipt should be generated in the BLM Collections and Billing System (CBS) and immediately mailed to the permittee (with a copy placed in the case file). The “receipt” does not mean that the bond is accepted, but only that the money has been received and deposited. The process for reviewing and “accepting” the bond is found in Section d. below.

d. Adjudication and Processing of Personal (Cash) Bonds

Personal bonds should be reviewed for acceptability. A checklist for reviewing personal bonds is provided as Illustration VII-8. The checklist includes the following items to be verified:

- Is the permittee name correct (does it match the name on the application and corporate, partnership, or other business entity has been verified as the legal name)?
- Does the cash bond amount meet the minimum requirements contained in the regulations (\$500/mile or fraction thereof), or a higher amount as recommended by the AO?
- As with surety bonds, is the dollar amount spelled out in words (on the bond Form OR 2812-9) as well as expressed in figures? (The dollar amount can be spelled out alone, but the bond cannot just contain the dollar amount in figures only.)
- Are the serial numbers and/or permit numbers correctly identified (unless it is a blanket bond covering all of their authorizations)?

- Is the description of the negotiable securities complete? (Does it contain the series, number and face value of cash equivalent, if applicable)?
- Do the signors have proper authority to do so? (Are they an authorized signor for permittee?) Follow the same guidance for verifying signatures as for surety bonds in H.1.b. above.
- Are there at least two witnesses for each signature?

After the information on the Form 2812-9 is verified, the acknowledgement block (on the form) is signed by the AO. This “acknowledgement” does not mean notarized in this case. The AO should receive assurance from the person adjudicating the bond that it is acceptable and, if requested, be given a copy of the completed, signed checklist Illustration VII-8 validating that it meets the requirements in the regulations.

In addition to reviewing the bond for the items in the checklist, bonds fulfilled with the use of ILC’s and AFSP’s require additional review as shown below.

6) Verification of Irrevocable Letters of Credit (ILC)

The ILC is prepared by the issuing bank on its letterhead following the prescribed BLM format and filed along with the Form OR 2812-9. The ILC must be reviewed to ensure 1) the minimal information specified for an ILC is met, 2) the information is accurate, and 3) no conflicting information has been added. The ILC shall be placed in a locked cabinet or safe until attached (in the case of default) or until returned to the issuing bank upon full compliance with the terms and conditions of the permit. The BLM prescribed format for an ILC is provided as Illustration VII-9.

If an ILC is submitted in fulfillment of the bonding requirements, it must be accompanied by Form OR 2812-9 which form must include certain language following these words already appearing on the form:

This road use bond is secured by a deposit with the Bureau of Land Management, Department of Interior . . .

This additional verbiage should be added:

an irrevocable letter of credit in the amount of \$_____, lawful money of the U.S. Said letter of credit is security for performance and fulfillment of permit designated herein.

After reviewing the items in the checklist for personal (cash) bonds (Illustration VII-8), the ILC itself should be reviewed to ensure that the following elements are present:

- If the ILC binds a third party (bank) to act, the ILC must specifically state the third party is responsible and capable of responding if necessary.
- The ILC must clearly state the right of the U.S. to negotiate (cash) the ILC, and that it sets forth the conditions under which it may be cashed.
- The negotiable amount must be at least the amount of the required bond.
- The term of the ILC should be until the bond is released by the AO (or open-ended if it is a perpetual permit).
- The ILC should clearly state the purpose for which it is being issued (permit No., permittee name, etc.).

7) Verification of “Assignment of Funds for Surety of Performance” (AFSP) Bond

The AFSP submitted by the permittee must be accompanied by Form OR-2812-9. This section provides guidance for reviewing AFSP’s for acceptability. A sample AFSP is included as Illustration VII-10.

When accepting an AFSP, the following items shall be verified in addition to those items found on the checklist (Illustration VII-8):

- The AFSP should clearly indicate that the funds are immediately negotiable by the U.S. in the case of default.
- The AFSP should not be tied to a certificate of deposit (CD) which cannot be cashed prior to the expiration of the certificate, if the BLM needs to attach it for noncompliance. The only way the BLM can accept an AFSP tied to a CD is for the bank to certify that the BLM can attach a CD prior to the expiration date for noncompliance with the permit, and that early withdrawal penalties, if any, would come out of the interest, and not the principal to which the bond is tied.
- While the permittee remains the owner of the underlying account, the AFSP should provide that it could not be cashed (by the permittee) except with consent of the U.S. and that the U.S. could liquidate the funds without the consent of the permittee in the case of default of the permit.
- The term of the AFSP should show as being effective until released by the AO.

- The permittee may collect interest on the account, but the U.S. has no obligation to provide for payment of interest.

e. Accepting Personal Bonds

If the bond is in order per the above, the original bond (Form OR 2812-9-- Illustration VII-7) should be routed to the AO for acceptance, along with the completed checklist (Illustration VII-8) signed by the person adjudicating the bond, indicating that the bond has been reviewed and meets all requirements.

After the AO has accepted (signed) the Form OR 2812-9, prepare a formal Decision “accepting” the bond. Illustration VII-4 accepting a surety bond can be used and modified for a personal (cash) bond.

After the bond is “accepted,” LR2000 should be updated (using action code 909) for the date the bond was accepted.

f. Rejecting Personal Bonds

If any form of personal bond has been determined to be unacceptable, it should be rejected. However, before a formal decision rejecting the bond is prepared, the permittee should be informally notified of the defect and allowed an opportunity to correct the defect. If they fail to correct the defect within a reasonable or specified period of time, a formal decision rejecting the bond (with rights of appeal) should be completed and sent by certified mail. Illustration VII-11 (Notice of Defective Personal Bond) and Illustration VII-6 (Final Decision Rejecting Bond and Closing Case File) can be modified and used for a personal (cash) bond.

I. Release of Bonds

The following sections provide guidance for releasing both surety and cash bonds. Bonds are released: 1) at the termination of the permit, or 2) during extended periods of anticipated non-use by the permittee (with the approval of the AO).

1. Release of Surety Bonds

Bonds do not expire. They remain active until released by the BLM AO. A bond may be partially or fully released with a letter signed by the BLM AO. A full release by the AO will release the bond altogether. A partial release reduces the bond amount in cases when the full amount is no longer required. For example, if the permit has been amended to remove certain roads, the bond amount could be reduced because the length has changed.

Before fully releasing a bond, BLM should conduct a field exam and determine if:

- any resource damage, has it been repaired to the satisfaction of the AO,
- the permittee left the roads in at least as good of a condition as existed prior to permittee haul,
- all volume has been reported, verified, billed and paid, and
- all special circumstances or requirements have been satisfactorily met (e.g., road decommissioning, planting).

See Illustration VII-12 for a sample letter completely releasing the bond.

2. Release of Personal Bonds

The release of personal bonds is slightly different depending on how the monetary requirements of the bond were fulfilled (cash (or equivalent), ILC, AFSP, etc).

a. Release of Bonds Fulfilled with Cash, Check or Money Order

Cash bonds are released via a refund in the form of a check issued by the National Business Center (NBC). Refunds are ordered in CBS when the accounting technician receives a “cc” of the letter closing the case and notifying the permittee that the bond will be refunded (see Illustration VII-13). This letter also notifies the permittee that the bond is being released and when they should expect the refund.

b. Release of Bonds Fulfilled with an ILC

ILCs are released by signature of the AO. The ILC may include a signature block for the release (as shown on the bottom of Illustration VII-9). If it does not, BLM must write a letter releasing “all right, title and interest” in the form of deposit described in the ILC. In any case, the ILC should be returned to the bank with a cover letter via certified mail. A copy of the letter should be provided to the permittee.

c. Release of Bonds Filed with an AFSP

AFSPs are released by signature of the AO. The AFSP may include a signature block for the release (as shown on the bottom of Illustration VII-10). If it does not, BLM must write a letter releasing “all right, title and interest” in the form of deposit described in the AFSP. In any case, the AFSP should be returned to the bank with a cover letter via certified mail. A copy of the letter should be provided to the permittee.

J. Attaching Bonds for Noncompliance

This section covers the attachment of bonds when noncompliance is an issue. Guidance for attaching a performance bond (also referred to as seizing or collecting) is provided below. There are different procedures for attaching bonds depending on whether the bond is a surety or personal (cash) bond. These procedures apply if: 1) the permit is to be terminated, 2) rehabilitation of the site is required, or 3) there is a temporary suspension of the permit.

Before any bond is attached, the guidance in Chapter VI., Section B., must be followed. No matter the form of bond, the guidance found in Chapter VI. requires attempts at informal resolution first. Failing that, a formal Notice of Noncompliance is sent to the permittee by certified mail specifying: a) the necessary work to be performed in order for the permittee to come into compliance, b) the time allowed to commence the work, c) the time allowed to complete the work, and d) notice that failure to do so will result in eventual attachment of the bond (and/or suspension of the permit). A copy of this letter goes to the surety company if the bond is a surety bond. See Chapter VI. for guidance on noncompliance. A copy of the Notice of Noncompliance should be provided to the surety. A sample Second Notice of Noncompliance is found in Chapter VI. (Illustration VI-2). Illustration VI-3 is Final Decision to Terminate and Attach Bond for Continual Noncompliance.

Only after the permittee has been provided the opportunity to remedy any noncompliance issues should a bond be attached. If all attempts to resolve the noncompliance as outlined in Chapter VI. have been exhausted without resolution, the procedures for attaching a bond as detailed below should be followed.

1. Attaching Surety Bonds

If, after correspondence and discussions and exhausting informal attempts at resolution of noncompliance issues, the permittee has failed to perform the required work or implement other remedies as requested within the specified time frames, a certified letter shall be sent to the surety. The letter should specify: 1) the required work to be performed by the permittee, 2) the date the work is to commence, and 3) the required completion time (all as determined by the AO). The letter should also state that if the permittee fails to perform within the time specified, the U.S. will take action to attach the bond for an amount equal to the total cost to the U.S. of performing the work, including administrative indirect costs. The AO shall use the guidance provided in Handbook H-1681-1, Chapter II., in estimating rehabilitation costs.

The surety may, at their option, authorize the BLM (in writing) to act as the surety's agent to contract and oversee the performance of the specified work, with the contractor billing the surety directly. The BLM Accounting Technician will bill the surety and require advance payment of the estimated administrative costs. In these situations, the surety will be responsible for the BLM's costs to administer and oversee the specified work, including direct costs and indirect administrative costs. The total liability of the surety is limited to the face amount of the bond. Upon BLM's receipt of the money for the administrative costs the AO can arrange to have the work performed directly.

The AO, acting as the surety's agent, will ensure that the specified work is performed as directed above. The AO shall keep clear and thorough records of all costs incurred to perform the specified work.

Distribute copies of the notification letter to: 1) permittee (by certified mail), b) surety (c/o attorney-in-fact), and c) case file.

If the actual total administrative costs (direct and indirect) incurred are less than the monies received, the difference shall be refunded to the surety.

Illustration VI-2 (2nd Notice of Noncompliance) and Illustration VI-3 (Final Decision to Terminate and Seize Bond for Continued Noncompliance) can be used here.

2. Attaching Personal Bonds

As with surety bonds, in order to attach personal bonds for noncompliance, the permittee must first be notified of the noncompliance and provided an opportunity to resolve the noncompliance informally. A letter should be sent to the permittee by certified mail which contains the following information: 1) the details of the noncompliance or default (cite permit provisions, etc.), 2) the specific work needing to be performed in order to bring the permit into compliance, 3) the date the work should be commenced; 4) the time allowed to complete the work, and 5) notification that failure to perform the required actions will result in eventual attachment of the personal bond.

If, after appropriate further discussion and/or correspondence, the holder does not agree to perform the required work, a letter should be sent by certified mail informing the holder that if none of the above occurs within the time specified time, the U.S. will take action to attach the personal bond for the amount equal to the total costs to the U.S. of performing the work, including direct and indirect administrative costs. (See BLM handbook H-2801-3 for guidance on estimating indirect administrative costs.) Refer to Chapter VI. for noncompliance resolution.

If the permittee fails to take actions specified in the Decision to Terminate (Illustration VI-3), the AO shall notify the Accounting Technician to collect on the personal bond (if it was filed with cash or certified check).

a. Attaching Cash, Checks or Money Orders

The Accounting Technician will prepare the appropriate documents authorizing the NBC to transfer the monies secured by the cash bond from the suspense account to the “services charges, deposits and forfeitures” account. The Accounting Technician shall notify the AO once the monies are deposited into the “service charges, deposits and forfeitures account” and are available for rehabilitation work.

Once notified of the availability of funds, the AO can arrange to perform the specified work using BLM subactivity 5320 to record expenditures.

Note: Subactivity 5320 does not provide for the establishment of project numbers. The AO shall keep clear and thorough case file records of all costs incurred to perform the work. The AO shall also take extreme care not to expend more funds (including leave surcharge and direct and indirect administrative costs associated with the rehabilitation of the right-of-way) than the amount that was attached.

If actual total BLM incurred costs (including leave and indirect administrative costs) are less than the monies received, the difference is to be returned to the suspense account and then to the permittee once the work is done.

b. Attaching ILCs and AFSPs

To attach a bond secured by an ILC or AFSP, the following actions shall be taken:

- Advise the permittee that a demand (Sight Draft) will be made upon the bank issuing the ILC for the delinquent payment.
- Prepare a letter to the issuing bank certifying that the permittee has failed to make payments in accordance with the terms and conditions of the permit.
- Deliver a sight draft to the issuing bank for payment (see Illustration VII-14).

If the amount of the sight draft exhausts the amount of the ILC, the permittee will have to make other operating arrangements.

K. Insurance

For purposes of this handbook, liability insurance is that form of insurance which indemnifies or protects one party (either the U.S. or the permittee) against liability on account of injuries to the person or property of another.

1. Permit and Agreement Provisions for Insurance

Most permits and reciprocal agreements contain provisions for insurance. These provisions are located in the Exhibit A of a reciprocal Permit and Exhibit B of a reciprocal Agreement (Form OR 2812-16, Illustration V-2). In unilateral permits, the insurance provision is found in the Exhibit B (Additional Provisions) (Form OR 2812-3, Illustration IV-1).

2. Regulatory Requirement for Insurance

The regulations found at 43 CFR §2812.3-7(a) address insurance requirements for licensees (BLM timber sale purchasers) as follows:

Where the U.S. receives rights . . . the AO will seek to arrive at an advance agreement with the permittee respecting any or all of such matters as

. . . the amount and type of insurance to be carried, and the type of security to be furnished by licensees of the U.S. who use such road; and such other similar matters as the authorized officer may deem appropriate.

The above regulation specifically addresses insurance requirements (amounts) for licensee use of permittee roads. While there is no specific regulatory requirement for permittees to file proof of insurance, the regulations give full discretion to the AO to determine whether insurance will be required as a condition of the new permit (whether reciprocal or unilateral). This premise is based on the fact that the road owner can set terms and conditions of use for use of their roads. Insurance is especially important if road construction is involved. The insurance limitations set by the BLM should generally coincide with industry standards.

a. Right-of-Way Permits (Permittee Use)

Paragraph 16 of Exhibit A to the standard template for reciprocal right-of-way agreements (Form OR 2812-16, Illustration V-2, page 15) contains the following regarding insurance requirements for permittee use of U.S. roads:

6. Bonding and Insurance Requirements for Permittee Use. . . .
The United States may also require the Permittee to maintain the following types of insurance under this permit, in amounts not to

exceed the following whenever it exercises any of the rights granted by this permit:

(a) Commercial General Liability covering all operations, including vehicles of the Permittee: (Bodily Injury: \$1,000,000 - for injury to any one person; \$1,000,000 - for any one occurrence);

(b) Property Damage in the amount of \$1,000,000 for any one occurrence, and

(c) Loggers Broad Form B - \$1,000,000 - for any one occurrence.

The Permittee shall deliver to the United States a certificate from the insurer stating that such insurance is in force and that the insurer will give the United States thirty (30) days' notice prior to any intended or proposed cancellation or modification of such policies.

If the U.S. and permittee wish to increase the maximum insurance amounts, they must do so by a recorded amendment of the reciprocal right-of-way agreement since this is part of a recorded document, unless the reciprocal right-of-way agreement provides an alternative as shown below. See Chapter XII. for guidance in process amendments for this purpose.

However, some existing reciprocal right-of-way agreements contain the following additional language which allows for an increase in insurance limits without the requirement for an amendment (based on the increase in the Consumer's Price Index):

(In the event that the average Consumers Price Index, as published by the U.S. Department of Labor Bureau of Labor Statistics, is increased by multiples of 10% above the index on the date this permit is approved by the Authorized Officer the amounts required herein for the performance bond and the comprehensive liability insurance may also be increased by multiples of 10%) or, (It is understood that the amount of the bond and insurance hereinabove required shall be reviewed from time to time and that the parties shall mutually agree upon such adjustment as is required to comply and conform with general insurance practices of the timber industry in effect at the time of review).

b. Right-of-Way and Road Use Agreements (BLM Licensee Use)

Paragraph 6 of Exhibit B to the standard template for reciprocal right-of-way agreements (Form OR 2812-16, Illustration V-2, page 34) contains the following regarding insurance requirements for BLM licensee's use of permittee roads:

6. BLM Licensee Use of Permittee Roads (And Licensee Bonding and Insurance Requirements). When a Licensee of the United States uses any road which is owned or controlled by the Permittee, located on the lands described in Schedules 1 or 2, or severs Licensor's timber in the construction of a road or roads the Licensee shall enter into an agreement with the Permittee. . . The Permittee may also require the Licensee of the United States to maintain the following types of insurance under this permit, in amounts not to exceed the following whenever it exercises any of the rights granted by this permit:

(a) Commercial General Liability covering all operations, including vehicles of the Licensee: (Bodily Injury: \$1,000,000.00 - for injury to any one person; \$1,000,000.00 - for any one occurrence);

(b) Property Damage in the amount of \$1,000,000 for any one occurrence, and

(c) Loggers Broad Form B - \$1,000,000.00 - for any one occurrence.

The Licensee shall deliver to the Permittee a certificate from the insurer stating that such insurance is in force and that the insurer will give the Permittee thirty (30) days notice prior to any intended or proposed cancellation or modification of such policies.

If the parties wish to increase the insurance maximum amounts, it must do so by amendment of the reciprocal right-of-way agreement.

However, many existing reciprocal right-of-way agreements also contain the following additional language which allows for an increase in insurance limits without the requirement for an amendment (based on the increase in the Consumer's Price Index).

(In the event that the Consumers Price Index, as published in the U.S. Department of Labor Bureau of Labor Statistics, is increased by multiples of 10% above the index on the date this agreement is approved by the Permittee the amounts required herein for the performance bond and the comprehensive liability insurance may also be increased by multiples of 10%) or, (it is understood that the amounts of the bond and insurance hereinabove required shall be reviewed from time to time and that the parties shall mutually agree upon such adjustment as is required to comply and conform with general insurance practices of the timber industry in effect at the time of review.) No adjustment of insurance or bond shall be made upon any Licensee of the U.S. who has purchased timber prior to the time the adjusted amounts are determined." [Underline added.]

Insurance and bonding requirements under Exhibit B of a reciprocal Agreement provide the permittee an opportunity to require bonding and insurance from a licensee of the U.S. (usually a timber sale purchaser) through terms and conditions set forth in a license agreement. The amount of the bond and insurance requested cannot exceed those amounts set forth in the Agreement unless the amounts have been increased by mutual written agreement of the parties (by amendment of the Agreement or other written agreement if CPI index wording is included in the Exhibit B.) Any lesser amounts (or no bond and/or insurance requirements) may be imposed on a BLM licensee at the discretion of the permittee.

The bonding and insurance requirements in Exhibit A of a reciprocal Permit are left to the discretion of the U.S. (AO). Requirements may not exceed those limits set forth in the reciprocal right-of-way Permit (Exhibit A), unless the amounts have been increased by mutual written agreement of the parties (by amendment of the permit since it is an amendment to a recorded document). Although the bond and insurance requirements under the Permit suggest that the AO has the option of not requiring insurance, it may not be in the best interest of the government to do so.

3. Administration of Insurance Requirements for Permittee Use

Modification of insurance requirements should be discussed at the annual meetings. If changes are recommended, the same amounts must be used for both the Agreement and Permit.

For new reciprocal right-of-way agreements or unilateral permits, the permittee should be informed of insurance requirements in the letter transmitting the permit for signature. Notification should include the requirement to provide the proof of insurance prior to permit approval (if the AO has determined that insurance is necessary).

For existing unilateral and reciprocal permits, there should be a periodic review to ensure that the permittees have a current insurance certificate on file with the BLM. A good time to look at this is prior to the annual meetings.

The insurance certificate should be reviewed to ensure that: 1) the policy is held by the current permittee, and 2) the insurance coverage is in the correct amounts, and 3) the types of insurance are as specified in the permit provisions.

4. Modification to Insurance or Bonding Provisions in Reciprocal Right-of-Way Agreements.

If the U.S. and permittee wish to modify the maximum amounts (or types of insurance specified above), an amendment would be required since the insurance specifications are included in a provision to a recorded document.

However, some reciprocal right-of-way agreements may state something similar to “the amount will be reviewed regularly against the standards of the industry and may be changed by mutual agreement.” In this case, the “mutual agreement” should be documented in a letter or other written document (signed by both the BLM AO and the permittee). The agreement should then be filed in the section of the reciprocal right-of-way agreement file where the bonds are filed so as not to get lost in the general correspondence section. If this wording is not present then an amendment is required.

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Illustration VII-1
Form OR 2812-12 – Individual Surety Road Use Bond
Page 1 of 1

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT - OREGON STATE OFFICE

Form OR 2812-12 (February 2009)

INDIVIDUAL SURETY ROAD USE BOND
FOR LICENSE AGREEMENT OR O&C Logging Road Right-of-Way Permit
43 CFR Subpart 2812, Title V, P.L. 94-579; 90 Stat 2743.

Bond No.: _____

KNOWN ALL MEN BY THESE PRESENTS, That
_____ of
(Principal Name)
_____, as principal, and
(Principal Address)
_____ of
(Surety Name)
_____, as surety are held
(Surety Address)

and firmly bound unto the United States of America in the sum of:
_____ dollars \$ _____

lawful money of the United States, for the payment of which sum we bind ourselves, each of us, our heirs, executors, administrators, successors, or assigns, jointly and severally, firmly by these presents.

WHEREAS, said principal has been granted permit and/or license agreement Number _____ for the use of tramroads under the jurisdiction of the _____ Office, Bureau of Land Management; and

WHEREAS, said principal upon the issuance of a permit and/or license agreement is required to comply with the regulations of the Secretary of the Interior (43 CFR Subpart 2812) relating to the use of such roads, including the proper maintenance and repair of the road during periods of use and, if required, payment of a road use fee to be determined by the Authorized Officer of the Bureau of Land Management; and

WHEREAS, said principal upon the issuance of a permit and/or license agreement is required to comply with the regulations of the Secretary of the Interior (43 CFR Subpart 2812) relating to the use of such roads, including the proper maintenance and repair of the road during periods of use and, if required, payment of a road use fee to be determined by the Authorized Officer of the Bureau of Land Management; and

NOW, THEREFORE, if the said principal, or its heirs, executors, administrators, successors, or assigns, shall comply with the terms of all such permits and/or license agreements and the applicable regulations, then in that event the above obligations shall be null and void; otherwise they shall remain in full force and effect.

WHEREFORE, we hereunto set our hands and seals this _____ day of _____, 20____.

PRINCIPAL: _____ SURETY: _____
By: _____ By: _____
Title: _____ Title: _____
(If individual, title not necessary).

Attest (if corporation): _____ Attest (if corporation): _____
By: _____ By: _____
Title: _____ Title: _____

The bond must bear the seal of the surety signing the bond. A copy of the Power of Attorney or the Authorized Agent of a surety company must accompany the bond.

Illustration VII-2

Form OR 2812-13 – Blanket Surety Road Use Bond

Page 1 of 1

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT - OREGON STATE OFFICE
BLANKET SURETY ROAD USE BOND
O&C Logging Road Right-of-Way Permit
43 CFR Subpart 2812, Title V, P.L. 94-579; 90 Stat 2743.

Form OR 2812-13 (February 2009)

Bond No.:

KNOWN ALL MEN BY THESE PRESENTS, That

_____ of
(Principal Name)
_____, as principal, and
(Principal Address)
_____ of
(Surety Name)
_____, as surety are held
(Surety Address)

and firmly bound unto the United States of America in the sum of

_____ dollars \$_____

lawful money of the United States, which may be increased or decreased by a rider hereto executed in the same manner as this bond, for the payment of which sum we bind ourselves, each of us, our heirs, executors, administrators, successors, or assigns, jointly and severally, firmly by these presents.

WHEREAS, said principal has been granted a permit and/or license agreement for the use of tramroads under the jurisdiction of the Bureau of Land Management; and

WHEREAS, said principal may obtain additional permits and/or license agreements for the use of tramroads under the jurisdiction of the Bureau of Land Management; and

WHEREAS, said principal upon the issuance of a permit and/or license agreement is required to comply with the regulations of the Secretary of the Interior (43 CFR Subpart 2812) relating to the use of such roads, including the proper maintenance and repair of the road during periods of use and, if required, payment of a road use fee to be determined by the Authorized Officer of the Bureau of Land Management; and

NOW, THEREFORE, if the said principal, or its heirs, executors, administrators, successors, or assigns, shall comply with the terms of all such permits and/or license agreements and the applicable regulations, then in that event the above obligations shall be null and void; otherwise they shall remain in full force and effect.

WHEREFORE, we hereunto set our hands and seals this _____ day of _____, 20____.

PRINCIPAL:
By: _____
Title: _____
(If individual, title not necessary).

SURETY:
By: _____
Title: _____

Attest (if corporation):
By: _____
Title: _____

Attest (if corporation):
By: _____
Title: _____

The bond must bear the seal of the surety signing the bond. A copy of the Power of Attorney or the Authorized Agent of a surety company must accompany the bond.

Illustration VII-3
 Checklist for Adjudicating Surety Bonds
 Page 1 of 1

**Checklist for Adjudicating Surety Bond
 For O&C Logging Road Right-of-Way Permits**

Permit No.		Serial No.		Permittee:		
Bond No.				Surety:		
Item					Reviewer Initials	Date
The bond is filed on the proper form (OR 2812-12 for individual bonds, and OR 2812-13 for blanket bonds).						
Does it clearly identify which permits are covered (specifically identified), or if a blanket bond has statement similar to: “. . . covers all rights-of-way, permits or license agreements held by the Principal?”						
Is the name of the Permittee (Principal) correct and in the right location on the form (matches application, if corporation, matches how they filed with the state)?						
Is the address of the Permittee (principal) the same as on the application and/or permit?						
Is the bond properly executed by the Permittee? Does the person signing for the Permittee have proper signing authority for the company?						
Is the name of the Surety in the right location on the form?						
Is the bond properly executed by the Surety and dated? Is the seal of the corporate surety affixed to the bond form? Is the signature accompanied by proof of the authority of the person signing the bond to execute such a document on the date it was executed?						
Did the surety sign by means of a power of attorney? If so, see O&C handbook (Chap VII) to determine if it is acceptable. Verify that no unacceptable conditions are attached.						
Is the bond amount correct (\$500/mile or fraction thereof, minimum \$500)--or larger amount as determined by AO —matches amount in permit.						
Is the bond amount spelled out in words? (Not okay to just have in figures).						
Is the bond No. clearly shown? (If it has no number then it is an unnumbered bond and all correspondence should be referenced that way).						
Is the execution date filled in and does it precede the filing date of the bond with the BLM?						
Is the surety company on the Dept. of Treasury (DOT) list of approved sureties and does the DOT list indicate they are approved for Oregon?						
The bond has been reviewed and meets the requirements for surety bonds and I recommend acceptance.						
Signature _____				Date _____		(February 2009)

Illustration VII-4

Notice of Bond Acceptance and Transmittal of Unilateral Permit

Page 1 of 1

2812 (OR 112)

[Permit No.]

[Serial No.]

NOTICE OF ACCEPTANCE OF PERFORMANCE BOND
AND TRANSMITTAL OF APPROVED PERMIT

Mr. Hap E. Kamper
I Gitta Log Now Co.
1 Logger Lane
Loggerville, OR 97111

Dear _____:

You have paid all the required advanced fees, filed your performance bond and insurance certificate in connection with O&C Logging Road Right-of-Way Permit No. _____ (OR _____). The appeal period has expired with no request for stay filed.

The bond you filed in the amount of \$_____ has been reviewed and it has been found to be proper and sufficient. Therefore, the bond is accepted and considered effective as of [date bond was filed] [the date the permit was approved by me].

Therefore, I have enclosed an approved copy of your permit.

You are responsible for leaving the road in at least as good of a condition as prior to your use. Please contact _____ at _____ when you are ready to commence operations so that a pre-haul road condition assessment can be made.

Sincerely,

Field Manager
_____ Resource Area

Enclosure

cc: Lead Engineer
Acct. Technician

[NOTE: ATTACH THE PERMIT]

Illustration VII-5
 Notice of Defective Surety Bond
 Page 1 of 3

IN REPLY REFER TO:
 2812[org code]
 [Permit/Serial Nos.]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DATE

We Wanna Log II	:	O&C Logging Road
_____	:	Right-of-Way Permit
_____	:	[Permit No.]
City, Oregon 97000	:	[Serial No.]

NOTICE OF DEFECTIVE SURETY BOND

Dear Permittee:

By letter dated _____, you were sent two copies of a draft permit for you to sign, as well as a request for submittal of your performance bond in the amount of \$_____ for Permit No. _____, OR _____.

You chose to fulfill the bonding requirement with a surety bond. Unfortunately, we are unable to accept your bond at this time for the following reasons:

[Select all reasons that apply. Delete those that don't.]

- The bond is not filed on the proper form. For an individual bond, it needs to be filed on form OR 2812-12. For blanket bonds, it needs to be filed on Form OR 2812-13. You have chosen to file [an individual] [a blanket] bond. We have enclosed the correct form (OR _____) for you to resubmit your bond.
- Your blanket bond does not either : 1) clearly identify which permits are covered, 2) does not contain wording similar to: “. . . covers all rights-of-way, permits or license agreements held by the Principal.”
- The name of the Principal (you, as the Permittee) is not correct. [State why, e.g., It does not match the name on your application, it does not match the corporate information supplied, etc.]

Illustration VII-5
Notice of Defective Surety Bond
Page 2 of 3

- The address shown for the Principal (you, as the Permittee) is not the same as you indicated on your application.
- The bond is not properly executed by the [you] [your company]. We do not have evidence that the person signing for the bond has proper signing authority for the [company] [corporation].
- The bond is not properly executed by the surety company [and/or the date executed by the surety is not shown].
- The seal of the corporate surety is not affixed to the bond form.
- The signature was not accompanied by proof of the authority of the person signing the bond to execute such a document on the date it was executed.
- The surety was signed by means of a power of attorney, but after a review we have determined the power of attorney is not acceptable because: [explain].
- The bond amount is incorrect. The bond received was in the amount of \$_____. It should have been filed in the amount of \$_____.
- The bond amount is not spelled out in words..
- The bond Number is not clearly shown (or it is not printed on the form that it is an unnumbered bond)..
- The execution date [is not filled in] and/or [does not precede the date the bond was filed with the BLM].
- The surety company issuing the bond is not on the approved list of bonding companies by the Department of Transportation (DOT) [or they are on the approved list, but DOT does not indicate they are approved for Oregon].

Illustration VII-5
Notice of Defective Surety Bond
Page 3 of 3

If you wish to proceed with issuance of Permit No. _____, please provide a new bond that corrects the above deficiencies. You may contact _____ at _____ to answer any questions related to correcting the deficiencies.

If we do not receive a corrected bond within 30 days of your receipt of this letter, we will send a formal Decision (with rights of appeal) rejecting the bond and closing the case file.

Sincerely,

Field Manager
_____ Resource Area

Enclosures

cc: Surety Company

[ENCLOSE THE BOND BEING RETURNED AND THE CORRECT BOND FORM]

Illustration VII-6
Final Decision Rejecting Bond and Closing Case File
Page 1 of 2

IN REPLY REFER TO:
2812(ORG CODE)
[Permit/serial No.]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Date

We Wanna Log II : O&C Logging Road
Permittee : Right-of-Way Permit
Address : [Permit No.]
City, Oregon 97000 : [Serial No.]

FINAL DECISION REJECTING BOND
CASE FILE CLOSED

Dear Permittee:

By letter dated _____, you were notified that the performance bond you submitted in connection with your application for O&C Logging Road Right-of-Way Permit No. _____, OR _____ was defective and could not be accepted.

You were requested to file an adequate bond within 30 days of your receipt of that letter. You received the Notice of Defective Bond by certified mail on _____ and to date we have not received the replacement bond.

Therefore, your application is hereby considered withdrawn and this case is closed. The advance payment of road fees in the amount of \$_____ will be refunded. You should expect a refund within 7-10 days.

You are reminded that any haul without authorization is considered to be in trespass.

This is the final decision of the BLM. You have the right to appeal this decision.

Illustration VII-6

Final Decision Rejecting Bond and Closing Case File

Page 2 of 2

How to Appeal This Decision ¹

If you believe this decision is in error, you may file an appeal with the Interior Board of Land Appeals (Board), Office of the Secretary, within 30 days of your receipt of this decision. In deciding whether to file an appeal, you have the burden of showing this decision is in error. If you decide to file an appeal, you must carefully follow the procedure described on the enclosed form 1842-1. If you don't file your appeal at the locations specified on the form within 30 days, the Board may dismiss your appeal as untimely without considering its merits. Be sure to send a copy of your notice of appeal to each party named in this decision and to all of the addresses on the **enclosed form 1842-1**.

How to Obtain a Stay of This Decision While Your Appeal is Pending. ²

You may also ask the Board to stay or suspend the effect of this decision while your appeal is pending. If you desire a stay, you must enclose your request for a stay with your notice of appeal. You have the burden of showing a stay is justified.

The Board will grant a stay only if you provide sufficient justification based on the following standards:

- The relative harm to the parties if the Board grants or denies the stay;
- The likelihood of the success of your appeal on its merits;
- The likelihood of immediate and irreparable harm if the Board doesn't grant the stay;
- Whether the public interest favors granting a stay.

If you have any further questions, contact _____ at _____.

Sincerely,

Field Manager
_____ Resource Area

Enclosure [THE ATTACHMENT IS THE FORM 1842-1]

¹ 43 Code of Federal Regulations Parts 4 and 4.413

² 43 Code of Federal Regulations Parts 4.21 or 2804.1

Illustration VII-7

Form OR 2812-9 – Personal (Cash) Individual Road Use Bond

Page 1 of 2

Form OR 2812-9
(October 2009)

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT - OREGON STATE OFFICE
PERSONAL (CASH) INDIVIDUAL ROAD USE BOND
(DEPOSIT OF CASH OR NEGOTIABLE SECURITIES OF THE UNITED STATES)

This will give notice that _____ hereinafter referred to as "PERMITTEE," is held and firmly bound unto the UNITED STATES OF AMERICA in the penal sum of _____ and no/100 dollars (\$ _____), lawful money of the United States, for which payment well and truly to be made, Permittee is hereby bound. The condition of this obligation is such that whereas Permittee has been issued and has accepted the following described Right-of-Way Permit:

Permit No.		Serial No.	
------------	--	------------	--

NOW, THEREFORE, if Permittee shall well and truly comply with 43 CFR Subpart 2800 through 2812 and the terms and conditions of the above-described permit(s), then this obligation shall be void; otherwise the same shall be and remain in full force and effect. This road bond is secured by a deposit with the Bureau of Land Management, Department of the Interior the sum of _____ and no/100 dollars (\$ _____), lawful money of the United

States (or other negotiable securities of the United States described in the form as follows:

[] If checked, the bond is secured by a deposit with the Bureau of Land Management in the form of [] an Irrevocable Letter of Credit (ILC), or [] Assignment of Funds for Surety of Performance (AFSP), said ILC or AFSP (both lawful money of the U.S.) is security for performance and fulfillment of permit designated herein and being further described below in checked box:

If other than cash, name of Bank of Financial Institution:					
<input type="checkbox"/> Cash	<input type="checkbox"/> Certified check	<input type="checkbox"/> Irrevocable Letter of Credit	<input type="checkbox"/> Assignment of Funds for Surety of Performance		
\$	Amount	Amount	\$	Amount	\$
	Dated	Effective Date:		Effective Date:	
	Check No.	Exp. Date		Type of Account:	
				Acct. No.	
Other (Indicate Amount, Type, No., Etc.):					

Securities may be substituted without affecting this road use bond upon request by Permittee, approval by the Bureau of Land Management, and an executed endorsement detailing the change.

That the said Permittee does hereby constitute and appoint the Secretary of the Interior as attorney to act in the Permittee's name to collect or to sell, assign, and transfer the said deposit above described and deposited by the Permittee, as aforesaid, pursuant to authority conferred by Sec. 1 of the Act of July 30, 1947 (61 Stat. 646, 6 U.S.C. 15), as security for the faithful performance of any and all of the conditions or stipulations as hereinbefore set out, and it is agreed that, in case of any default in the performance of the conditions and stipulations of such undertaking the said attorney shall have full power to collect and deposit or any part thereof, or to sell, assign, and transfer said deposits of any part thereof without notice, at public or private sale free from any equity of redemption or without appraisal or valuation, notice and right to redeem being waived, and to apply proceeds of such sale or collection to the full amount of the bond to the satisfaction of any damages, or deficiencies arising by reason of such default, as said attorney may deem best. The interest, if any, accruing upon aid deposit as above stated, in the absence of any default in the performance of any of the conditions or stipulations of the bond, shall belong to said Permittee. The Permittee hereby for the Permittee and all heirs, executors, administrators, and successors, ratifies and confirms whatever the said attorney shall do by virtue of these presents.

Permittee may terminate this road use bond upon release of all rights and obligations acquired in accordance with the Permit(s) described above. The United States shall make claim for any damages or amounts due the United States or return the deposit or such part thereof not required to compensate the United States.

IN WITNESS WHEREFORE, this road use bond is executed on the _____ day of _____, 20____.

IF INDIVIDUAL OR PARTNERSHIP, SIGN HERE	IN THE PRESENCE OF TWO WITNESSES:
By: _____	Witness: _____
Address: _____	Address: _____
By: _____	Witness: _____
Address: _____	Address: _____
By: _____	Witness: _____
Address: _____	Witness: _____
IF CORPORATION, SIGN HERE	ATTESTED BY:
By: _____	Attest: _____
Title: _____	Title: _____

(Continued on page 2)

(Form OR 2812-9, page 1)

Illustration VII-7
Form OR 2812-9 – Personal (Cash) Individual Road Use Bond
Page 2 of 2

CORPORATION CERTIFICATE

If Permittee is a corporation, the following certificate shall be executed by the Secretary or Assistant Secretary of the Corporation:

I, _____, certify that I am the _____ Secretary of the corporation named as Permittee herein, that _____ who signed this contract, was then _____ of said corporation that said contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

(Corporate Seal)

Receipt of the above-described securities, to be held under the terms and conditions of this road use bond, is hereby acknowledged.

UNITED STATES OF AMERICA
Department of the Interior
Bureau of Land Management

By: _____

Title: _____

Date: _____

(Form OR 2812-9, page 2)

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Illustration VII-8
 Checklist for Adjudicating Personal (Cash) Bonds
 Page 1 of 1

**Checklist for Adjudicating Personal (Cash) Bond
 For O&C Logging Road Right-of-Way Permits**

Permit No.		Serial No.		Permittee:		
					Reviewer Initials	Date
Item						
The bond is filed on the proper form (OR 2812-9).						
Type of cash bond: <input type="checkbox"/> Cash <input type="checkbox"/> Certified Check, <input type="checkbox"/> ILC, <input type="checkbox"/> Assignment of Surety for Performance (AFSP) If AFSP indicate type of funds (CD, savings, etc.): _____						
Amount of bond: \$ Does this amount match the required amount of the permit and is it in accordance with regulations? (\$500/mile or fraction thereof, minimum \$500) Is the bond amount spelled out in words? (Not okay to just have in figures).						
Does it clearly identify which permits are covered (specifically identified), or if a blanket bond has statement similar to: “. . . covers all rights-of-way, permits or license agreements held by the Principal?”						
Is the name of the Permittee (Principal) correct and in the right location on the form. Matches name on application. If corporation, matches how they filed with the state?						
Is the address of the Permittee (principal) the same as on the application and/or permit?						
Is the bond properly executed by the Permittee? Does the person signing for the Permittee have proper signing authority for the company?						
If other than cash or certified check (ILC or Assignment of Surety for Performance), is the description of negotiable securities complete?						
<input type="checkbox"/>	Account No. clearly shown.					
<input type="checkbox"/>	Account Owner identified (if Assignment of surety for Performance).					
<input type="checkbox"/>	Signed by Owner and Co-Owner					
<input type="checkbox"/>	Series, No. & face value shown, if applicable (CD, etc.)					
<input type="checkbox"/>	Properly assigns rights to U.S. and clearly shows U.S. ability to collect in case of default.					
Is the execution date filled in and does it precede the filing date of the bond with the BLM?						
The bond has been reviewed and meets the requirements for personal (cash) bonds and I recommend acceptance.						
Signature _____				Date _____	(February 2009)	

Illustration VII-9
Sample Irrevocable Letter of Credit (ILC)
Page 1 of 2

Bank Letterhead Here
Letter of Credit Number _____

Date__

United States Department of the Interior
Bureau of Land Management

RE: Performance and Payment Bond
Amount_____

Gentlemen:

We hereby establish this irrevocable standby letter of credit in your favor for the account of: [permittee name], up to the aggregate amount of _____, U.S. dollars, available by your drafts drawn on the issuing bank at sight accompanied by the following documents:

A signed statement from the Bureau of Land Management, United States Department of the Interior, stating the following:

“We hereby certify that _____ has failed to perform and/or make payments in accordance with the terms and conditions of O & C Logging Road Right-of-Way Permit No._____.

Special Conditions:

Partial drawings are permitted.

This credit expires at the counters of the issuing bank on _____.

This credit is subject to the “Uniform Customs and Practice for Documentary Credits, (1974 Revision)” International Chamber of Commerce, Publication No. 290, or any further revisions thereof.

Illustration VII-9
Sample Irrevocable Letter of Credit (ILC)
Page 2 of 2

We hereby engage with drawers, endorsers, and bona fide holders that drafts and documents will be honored upon presentation.

Bank Signature Here

[Name and Title of Signer]

Verified by: _____
Approved by: _____
Date: _____

Release of Irrevocable Letter of Credit

The Bureau of Land Management, U.S. Department of the Interior hereby releases all right, title and interest in, to and under the form of deposit described in the above Irrevocable Letter of Credit.

Dated: _____

U.S. Department of the Interior
Bureau of Land Management

By:
Name: _____
Title: _____

cc: Owner

Illustration VII-10

Sample Assignment of Funds for Surety of Performance (AFSP)

Page 1 of 3

permittee Letterhead Here
(or not required if individual)

Date

United States Department of the Interior
Bureau of Land Management

RE: Assignment of Funds for Surety of Performance and Payment Bond
As required as a condition of BLM issuing
O&C Logging Road Right-of-Way Permit No. _____, Serial No. _____
Amount: _____

The undersigned owner (and co-owner, if any) of the following account:

[type of account, e.g., Certificate of Deposit, Savings Account] numbered
_____, held with the [name of bank or financial institution],

Hereby assigns his or their right, title and interest in, to or under said "deposit" to
the United States Department of Interior, Bureau of Land Management in the
amount of [dollar amount spelled out in words] and no/100 dollars,
\$ _____, until such time as the assignment of funds is released by the
U.S. below.

Such amount shall be for the purpose of surety in lieu of a performance bond by
a surety company required by O&C Logging Road Right-of-Way Permit No.
_____, Serial No. _____, issued to the above owner. The Bureau of
Land Management, U.S. Department of Interior shall be authorized to charge
against the described "deposit" for any unpaid claims arising out of and
pertaining to said contract. Such claims upon the funds shall be submitted to the
[financial institution], accompanied by a letter containing the following:

"We hereby certify that _____
has failed to perform and/or make payments in accordance with the terms and
conditions of O&C Logging Road Right of Way Permit No. _____, serial
No. _____ and the U.S. Department of Interior, Bureau of Land
Management, hereby makes claim against Account No. _____ of your client
_____, in the amount of \$_____."

Illustration VII-10

Sample Assignment of Funds for Surety of Performance (AFSP)

Page 2 of 3

RE: Assignments of Funds for Surety of Performance and Payment Bond required under BLM O&C Logging Road Right-of-Way Permit No. _____, Serial No. _____, Amount: _____

Any interest earnings shall remain the property of the Owner. It is agreed the issuing institution will hold the "deposit" in trust for the uses and purposes stated above until released by the Bureau of Land Management, U.S. Department of Interior. Time Deposits shall be automatically renewable at maturity dates at the rates and terms in effect at the time of renewal.

SIGNATURE OF OWNER OF ACCOUNT:

(Date)

SIGNATURE OF Co-OWNER OF ACCOUNT:

(Date)

FINANCIAL INSTITUTION CONCURRENCE:

Signatures of all owners of the above account have been verified. We hereby engage with drawers, endorsers, and bona fide holders that drafts and documents will be honored upon presentations.

Name of Institution: _____
Address: _____

Signature: _____
Title: _____
Date: _____

Illustration VII-10

Sample Assignment of Funds for Surety of Performance (AFSP)

Page 3 of 3

RE: Assignments of Funds for Surety of Performance and Payment Bond required under BLM O&C Logging Road Right-of-Way Permit No. _____, Serial No. _____, Amount: _____

BLM RELEASE OF ASSIGNMENT

The Bureau of Land Management, U. S. Department of Interior hereby releases all right, title, and interest in, to and under the form of deposit described in above assignment.

SIGNATURE OF AUTHORIZED OFFICER:

Title:

Date:

cc: Owner of Account (Permittee)

Illustration VII-11
Notice of Defective Personal (Cash) Bond
Page 1 of 3

IN REPLY REFER TO:
2812[org code]
[Permit/Serial Nos.]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DATE

We Wanna Log II	:	O&C Logging Road
_____	:	Right-of-Way Permit
_____	:	[Serial No. _____]
_____	:	[Permit No. _____]

NOTICE OF DEFECTIVE PERSONAL (CASH) BOND

Dear Permittee:

By letter dated _____, you were sent two copies of a draft permit for you to sign, as well as a request for submittal of your performance bond in the amount of \$_____ before I can sign Permit No. _____, serial No. OR _____.

You chose to fulfill the bonding requirement with a surety] bond. Unfortunately, we are unable to accept your bond at this time for the following reasons:

[Select all reasons that apply. Delete those that don't.]

- The bond is not filed on the proper form. For an individual bond, it needs to be filed accompanied by a Form OR 2812-12. For a blanket bonds, it needs to be accompanied with a Form OR 2812-13. You have chosen to file [an individual] [a blanket] bond. We have enclosed the correct form (OR _____) for you to resubmit your bond.
- Your blanket bond does not clearly identify which permits are covered or does not contain wording similar to: “. . . covers all rights-of-way, permits or license agreements held by the Principal.”

Illustration VII-11

Notice of Defective Personal (Cash) Bond

Page 2 of 3

- The named Principal name (you, as the Permittee) is not correct. [(State why: It does not match your application, it does not match the corporate information supplied, etc.)]
- The address shown for the Principal (you) is not the same as you indicated on your application.
- The bond form is not properly executed by the Permittee (you). We do not have evidence that the person signing for the bond has proper signing authority for the [company] [corporation].
- The bond amount is not correct. You submitted a bond in the amount of \$_____. The required amount is \$_____.
- Is the bond amount is not spelled out in words.
- Is the bond No. is not clearly shown.
- The execution date [is not filled in] and/or [does not precede the filing date filing date of the bond with the BLM].
- The surety company issuing the bond is not on the approved list of bonding companies by the Department of Transportation (DOT) [or they are on the approved list, but DOT does not indicate they are not approved for Oregon].

If you wish to proceed with issuance of Permit No. _____, please provide a new bond that corrects the above deficiencies. You may contact _____ at _____ to answer any questions related to ensuring your bond is filed properly.

Illustration VII-11
Notice of Defective Personal (Cash) Bond
Page 3 of 3

If we do not receive a corrected bond within 30 days of your receipt of this letter, we will consider your application to be withdrawn and will proceed to close out your case file.

Sincerely,

Field Manager
_____ Resource Area

Enclosure

[THE ENCLOSURE IS THE CORRECT BOND FORM FOR BLANKET OR INDIVIDUAL]

Illustration VII-12
 Sample Letter Fully Releasing Surety Bond & Case Closure
 Page 1 of 2

2812(OR-112)
 [Permit No.]
 [Serial No.]

We Wanna Log II

RELEASE OF BOND, REFUND OF FEES & CASE CLOSURE

Permit _____, Serial No. _____

Dear _____:

You reported final hauling of _____ MBF of timber over Bureau of Land Management (BLM) roads under O&C Logging Road Right-of-Way Permit No. _____. serial No. OR _____. You paid advance fees in the amount of \$_____ when the permit was approved. The following table indicates you have made an overpayment (If Applicable) in the amount of \$_____. A revised fee schedule (Exhibit C) is attached which shows the new total fee calculations by road.

	Road Use Fees	Surface Replacement Fees	Maintenance Fees	Totals
Advance Fees Paid				
Actual Fees Due for Hauling _____ MBF				
Overpayment to be Refunded (If Applicable or additional Amount due)				

You should receive a refund from our National Business Center within approximately 7-10 days.

Illustration VII-12

Sample Letter Fully Releasing Surety Bond & Case Closure

Page 2 of 2

An inspection of the roads has been performed and it has been determined that you left the roads in “at least as good condition” than what existed prior to your use and that no resource damage occurred.

You have fulfilled all other terms and conditions of the permit.

Therefore, your surety bond underwritten by _____ (No. _____, filed on [date] in the amount of \$_____) is hereby fully released.

A copy of this letter is also being sent to your surety company.

This permit case file is now considered closed.

Sincerely,

Field Manager

Resource Area

Enclosure

cc:

Accounting Tech (OR-_____)

Surety Company

[THE ENCLOSURE IS THE UPDATED FEE SCHEDULE]

Illustration VII-13
 Sample Letter Fully Releasing Cash Bond and Case Closure
 Page 1 of 2

2812(OR-112)
 [Permit No.]
 [Serial No.]

We Wanna Log II

DECISION
 RELEASE OF BOND, REFUND OF FEES **[IF APPLICABLE]** & CASE
 CLOSURE

O&C Logging Road Right-of-Way
 Permit _____, Serial No. _____

You reported final hauling of _____ MBF of timber over Bureau of Land Management (BLM) roads under O&C Logging Road Right-of-Way Permit No. _____, serial No. OR _____. You paid advance fees in the amount of \$_____ when the permit was approved. The following table indicates you have made an overpayment (If Applicable) in the amount of \$_____. A revised fee schedule (Exhibit C) is attached which shows the new total fee calculations by road.

	Road Use Fees	Surface Replacement Fees	Maintenance Fees	Totals
Advance Fees Paid				
Actual Fees Due for Hauling _____ MBF				
Overpayment to be Refunded (If Applicable or additional Amount due)				

Illustration VII-13

Sample Letter Fully Releasing Cash Bond & Case Closure

Page 2 of 2

You should receive a refund from our Denver Business Center within approximately 7-10 days.

An inspection of the roads has been performed and it has been determined that you left the roads in “as good or better condition” than what existed prior to use and that no resource damage occurred.

You have fulfilled all other terms and conditions of the permit.

Therefore, your cash bond, filed on [date] in the amount of \$ _____) is hereby fully released. You should receive a refund within 7-10 days.

A copy of this letter is also being sent to your surety company.

This permit case file is now considered closed.

Sincerely,

Field Manager
_____ Resource Area

Enclosure

cc:
Accounting Tech (OR-____)
Surety Company

[THE ENCLOSURE IS THE UPDATED FEE SCHEDULE]

Illustration VII-14

Sample Sight Draft Letter for Irrevocable Letter of Credit (ILC)

Page 1 of 1

Date: _____

Issuing Bank
Street Address
City, State & Zip Code

SIGHT DRAFT

Draft No. _____

Permittee: _____

Permit No.: _____

ILC No: _____

ILC Value: _____

At sight, upon presentation, pay to the order of the United States Department of the Interior, Bureau of Land Management, the sum of

(\$ _____), drawn under Irrevocable Letter of Credit No. _____

Of the

_____ of _____
Banking Institution Address

This letter is certification that the Permittee has failed to comply with the authorization in accordance with terms and conditions of the above referenced permit.

UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Land Management

By: _____

Title: _____

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VIII. ROAD USE (U.S., PERMITTEE, AND THIRD PARTIES)

A. Purpose and Authorities

The purpose of this chapter is to provide guidance on the different aspects of road use authorization under the 43 CFR 2812 regulations for: 1) U.S. use of permittee roads, 2) permittee use of U.S. roads, and 3) third party use of U.S. or permittee roads.

This chapter includes guidance for requesting terms and conditions of use, road use reporting, maintenance responsibilities, road use monitoring, billing and collections.

Since the 2812 regulations are specifically for “tramroad” purposes and this chapter covers road use, it is important to understand the definition of “tramroad” as found in the regulations (see glossary):

tramroads include tramways, and wagon or motor-truck roads to be used in connection with logging, and the manufacturing of lumber; it also includes railroads to be used principally for the transportation, in connection with such activities, of the property of the owner of such railroad. [Definition from 43 CFR §2812.0-5(f).]

1. Authorities, Provisions, and Definitions for “Forest Products” (Including Mineral Products)

The hauling of timber is straightforward and will not be defined further. However, since this chapter provides guidance on the hauling of timber and “forest products,” this section provides references and guidance for understanding what other “forest products” are allowable uses under the 2812 regulations. The following regulations refer to hauling of “forest products” by both the U.S. and permittees:

§43 CFR 2812.0-5(h) [Agreement]
Licensee of the United States is, with respect to any road or right-of-way, any person who is authorized to remove timber or forest products from lands of the United States, or to remove timber or forest products from other lands committed by a cooperative agreement to coordinated administration with the timber of the United States over such road or right-of-way while it is covered by an outstanding permit, or while a former permittee is entitled to receive compensation for such use under the provisions of these regulations. A licensee is not an agent of the United States.
[Underline added.]

and

§ 2812.2-1 Nonexclusive license [Permit]

. . . The permits are merely nonexclusive licenses to transport forest products owned by the permittee. . . [Underline added.]

The boilerplate for the standard template reciprocal right-of-way agreement (Agreement side) contains the following provision (as part of the granting clause) which authorizes use of permittee lands by U.S. and its licensees (see page 24, Form OR 2812-16, Illustration V-2):

1. b. To the United States and its licensees, pursuant to 43 CFR §2812.3-1(b), the rights to use the roads and rights-of-way owned or controlled by the Permittee across the hereinafter described lands for the management and removal of timber and other forest products or mineral products from lands of the United States . . . [Underline and bold added.]

The boilerplate for the standard template reciprocal right-of-way agreement (Permit side) contains the following provision which authorizes use of U.S. lands, roads or right-of-way by the permittee (see page 1, Form OR 2812-16, Illustration V-2):

The use of such lands, roads and rights-of-way by the Permittee shall be for the purpose of management and removal of timber, forest and mineral products from lands which are owned or controlled by Permittee as of the time of exercise by Permittee of the rights herein granted by the Government. [Bold and underline added.]

Both of these stipulations specify forest and mineral products. However, each reciprocal right-of-way way agreement should be checked for the exact authorizing wording. Most existing semi-detailed agreements are similar. In order to correctly administer the agreements for road use requests, this handbook includes a glossary definition for “forest products” as follows:

forest products: Timber or other vegetative resources derived from timber (i.e., firewood, chips, poles, cull, and salvage material). Forest products may also include mineral materials (i.e. sand, gravel, and riprap) only to the extent they are to be used in connection with logging, and the manufacturing of lumber (see definition of tramroads). Mineral material as described herein does not include locatable minerals (such as gold, silver, iron ore, etc.) or the commercial removal of mineral material from the forest for delivery to the market place.

Timber and commercial wood products easily fit into the above description and no special explanation is necessary regarding the right to haul timber and wood products. However, while “chip” material is a wood product, there are some special considerations for reporting haul. Chip haul is covered in Section C. below.

The hauling of mineral materials is an integral part of the maintenance and construction of roads used for the transportation of timber and other forest products in western Oregon. As described in the glossary definition for forest products above, mineral material is an allowable use under reciprocal right-of-way agreements and O&C permits if the mineral material is associated with “logging and manufacturing of lumber” (tramroad definition). Even if mineral products are not specifically authorized in the granting clause of a specific reciprocal Permit or Agreement, the above guidance makes it clear that mineral haul is an allowable use as long as it is associated with “logging and manufacturing of lumber.”

As noted in the definition of “forest products,” mineral products that are associated with logging typically include (but may not be limited to) sand, gravel (pit run, grid rolled, crushed rock), riprap, etc., and any of these products are considered a legitimate use under the 2812 regulations (as long as it is associated with “logging and the manufacture of lumber”).

a. Mineral Haul that Does Not Qualify under the 2812 Regulations

As noted above, the glossary definition for “forest products” excludes locatable minerals such as gold, silver, etc. Therefore, the hauling of locatable mineral materials shall not be authorized under the 2812 regulations. A more appropriate authority for authorizing the haul of locatable minerals is Title V of FLPMA.

Another exception to mineral haul under the 2812 regulations is for commercial haul of rock from its source to the marketplace (the rock is not being placed on logging roads in support of the removal of timber). This exception would include the hauling of such things as moss rock or other decorative rock that is being hauled over each other’s roads merely for getting it to the marketplace.

The hauling of rock from a commercial pit is also not authorized if it is being hauled to sell at the marketplace and not being placed on logging roads.

b. Reserved

2. Current Mineral Haul Reporting Policy and Future Expectations

See Chapter XV., Section J. for the current mineral haul reporting policy. It is anticipated that the current mineral haul reporting policy will be superseded by an alternative road maintenance fee model (which will incorporate mineral haul use

into the timber haul fees) to be implemented on or before December 31, 2010, at which time the interim Oregon/Washington Road Maintenance Fee Schedule will expire. Until the policy is superseded, the procedures found in this handbook incorporate the interim procedures for implementing policy for mineral haul.

For guidance on BLM reporting of mineral haul, see Sections F.4. (BLM Reporting), and G.10. (Permittee Reporting) of this chapter.

B. Road Maintenance Rights and Responsibilities Associated with Reciprocal Right-of-Way Agreements

Chapter XV. of this handbook addresses specifics of the BLM transportation management system and program. Since road maintenance is an integral part of road use, this chapter section is included to provide guidance on rights, roles and responsibilities for road maintenance, including collection of fees under the terms of reciprocal right-of-way agreements and unilateral permits.

The BLM is responsible for maintaining roads that it owns at standards set forth in BLM 9100 Series Manuals and the Best Management Practices (BMP's) as listed in each District's approved land use plan.

The right-of-way provisions of Section 502 of FLPMA authorize the Secretary of the Interior:

to provide for the maintenance of roads within and near the public lands and perform that work, in part, by cooperative financing with other public agencies and with private agencies and persons in proportion of their use.

The terms and conditions of most reciprocal right-of-way agreements in western Oregon provide that the party who performs the maintenance on a road shall be entitled to recover pro rata maintenance expenses from others who use the road for the removal of timber and other forest products. The following is found as paragraph No. 7 of the Exhibit B in the standard reciprocal right-of-way agreement template (Form OR 2812-16, Illustration V-2, pages 34 and 35).

7. Annual Meetings and Road Owner First Right to Maintain (Applies to U.S. and Permittee). Representatives of the United States and Permittee will meet annually for the purpose of discussing matters relating to this Agreement, unless otherwise agreed upon. The party who owns or controls any road across the lands in Schedules 1 or 2 shall have first opportunity to perform maintenance on such road. If the party who owns or controls the road is not maintaining it and fails to maintain it promptly upon request by the other party, the other party may proceed to perform the maintenance. The party who performs the maintenance shall

be entitled to recover pro rata maintenance expense from others who use the road for the removal of forest products. Maintenance expense (for purposes of calculating pro-rata maintenance expenses) shall include all expenditures necessary to place a road in satisfactory condition for log hauling, to keep it in such condition and to reasonably protect the road from winter weather. Catastrophic maintenance or bridge replacement shall be treated as a capital expenditure under paragraph _____ above. [Underline added.]

The following provision (No. 9 in the Exhibit B of the standard reciprocal right-of-way agreement (Form OR 2812-16, Illustration V-2, page 35) discusses the responsibility for reporting haul and payment of pro-rata maintenance fees during the period a party is maintaining the road.

9. Party Maintaining Road Has Rights to Collect Pro Rata Maintenance (Applies to U.S. and Permittee). The party who performs the maintenance shall be entitled to receive from each road user a certified statement of the number of M bd. ft. of forest products moved over the road by such user. Such certified statement shall be submitted quarterly [each permit has specific time frame] and shall show the M bd. ft. hauled over the road during the previous month. Unless otherwise agreed upon, payment for maintenance shall be made within thirty (30) days following the billing. Either party to the Agreement shall be entitled to examine the records of the other party relating to expenses for maintaining the roads covered by this agreement and the records relating to the collections of maintenance fees from road users. If the United States performs the maintenance of a road owned or controlled by it, and the Permittee pays the United States therefore, the Permittee shall be relieved of the maintenance requirements of 43 CFR §2812.6-2(b)(1) and (2).

Regarding the right to “recover pro rata maintenance expense,” this handbook does not provide detailed information on the historical practice of calculating exact pro-rata maintenance expense to be recovered from others who use the road. Historically, there was a complex process (similar to road use fee calculations) which was completed when there were pro-rata expenses to collect. The determination of pro rata has historically been based on the percentage of use done by each party during the period of maintenance responsibility by one party.

Over the years this practice has been replaced with the use of the BLM Oregon/Washington Road Maintenance Fee Schedule being used in lieu of true pro-rata maintenance fee calculations. In this case, the party that is maintaining the roads (and thus entitled to collect pro rata fees) will charge other users of the

roads the standard maintenance and/or surface replacement fees in lieu of actual pro-rata calculations. This practice was developed by mutual consent of the BLM and permittees due to the cumbersome process of actual pro-rata maintenance fee calculations. See also Chapter XV., Section C., for more discussion on pro rata maintenance.

C. Chip or Biomass Haul

It is worth noting that in certain circumstances the hauling of chip material would be reportable (separately from the reporting of merchantable timber). This requirement would apply to the permittee when submitting their Report of Road Use. It would also be included in license agreements for BLM timber sales, and thus would qualify for payment of fees to the permittee.

To determine whether hauling of chip material should be reported and paid for separately from merchantable timber depends on whether it is considered “incidental” to the harvesting and haul of a green timber sale. The determination of this may not be straightforward, so this section provides some guidance to help in this determination.

- If the “chip” material is the slash material left from a green timber sale, then it is considered to be “incidental” and it would ride free (and would not be reportable).
- The timing of the chipping of the slash material that is “incidental” to a green sale is irrelevant. That is, if a green sale is harvested and hauled in one year and the purchaser comes back the following year to chip and haul the slash material, the haul of the chip material is still “incidental” to the green sale and thus would ride free (and would not be reportable).
- If BLM or the permittee have a strictly biomass or chip sale in which all of the harvest unit is being chipped (there is no green timber being harvested in the unit to be hauled), then the chip hauling would be reportable (separate from the merchantable timber) and billed at the rates in the BLM Oregon/Washington Road Maintenance Fee Schedule in effect at the time of haul. In this case, the chip haul would be reported separately from merchantable timber.

D. Helicopters as a Legitimate Use under the 2812 Regulations

The O&C right-of-way regulations (43 CFR 2812) were developed in order to allow the use of U.S. and private lands for access to both federal and non-federal timber lands for the purpose of management and removal of timber and other forest products. Logging practices have evolved since the regulations were originally crafted making helicopter logging economical in some circumstances. Since helicopters are used for the “management and removal” of forest products

from lands of the U.S. or permittees, this use is considered to be consistent with the purposes of the reciprocal right-of-way agreements and regulations.

No revisions or amendments to semi-detailed agreements are required in order for either party to use each other's lands for helicopter use.

The actual helicopter use is implemented differently depending on whether or not the provision found directly below is present in the reciprocal right-of-way agreement.

1. Helicopter/Heliport Provision Developed for Older Arbitration-Type Agreements

When dealing with the older "arbitration" type of agreement (mostly pre-1960), the Regional Solicitor developed the following provision in order to recognize and authorize helicopter use in these older agreements. Many arbitration agreements (and some semi-detailed agreements) have been amended to include the following provision:

The Permittee and the United States agree that each party may construct, improve and maintain heliports, heliponds with supporting water supply systems and temporary logging landings upon the other party's lands described in Schedules 1 and 2, for forest management use by the constructing party, its agents, contractors and in the case of the United States, its licensees; provided, however, that prior to the construction of a heliport, helipond or temporary log landing, approval of the location, design, access and flightways (if applicable) must be obtained in writing from the landowner and agreement must be reached as to the disposal of any timber on the site and provided further, that said heliports and heliponds shall not be used for aerial logging or log transportation, the storage of fuel and other petroleum products or log transportation, the storage of fuel and other petroleum products or as a site for the construction of any hangar, shop or other buildings without the written approval of the landowner and subject to such additional terms and conditions as he may require. The Permittee and the United States also agree that each party, its agents, contractors and in the case of the United States its licensees, may use the other's heliports and heliponds constructed upon any lands described in Schedules 1 and 2, under terms and conditions to be mutually agreed upon.

2. Helicopter Use if Provision is Absent in Semi-Detailed Agreements

If the above provision is absent in the specific semi-detailed agreement, the following is the process to be followed:

a. Use of Existing Landings for Helicopter Purposes

The use of each other's lands for helicopter purposes (either as a service landing or as a log landing) is accomplished by the using party requesting terms and conditions of use (see Sections F.3.b. (BLM Use) and G.1. (Permittee Use)). The request should specify whether the request is for a helicopter service landing or a helicopter log landing.

If the U.S. has a need for helicopter use on permittee land under a BLM timber sale, the request is included in the request for terms and conditions of use as described in Section F.3.b. of this chapter. The permittee will include the terms and conditions for helicopter use in the draft license agreement to be available at time of advertisement.

If the permittee wishes to use U.S. lands for helicopter purposes, the request is included in the request for terms and conditions of use as described in Section G.1. of this chapter. The AO will include the terms and conditions of helicopter use along with the terms and conditions of road use.

b. Requests for Construction of a Helicopter Landing

See Chapter IX., Section B.10. for processing requests for construction of heliports or helipads.

3. Helicopter Use if Provision Is Present

If the provision shown in Section D.1., above, is found in any reciprocal right-of-way agreement (arbitration or semi-detailed), the following is provided as guidance in the administration and implementation of this provision.

a. Use of Existing Landings

If the requested helicopter use is for "existing" landings, the using party will prepare a request for terms and conditions of use (the same as for request of road use as identified in Sections F.3.b. (U.S. Use) and G.1. (Permittee Use) below. The request should specify whether the request is for a helicopter service landing or a helicopter log landing.

However, if the above provision is present, it says that the landowner:

. . . may use the other’s heliports and heliponds constructed upon any lands described in Schedules 1 and 2, **under terms and conditions** to be mutually agreed upon. [Underline added.]

Therefore, since the words “to be mutually agreed upon are in the provision, if that provision is present, the landowner and the requestor (or heliport user) must “mutually agree” to the terms and conditions.

The written terms and conditions which are “mutually agreed upon” are included in the BLM’s terms and conditions letter back to the permittee if the request is from the Permittee. If the request is from the BLM, the “agreed upon” terms and conditions are included in the draft license agreement supplied by the permittee prior to advertisement of the timber sale.

b. Construction of New Heliports/Helipads

See Chapter IX., Section B.10.a.1) for processing requests for construction of heliport and helipads if the provision shown in Section B.1., above, is present in the reciprocal right-of-way agreement.

E. Determination of Road Ownership and Control Prior to Requesting or Authorizing Use

The remainder of this chapter provides specific guidance on requesting and authorizing road use by either the U.S. or permittee. Before requests are made or processed by either party, it is important to understand the definitions of road ownership and control. The glossary definitions for these terms are:

road control: The right to use the road and authorize third parties to use the road subject to the rights of the road owner.

road ownership: The rights of road ownership include: 1) use of the road, 2) first right of maintenance on the road and collecting pro-rata expenses from other users, or allowing for operator maintenance, 3) collection of road use fees from other users for amortization of the replacement cost of the road, and 4) establishing reasonable traffic regulations for the use of the road which are applicable to all users of the road, including the road owner.

Illustration VIII-1 (Road Ownership and Control Matrix) has been developed as an aid in determining road control and ownership of various categories of roads. This matrix also indicates which party, has the:

- first right of maintenance on the road and collecting pro-rata expenses from other users, or allowing for operator maintenance,

- right to collect road use fees from other users for amortization of the replacement cost of the road,
- right to establish reasonable traffic regulations for the use of the road which are applicable to all users of the road, including the road owner, and
- right to authorize third parties to use the road.

F. BLM Use of Existing Permittee Roads – Authority, Requirements

This section covers use of permittee roads: 1) directly by BLM (not through a timber sale), and 2) by BLM licensees (timber sale purchasers). The following sections provide guidance for each of these three uses.

1. U.S. Direct Use of Permittee Roads for Timber Haul (Other than through Licensee)

Pursuant to 43 CFR §2812.4-2, in the event the U.S. itself (instead of through a licensee) removes forest products over any road or right-of-way of the permittee or his successor in interest, the following shall apply:

- The U.S. shall pay to a permittee reasonable compensation in the same manner as a licensee would pay.
- No bond or other security or liability insurance is to be required of the U.S.

2. BLM Licensee (Timber Sale Purchaser) Use of Permittee Roads

The rights of the U.S. and its licensees to use permittee roads are found in the granting clause of the Agreement (see page 24 of Form OR 2812-16 (Illustration V-2)):

1. a. To the United States, pursuant to 43 CFR §2812.3-1(a), rights-of-way across the following-described lands for use by the United States, its licensees and permittees, for the following specified periods of time: (Underline added.)

and

1.b. To the United States and its licensees, pursuant to 43 CFR §2812.3-1(b), the rights to use the roads and rights-of-way owned or controlled by the Permittee across the hereinafter described lands for the management and removal of timber and other forest products from lands of the United States:

As noted in the above provision, the rights are tied to the regulations at 43 CFR §2812.3-1(a) and (b). See Chapter V., Section F.2.a. for a detailed discussion on the nature of rights found in the Agreement.

The specific use of permittee roads or lands by a BLM timber sale purchaser is authorized via a license agreement, which has been defined as:

A contract between a United States' forest products Purchaser (Licensee) and the Permittee (Licensor), detailing the terms and conditions of the Licensee's use of the Licensor's roads and lands.

a. Requirement for License Agreement

Paragraph 6. of the Exhibit B to the standard template for reciprocal right-of-way agreements (see Form OR 2812-16, Illustration V-2, page 34) provides the standard verbiage authorizing BLM licensees' use of permittee road and establishes the requirement for a license agreement:

6. BLM Licensee Use of Permittee Roads. When a Licensee of the United States uses any road which is owned or controlled by the Permittee, located on the lands described in Schedules 1 or 2, or severs Licensor's timber in the construction of a road(s) the Licensee shall enter into an agreement with the Permittee. The form of such agreement has heretofore been submitted by the Permittee to the United States. Such form shall not be changed unless the change is previously approved by the Authorized Officer. [Underline added.]

Therefore, a license agreement is required when a BLM timber sale purchaser needs to: a) use permittee roads (for timber, mineral or other forest products); or b) sever timber owned by the permittee in the construction of roads (if the underlined verbiage regarding timber as shown above is included in the specific reciprocal right-of-way agreement)

b. Form of License Agreement

A license agreement could be required by permittees for purchasers of all types of forest products, including minor forest products (though the use of a license agreement for minor forest products is rare). This section provides limited guidance for minor forest product sales, but primarily focuses on license agreements for advertised timber sales.

1) Short Form License Agreement for BLM Sale of Minor Forest Products or Negotiated Sales

With respect to the sale of minor forest products by the BLM, sales are generally made in areas with public access where there would be no need for a license agreement. If sales are made in areas where BLM's purchaser would need access over permittee-controlled roads included in Schedule 2 of an Agreement, the permittee has discretion whether to require the purchaser to enter into a license agreement for the sale of minor forest products or not. If a license agreement is required by the permittee, BLM must incorporate the requirement for a license agreement into its minor forest product sale contract. Some districts and permittees have developed and agreed to a "short form" license agreement format to be used for the sale of minor forest products (sometimes including the "short form" sale of blow-down or salvage timber). In this situation, an Agreement would have two standard license agreement formats. A sample "short form" license agreement is shown in Illustration VIII-2.

If road use fees are included in the short form license agreement the fees paid by the licensee should be posted to the road amortization records in order to credit the U.S. for payments against the U.S. deficit share in any roads. The permittee should always be contacted for sales of minor forest products using permittee roads to see if they desire a license agreement.

2) Form of License Agreement for BLM Advertised Timber Sales

Most reciprocal right-of-way agreements have a specific license agreement format which has been previously agreed to by the BLM and the permittee at the time the reciprocal right-of-way agreement was executed. This form is usually an attachment to the Exhibit B of the Agreement.

a) New Reciprocal Agreements

The current wording in the standard reciprocal Agreement as found in Form OR 2812-16 (Illustration V-2, Exhibit B, portion of paragraph 9, page 35) regarding the "form" of the License Agreement follows:

. . . The form of such agreement has heretofore been submitted by the Permittee to the United States. Such form is attached hereto and made a part hereof and shall not be changed unless the change is previously approved in writing by the Authorized Officer. Since this License Agreement is a part of a recorded document, any changes thereto must be made by a recorded amendment.
[Underline added.]

Any new reciprocal right-of-way agreements shall be executed using this underlined wording, thus requiring an amendment signed by both parties in order to modify the standard form.

b) Existing Reciprocal Right-of-Way Agreements

Most existing right-of-way agreements contain the following language in Exhibit B regarding the “form” of license agreement to be used.

The form of such agreement is attached hereto and made a part hereof. Such form shall not be changed except by a recorded amendment to this agreement.

Therefore, since “approval” of an AO is inherently interpreted to mean a “written” approval, any modifications to the “form” of license agreement (if this wording is present) must be made in writing by the AO. At a minimum, the approval shall be made via a letter signed by the AO (and countersigned by the permittee to indicate concurrence). The new license agreement form shall be dated on the form itself and that date should be referenced in and attached to the approval letter. A copy of that letter with the license agreement form attached should be filed in the reciprocal right-of-way case file in the section where the main Agreement and Permit are filed (as it will most likely get lost if filed in the general chronological section. The letter and form should stay stapled together for reference.

While a formal amendment would not be required in this case (to modify a license agreement) if the above provision wording (requiring approval by the AO) is in the Agreement, the above paragraph directly sets forth the required process for modifying license agreement forms.

In the case of reciprocal right-of-way agreements that do not specify the form is to be approved by the AO and where the “form” of license agreement is a part of the recorded reciprocal right-of-way agreement, the form shall be approved only by amendment.

BLM shall ensure that the permittees are not submitting license agreements (which contain terms and conditions for BLM timber sales) on license agreement forms that have not been “approved by the AO” in writing or which contain provisions or wording that have not been approved.

The license agreement attached to the standard reciprocal right-of-way agreement (page 38 of Form OR 2812-16 – Illustration V-2.) is approved for use in any agreement. Any proposed revisions to a license agreement that has wording different than this form must be approved by the Oregon State Office. In some instances it may require advice from the Regional Solicitor, as some

seemingly innocuous wording could result in unintended consequences or burdens on the timber sale purchaser.

c) Older Agreements and Use of “Permit” Instead of License Agreement

Many older detailed (vs. semi-detailed) agreements (see glossary for both terms) refer to a "permit" (instead of license agreement), but with no particular format being prescribed. Since such permits serve the same purpose as license agreements, the term "license agreement" is used here.

c. License Agreements Covering More than One Agreement with an Individual Permittee

Some permittees hold rights under a number of permits covering several different geographic areas. Each of these reciprocal right-of-way agreements may have a different format for the license agreement. In such instances, it is administratively acceptable to jointly develop a "standard" license agreement which would be applicable to all the reciprocal right-of-way agreements with that permittee (provided that any deviation from the standard approved form that is a part of Form OR 2812-16 be approved by the Oregon State Office). The standard format could be used by more than one BLM district for the same permittee.

d. Payment under License Agreements for Scaled Sales

Road use fees due the permittee for cruised sales are payable when specified in the specific license agreement. Some permittees require the payment to be made in advance; others may specify the payment at the end of the timber sale. There is no requirement for the filing of a “Report of Road Use” by licensees, as the payment is lump sum based on the advertised timber sale volume and any modifications thereto.

However, payments for scaled sales present some unique problems. There are situations in which BLM sells timber based on an estimated volume to be scaled at the mill and payment for the timber is made based on the final scaled volume. One example of such a sale is for salvage sales (like blow-down timber sales). Since the sale is advertised and sold on an “estimated” volume with the provision that the final volume will be based on the final scale, it presents a problem related to license agreements. Since the actual volume is unknown at the time the request for terms and conditions is made, the executable license agreement to be provided by the permittee cannot include the actual volume and required payments which the license (timber sale purchaser) would be required to make. In order to accommodate this special circumstance, the BLM has approved the following wording for inclusion in the license agreements for such scaled sales. This wording should be negotiated with the permittee at the time the terms and conditions of use are requested prior to advertisement.

This timber sale is being sold on a scaled volume basis. The estimated road use and maintenance fees as noted in Tables _____ below are based on the BLM estimated timber sale volume. The Licensee is responsible for payment of the total amount of road use and maintenance fees (at the rates shown in Tables _____) to be paid to Licensor based on the Final Report of Volume (based on net merchantable timber) as determined by the BLM Authorized Officer. The Licensee is responsible for providing a copy of the Final Report Volume to the Licensor and making a final payment. If Licensor has required a pre-payment based on the estimated volume either an additional payment will be required or the Licensor will refund the difference if an over-payment has been made. If the Licensor required payment of fees at the end of the timber sale, based on the Final Report of Volume, the Licensee is responsible for the entire payment at the time the Final Report of Volume is determined.

If the permittee wants to use different wording than that shown in the above paragraph, the wording must be approved by the Oregon State Office prior to the AO approving its use for inclusion in license agreements. The wording should be approved in writing by the AO, the same as for approval of a new standard license agreement form (as attached to Form OR 2812-16--Illustration V-2, page 38). After approval, the new form should be filed in the main Agreement and Permit section--not in the chronological section.

Inclusion of this paragraph in the license agreement alone without a provision in the timber sale requiring a separate tracking of scale tickets by timber sale unit would be problematic, as it would be difficult to determine final actual volumes and payments due each permittee.

Therefore, the BLM Oregon State Office has approved the use of a new timber sale provision (RE-2E_(LA)) for inclusion in any scaled timber sales where there is payment to permittees. This provision is included here because, as of the time of publication of this handbook, it is not yet incorporated into the BLM Handbook H-5400-1, Oregon State Office. Once the H-5400-1 handbook is updated to include this provision, reference should be made to that handbook for the latest approved wording.

Instructions: Add RC-2E_(LA) to RC-2A when the Purchaser is required to pay road maintenance fees to a Licensor for the use of roads covered in a License Agreement. RC-2E_(LA) is for use with License Agreements and scale sales only.
LA = License Agreement.

RC-2E_(LA) The Purchaser shall pay an estimated road maintenance fee for each License Agreement specified in, Section 41 (C) (# for each RC-3, repeat as necessary), per thousand board feet log scale per mile for the use of roads specified in Section 41 (C) (# for RC-2A). The total maintenance fee due to each Licensor shall be based upon volumes determined pursuant to Section (2 and 3) of this contract and mileage of roads used as determined by the Authorized Officer. Prior to the use of such roads, the Purchaser (Licensee) shall give written notice to the Authorized Officer and Licensor of the roads intended for use in the removal of timber purchased under this contract, together with an estimate of the volume to be hauled over such roads from each unit. The Purchaser will be required to label, with a permanent ink marker, each load ticket with the corresponding unit number as directed by the Authorized Officer. The Licensee shall comply with the terms of License Agreements for the use of roads listed in Section 41 (C) (# for RC-2A), for the payment of fees and final fee reconciliation with the Licensor upon report of final volume removed as determined by the Authorized Officer.

e. BLM Employee Responsibilities Associated with License Agreements

The license agreement is executed between the BLM timber sale purchaser (licensee) and the permittee (licensor). While BLM is not a direct party (or signor) to the license agreement, BLM does have certain responsibilities as shown below.

1) Pre-Advertisement (Planner, Engineers, Appraisers, etc.)

The following are some of the responsibilities of different BLM employees in relation to license agreements. Regardless of which designated employee has the responsibility, the following items must be verified before the timber sale is advertised:

- Identify all permittee roads to be used in the timber sale and verify whether the U.S. has rights over those roads (see Illustration VIII-1).
- Ensure that all permittees are contacted and allowed 30 days to provide the terms and conditions of use of their roads for inclusion in the timber sale prospectus.
- Ensure that there is a set of RC stipulations outlining the terms and conditions of use of permittee roads (one for each and every permittee whose roads are being used).

- Ensure that all fees (road use, maintenance, surface replacement) to be paid to permittees are included in the appraisal section of the timber sale contract.
- Ensure that there is an executable form of a license agreement available for inspection by prospective bidders (one license agreement for each permittee).
- Ensure that the prospectus discloses the requirement to execute license agreement(s) and that all license agreement requirements are disclosed (payment of fees, bonding and insurance requirements, maintenance provisions, etc.).

2) Timber Sale Contract Administrator Responsibilities (Post-Award)

After the timber sale is awarded, the BLM Timber Sale Contractor Administrator responsibilities associated with license agreements include:

- At the pre-work: 1) provide three copies of the executable (but not yet signed) copies of all license agreements to the purchaser, 2) ensure that the purchaser fully understands the terms and conditions of the license agreement (fees, maintenance obligations, bonds, insurance, traffic regulations, notifications to permittee of start/stop of operations, etc.).
- Require the timber sale purchaser to provide fully executed copies of all required license agreements (signed by both licensee and licensor) prior to the purchaser's use of any permittee roads.
- Notify the licensor (permittee) when there are timber sale modifications which increase or decrease the timber sale volume to be hauled over permittee's roads or which add additional uses (new roads, new landings, etc.) of permittees lands or roads. Ensure that the timber sale purchaser understands their license agreement requirements related to timber sale modifications (i.e., there may be additional payments due to the licensor for modifications).
- Act as the agent of the Timber Sale Contracting Officer serving to facilitate the relationship between the licensor and licensee in order to ensure compliance with the terms of the license agreement. Licensee non-compliance with the terms of the license agreement constitutes a violation of the timber sale contract. If the Contract Administrator believes the licensor or licensee is not complying with the terms and conditions of the license agreement, the BLM Timber Sale Contract Administrator should advise both parties of their rights and options for resolving licensee non-compliance as outlined in Chapter VI., Section B. and so advise the

Timber Sale Contracting Officer. The Timber Sale Contract Administrator may be advising and assisting the AO in reaching a final decision on licensee defaults.

- If the BLM Timber Sale Contract Administrator believes the licensor (permittee) is not complying with the terms and conditions of the license agreement, the Timber Sale Contract Administrator should notify the reciprocal Agreement administrator and/or AO of the issues of noncompliance by the licensor (permittee) for resolution under the terms of the reciprocal right-of-way agreement (see Chapter VI. for guidance on resolving non compliance by permittees.)
- Prior to terminating the timber sale contract, receive certification from every permittee that licensee has satisfied all terms and conditions of the license agreement (including payment of all fees for the original timber sale and any modifications).

The following sections discuss each of these responsibilities in more detail.

3. License Agreement Process for BLM Advertised Timber Sales

The following sections provide detailed guidance for: 1) requesting terms and conditions of use for BLM advertised timber sales, 2) ensuring that those terms and conditions are built into the timber sale prospectus and contract, and 3) ensuring that all terms and conditions of the license agreement are met by the licensee prior to closing out the timber sale contract.

Prior to appraising and advertising a timber sale, the BLM must determine whether the purchaser will need to use any permittee roads or lands.

a. No Timber Sale Advertisement Unless All Permittees are Contacted and Allowed Regulatory Time to Respond

The regulations at 43 CFR §2812.6-2(a)(10) require the permittee to provide terms and conditions of use within 30 days of request by the AO. The BLM must allow the permittee the full 30 days as follows:

§2812.6-2 – Terms and conditions of permit
As to all permits: Every permittee shall agree:
. . . (10) Upon request of an authorized officer, to submit to the Bureau within 30 days with permission to publish, the detailed terms and conditions, including the fee which the permittee will ask as a condition of such licensee's use for the removal of forest products over any road or right-of-way which the United States and its licensees have acquired a right to use under §§ 2812.1-3 to 2812.1-5. [Underline added.]

If a BLM advertised timber sale involves the use of permittee roads, such a sale **shall not be advertised until all permittees involved are contacted and provided the regulatory 30-day period to provide terms and conditions of use** which terms and conditions are made available to prospective purchasers in the prospectus and timber sale contract.

b. BLM Request for Terms and Conditions

At a minimum, the BLM request for terms and conditions should include the following:

- The location of the timber to be sold.
- The amount of merchantable timber to be hauled over permittee roads.
- The amount of chip material (that is not associated with the harvest of merchantable timber) to be hauled over permittee roads—this is rare.
- Amount of mineral material (excluding patch rock, pothole repair, culvert replacement and bridge renovation and/or replacement) to be hauled over permittee roads.
- A map (sufficient to use as an attachment to the license agreement) showing the road(s) or improvements controlled by the permittee. The map should show: 1) the haul route, 2) the permittee road segments to be used, 3) the timber sale harvest area, 4) any heliports to be used, 5) any landings to be used, and 6) any permittee road segments which BLM plans on improving or renovating.
- The proposed timber sale advertisement date.
- The term (duration) of the sale (XX No. of months, not a specific date).
- A statement that the terms and conditions of use provided by the permittee shall be for the term of the timber sale contract, as well as for any modification or extension thereof.
- A request for the amount of any road use fees payable by a licensee over roads where BLM percentage shares have already been calculated. BLM's road amortization records should already show the amounts due and these can be put in the letter for permittee verification.
- A request for road use fee calculation(s) if the U.S. has never shared in the replacement cost of a permittee's road(s) or in the cost of improvement placed by the permittee. In new fee calculations are needed, the

request for terms and conditions should include the following for each road segment needing fee calculations: 1) tributary area map, and 2) tributary volume determination. (See Chapter IX.C. for guidance on preparing fee calculations.)

- A request for the permittee to identify the method of maintenance (whether they elect to waive their first right of maintenance and allow operator maintenance by the BLM timber sale purchaser or whether they elect to perform the maintenance and charge maintenance or surface replacement fees. If the licensor (permittee) will maintain the road or roads, the BLM letter should request that the amount of fees be paid by the licensee be provided on a road-by-road basis and not just a lump sum amount (including fees for mineral material to be hauled under the timber sale).
- A request for the amount of performance bond (if required by the licensor) and a statement that the amount of bond is limited to the “not to exceed” amount found in the particular reciprocal right-of-way agreement).
- A request for the amount of any insurance (if required) and a statement that the types and amounts of insurance and any other requirements for insurance are limited to what is specific in the particular reciprocal right-of-way agreement.
- A request to identify any other terms and conditions and reasonable road rules such as speed limits, dust abatement measures, seasonal restrictions, etc.
- A request for permission to publish the terms and conditions in the timber sale prospectus.

Illustration VIII-3 is a sample letter (which includes all of the above items) for BLM to request terms and conditions of use of permittee roads or improvements.

c. Executable License Agreement Received from Permittee

The permittee should return an unsigned (but executable) license agreement to the BLM prior to the time of advertisement. The license agreement with all of the terms and conditions must be available for inspection by all prospective bidders. **The permittee should not sign the license agreement in advance**, but should wait until it is presented by the successful bidder. Having the purchaser come in person to sign the license agreement will provide an opportunity for the licensor to discuss the terms and conditions of the license agreement with the licensee and to ensure that all the fees, bonds, insurance certificates, etc. are in order before the licensee starts hauling on licensor roads.

The “form” of license agreement submitted by the permittee should be validated to ensure that it is in the approved format for that particular Agreement. The form attached to the Form OR 2812-16 (Illustration V-2, page 38) is approved by the BLM State Office for use. This form could be negotiated with individual permittees to replace older versions.

The current standard license agreement form (which is a part of Form OR 2812-16—Illustration V-2, page 38), contains a header block which has a space for including the term (duration of the timber sale). This should not have a hard date but instead list the no. of months (or years) which matches the duration of the timber sale. In addition, the current standard license agreement form contains the following as the last provision:

This License Agreement shall remain in effect for the life of the above-described timber sale contract; including extensions or modifications thereto, and until such time as the Licensor has certified that all the terms and conditions specified therein have been met. [Underline added.]

If the current approved license agreement form for a particular Agreement does not contain the above wording, the BLM should negotiate with the permittee to modify the form to include this provision.

BLM should never prepare a license agreement to give to the successful bidder unless it has been prepared by the permittee (or at least the permittee has given preliminary approval in writing of the license agreement with the specific terms and conditions). E-mail concurrence or transmittal of an executable license agreement from the permittee would suffice, as long as it was sent by a person with delegated authority from the permittee to do so.

Permittees can require a BLM licensee to submit a performance bond in favor of the permittee to ensure performance, but they must disclose this requirement at the time the terms and conditions of use (in the draft license agreement) prior to advertisement of the timber sale.

d. If Permittee Fails to Provide Terms and Conditions of Use within 30 days

The regulations cited in Section F.3.a., above, (43 CFR §2812.6-2(a)(10)) require a permittee to submit terms and conditions for the use of their roads by the U.S. within 30 days of request by the AO. In addition, the following regulations specify that the permittee cannot unreasonably obstruct the U.S. or its licensees:

§ 2812.4-3 Agreements and arbitration between permittee and licensee respecting adjustment of road use.

(a) When the United States exercises the right received under this paragraph to use or to license any person to use a road of a permittee, the permittee or his successor in interest shall not unreasonably obstruct the United States or such licensee in such use. . . [Underline added.]

Failure of the permittee to submit terms and conditions within 30 days of the request would constitute permittee noncompliance with both the permit and the regulations. However, noncompliance resolution can be a lengthy process. To ensure that the permittee's failure to provide terms and conditions does not delay the advertisement of the timber sale, Illustration VIII-4 has been developed as a follow-up letter if an executable license agreement is not received within the requested 30 days.

This letter notifies the permittee that their failure to provide terms and conditions constitutes noncompliance and that the BLM timber sale will proceed with the following assumptions:

- The permittee has given up their first right to maintain and licensee maintenance will be assumed.
- The licensee will be required to pay surface replacement fees to the permittee, if the roads are surfaced.
- The required bond amount will be at the "not to exceed" amount [\$10,000] or as found in Exhibit B the reciprocal agreement.
- The required insurance amounts will be for the types and amounts specified in Exhibit B of the reciprocal agreement.
- The BLM will determine applicable road use fees payable to the permittee, if any. [If the BLM has provided the tributary volume and acres to the permittee for the yet-to-be-calculated roads and the BLM has not received the fee calculations, a fee calculation will be completed and presented to the permittee with rights of appeal.]
- The BLM will expect the permittee to execute a license agreement with the above terms and conditions once the sale is awarded.

e. Terms and Conditions of Use Built Into Timber Sale Prospectus

Once the executable license agreement (which contains the terms and conditions of use of permittee roads) has been received by the BLM, a copy should be made and given to the reciprocal Agreement administrator (so that it can get pencil posted to the amortization records).

Then, the BLM timber sale planner or engineer must ensure that all terms and conditions are included as provisions in the BLM timber sale contract. The requirement for a license agreement is reflected in BLM timber sale contracts by use of the standard timber sale provision Nos. RC-3, RC-3b, and RC-5 (as listed in "Sales of Forest Products," section in BLM Handbook H-5400-1, Oregon State Office). These provisions are not included in this handbook as they change over time and the source of the current approved wording for these provisions is found in the above handbook.

These provisions tie the BLM licensee's operations over permittee (licensor) roads to the appropriate reciprocal right-of-way agreement(s). The provisions can be combined and/or expanded to highlight specific requirements, such as: 1) requirement for a license agreement, 2) road use fees, 3) maintenance obligations, 4) bonding and insurance, etc.

The above timber sale provisions will be repeated as many times in the contract as necessary to cover one set for each reciprocal right-of-way agreement and permittee.

f. Licensor Must Require Their Own Bond if Desired

Some permittees have asked if they can file a claim against the BLM timber sale performance bond instead of requiring their own separate bond under the license agreement. The timber sale performance bond that is required of the purchaser by the BLM is issued in favor of the U.S. and not the permittee. Therefore, the permittee would have no right to go against the timber sale bond. If a permittee wishes to have the timber sale purchaser bonded for purposes of use of permittee roads, the bonding requirement must be included in the license agreement when they submit the terms and conditions of use prior to advertisement.

If there is noncompliance with terms and conditions of the license agreement by the BLM licensee, the options for remedy are identified in Chapter VI., Section B.2.).

g. Pencil Post Road Use Fees to Road Amortization Record

Once the executable license agreement is received, any road use fees that are identified to be paid by the licensee to the licensor shall be "pencil" posted to the road amortization records. This is to ensure there is no inadvertent overpayment of fees for a U.S. deficit balance. The final posting would occur once the timber sale has been awarded.

h. Execution of License Agreement Prior to Licensee Use of Permittee Roads

After the timber sale is executed, the BLM Timber Sale Contract Administrator must ensure that (prior to the purchaser using any permittee roads or lands) the license agreement is executed in the same form and terms and conditions as presented by the licensor prior to advertisement. The BLM Timber Sale Contract Administrator should review the license agreement to ensure that it does not contain a specific expiration date. The duration of the license agreement is for the life of the timber sale and any modification thereto. See the last paragraph in the license agreement attached as part of form OR 2812-16 (Illustration V-2, page 44).

The BLM Timber Sale Contract Administrator should provide two unsigned copies of the license agreement to the timber sale purchaser with instructions to meet with the licensor to get two copies signed (executed). It is the purchaser's (licensee's) responsibility to provide a copy of the fully executed license agreement (with signatures of both the licensor and licensee) to the timber sale administrator.

The BLM timber sale administrator will make a copy of the executed license agreement and give a copy to the reciprocal Agreement administrator. One copy shall be placed in the timber sale file.

i. Final Posting of Road Use Fees to Amortization Records

The reciprocal Agreement copy should get routed to the person responsible for posting to the road amortization records. Once the executed copy is received, any road use fees that are payable by licensee to licensor shall be final posted to the road amortization records.

j. LR2000 and MIS Posting of Executed License Agreement

After the license agreement is executed by both parties, the reciprocal Agreement administrator should update the serial register page in LR2000 for the particular Agreement (PT side) with an action code 950 (compliance approved) using the date the license agreement is executed. A unit of accomplishment is reported in MIS under the NH program element.

k. BLM as Intermediary—Administration of License Agreement

During the administration of the timber sale, BLM also serves as an intermediary between the permittee (licensor) and the purchaser (licensee) in the administration of the license agreement. BLM, though not a party (signor) to the document, has an obligation to all parties to minimize road use problems. Most problems are misunderstandings and they can usually be solved cooperatively and quickly.

Once executed, the license agreement is specific to a particular permittee (licensor) and is limited to the use of that permittee's roads and lands by the licensee for only the specific purposes identified in the license agreement. It does not provide blanket permission for the licensee to use any other permittee roads or to use permittee's roads for any other purposes such as hunting behind a locked gate, etc.

If the licensee should subsequently wish to use permittee roads or lands for other purposes related to the timber sale (such as use of additional roads because haul route has changed, or the empty trucks will return with a different route, etc.), the executed license agreement terms and conditions should be modified or a separate license agreement should be executed for the additional uses. Any modifications must have written concurrence by both the licensee and licensor and the BLM should ensure that no modifications are made which are not consistent with the approved form.

The license agreement does not give permission to the licensee to use permittee's lands for uses such as hunting on permittee land behind locked gates, etc.

I. Remedies for Violations by Licensee (BLM Timber Sale Purchasers).

See Chapter VI., Section B.2. or guidance on options which the permittee has when a BLM licensee has violated the terms and conditions of a license agreement.

m. Terms and Conditions of License Agreement Satisfied Prior to Termination of BLM Timber Sale Contract

Prior to the termination of the BLM timber sale and release of the purchaser's performance bond(s), the BLM Timber Sale Contract Administrator must contact the permittee to ensure that all terms and conditions of the license agreement have been satisfied. See Illustration VIII-5 for a sample letter to be sent to the permittee(s) prior to timber sale termination. The letter should include assurance that any timber sale modifications did not also require a modification to the license agreement for additional payments to the permittee. Or, if any modifications required additional payments to licensor, those additional payments have been made.

n. License Agreements in Arbitration Agreements

Arbitration agreements (see Chapter I., Sec. D.3.a.) do not require license agreements. However, there is no reason why the parties to an arbitration agreement cannot mutually agree upon a license agreement similar in format to

those used in connection with semi-detailed agreements. A license agreement specifies the terms and conditions of use, and serves as a vehicle to assure that the licensee is aware of such conditions and provisions. Additionally, the license agreement identifies fees owed the licensor, as well as reporting and payment requirements.

4. BLM Mineral Haul Reporting over Permittee Roads (Other than Timber Sales)

The current mineral haul policy (see Chapter XV., Section J.1.) requires the BLM AO to submit to each permittee a Report of Mineral Haul (Form OR 2812-20) over permittee roads on a semi-annual basis. The two reporting periods are for:

- 1) January 1 – June 30, and
- 2) July 1 through December 31.

These reports of BLM mineral haul should be submitted to the permittees within 30 days of the end of the required reporting periods. The policy requires filing reports and certifying that “no mineral haul” occurred as well. This policy does not include the report of mineral haul over permittee roads in connection with BLM timber sales. Any mineral volume hauled under BLM timber sales is already included in license agreements.

The non-timber sale haul of mineral materials could include: 1) hauling done by the BLM MO organization, and 2) mineral haul done under any contracts (other than timber sale) such as Title II, ERFO projects, etc.

Any haul of mineral material for patch rock, pothole repair, culvert replacement and bridge renovation and/or replacement is exempt from this reporting requirement. BLM offices shall use Form OR 2812-20 - BLM Report of Mineral Haul” (see Illustration VIII-6).

If BLM submits a haul report that contains qualified mineral haul quantities hauled over permittee roads, the permittee would then submit a bill to the BLM based on the BLM Oregon/Washington Road Maintenance Fee in effect at the time of haul.

There are two options for BLM paying for this mineral haul: 1) BLM would make an allowance (or modification) to the hard money contract (ERFO, Title II, etc.) and the contractor would make the payment to the permittee, or 2) BLM would use 9110 collections to pay for the maintenance fees for mineral haul that is not associated with timber sales. There is no option to “swap” maintenance fees.

G. Permittee Use of U.S. Roads

This section provides guidance on a permittee's use of U.S. owned or controlled roads, whether the road is 1) on U.S. land, 2) on private land where BLM controls the road via an exclusive easement, or 3) the BLM built and controls the road under a reciprocal Agreement. See Illustration VIII-1 – Road Ownership and Control Matrix.

This section covers permittee's use of U.S. roads over which rights have already been authorized (either through a unilateral permit or reciprocal Permit). If the roads are NOT already authorized in an existing reciprocal right-of-way agreement (Schedule 1) or unilateral permit, the road would first have to be amended into the permit. (See Chapter XII. for guidance on processing amendments.)

The following sections outline the process for permittee use, reporting, payment, monitoring, etc.

1. Permittee Request for Terms and Conditions of Use of U.S. Roads

See Section E. of this chapter for discussion on determining U.S. road ownership and control. Most agreements specify that the party who controls the road (see "road control" in glossary) has the right to authorize use by others. In addition, the "road owner" (see glossary) of the road has rights that include: 1) first right of maintenance on the road and collecting pro-rata expenses from other users (maintenance and/or surface replacement fees), or allowing for operator maintenance, 2) collection of road use fees from other users for amortization of the replacement cost of the road, and 3) establishing reasonable traffic regulations for the use of the road which are applicable to all users of the road, including the road owner.

In order for the BLM to be afforded the opportunity to exercise the above rights over roads owned or controlled by the U.S., the permittee must submit a request for terms and conditions of use of BLM lands, roads, or rights-of-way prior to use.

The permittee request should contain similar information as contained in the BLM request described in Section F.3.b) of this chapter:

- the location of the permittee timber to be hauled over U.S. roads,
- the amount of merchantable timber to be hauled over U.S. roads,
- the amount of chip material (that is not associated with the harvest of merchantable timber to be hauled over U.S. roads)—rare,

- amount of mineral material (excluding patch rock, pothole repair, culvert replacement and bridge renovation and/or bridge replacement) to be hauled over U.S. roads,
- a map showing: 1) the haul route, 2) the U.S. road segments to be used, 3) the permittee harvest area, 4) any heliports to be used, 5) any landings to be used, and 5) any U.S. road segments for which the permittee plans on improving,
- the proposed period and duration of haul,
- a request for the BLM to identify the method of maintenance (whether the BLM will elect to waive their first right of maintenance and allow operator maintenance by the permittee or whether the BLM elects to perform the maintenance and charge maintenance or surface replacement fees (see glossary),
- a request for road use fee calculation(s) if the permittee has never bought into the replacement cost of any U.S. roads. In this case, the request for terms and conditions should include all necessary information for the BLM to complete a road use fee calculation: 1) tributary area map, and 2) tributary volumes of the permittee for each road segment needing fee calculations (see Chapter IX., Section C.),
- where shares have already been calculated for permittee's use of U.S. roads, the request includes a confirmation of the deficit balance and road use fee/MBF that will be charged,
- a request for BLM to determine the method of maintenance (whether the BLM elects to waive their first right of maintenance and allow operator maintenance or whether the BLM MO will performance the maintenance and the BLM will charge maintenance and/or surface replacement fees, and
- a request to identify any other terms and conditions of use such as speed limits, dust abatement measures, seasonal restrictions, etc.

If the request does not include all of the above information, the permittee should be notified immediately to provide any missing information.

The above information is used by BLM for determining: 1) terms and conditions of use, and 2) whether the BLM will retain the first right to maintain or whether operator maintenance will be allowed. If BLM elects to retain the maintenance responsibility, the terms and conditions of use letter are important for ensuring that the roads are built into the RMOP. See Illustration VIII-7 for a typical permittee request letter.

2. Determine Permittee Rights in Existing Permit(s)

When BLM receives a request for terms and conditions of use from a permittee, the Permit must first be reviewed to determine whether the permittee has sufficient rights to use the U.S. lands, roads or rights-of-way being requested. If the lands, roads or U.S. rights-of-way are not already contained within Schedule 1 of a Permit, the permittee should be immediately notified that an amendment is required to add such lands, roads or rights-of-way. (See Chapter XII. for guidance on processing amendments.)

3. Conduct Pre-Haul Condition Assessment of Roads

After a request for use is received or after a unilateral permit is approved, the BLM should immediately conduct a pre-haul road condition assessment of the existing roads to be used in order to better determine any maintenance needs. More importantly, this inspection will establish a record of the condition of the road prior to haul in order to determine maintenance needs and whether the road was left in “at least as good condition as existed prior to the commencement of his use” (see paragraph 8. below and 43 CFR §2812.6-2(b)(2)). If these pre-haul inspections are not made and damage to the road is discovered, BLM will not be able to document or substantiate permittee’s damage to the road. The permittee should be invited to accompany the road inspector so that there is no disagreement regarding the condition of the road in the “pre-haul” condition. Also, a picture is worth a thousand words.

See Illustration VIII-8 for a sample “Road Condition Assessment Form” for documenting the findings of the road inspection.

4. Determination of Maintenance Responsibility

After validating that sufficient rights exist, the AO must then decide who will perform maintenance on the road. Completion of the pre-haul inspection should aid in this decision. BLM has the option of either performing the maintenance and collecting maintenance fees (and/or surface replacement fees) or requiring the permittee to perform the maintenance and waiving maintenance and/or surface replacement fees. It is important to coordinate with the Maintenance Organization (MO) when determining who will perform maintenance in order to ensure that the maintenance request can be accommodated if BLM is retaining the maintenance responsibility.

There are a few instances where the BLM and the permittee have entered into cooperative road maintenance agreements. In these types of agreements the parties have, for economical reasons, pre-determined certain road systems that each party will exclusively maintain. The lead engineers and/or roads right-of-way specialists should be aware of any such cooperative maintenance agreements within their jurisdiction.

5. Determination of Traffic Regulations (Road Rules)

Since the controlling party may establish reasonable traffic regulations (commonly referred to as road rules), the BLM must determine what road rules to implement. Road rules include such items as: 1) seasonal restrictions (based on road design), 2) traffic speeds, etc.

The standard template for new reciprocal right-of-way agreements (Form OR 2812-16, Illustration V-2, page 36) contains the following as provision No. 12 to the Exhibit B.

12. Traffic Regulations (Applies to U.S. and Permittee). The party who owns or controls a road may issue reasonable traffic regulations for the use of the road. Such regulations shall be uniformly applicable to all users, including the party who owns or controls a road.

This provision is similar to that found in most semi-detailed agreements. See Chapter XV., Section B.6.b.2), for further discussion of traffic regulations. Traffic regulations must be applied equally to all users of the road, including the owner of the road, so any traffic regulations the BLM establishes for the permittee must also be applied to any BLM timber sales or for BLM's direct use, as well as to third party permittee use.

6. BLM Determination of Fees (Road Use, Maintenance, Surface Replacement)

If the BLM will be retaining the maintenance responsibility on any roads, the response letter must indicate that maintenance fees (and/or surface replacement) fees will be charged based on the Oregon/Washington Road Maintenance Fee Schedule in effect at the time of haul. If the permittee has already cost shared in a road, the road use fee per MBF and the permittee's current deficit balance in the road should be included in the reply.

If a road use fee calculation is required but has not yet been completed (and the permittee has provided their tributary area and volume), the terms and conditions reply letter would include either: 1) a approved road use fee calculation ready for permittee acceptance, or 2) an indication of when the calculation will be done.

See Chapter IX., Section C., for guidance on completing road use fee calculations.

If the permittee has not yet provided their tributary area map, acres and volumes, the letter would request that information be submitted so that a fee calculation can be done prior to their first use.

7. BLM Response to Permittee

After BLM review of the permittee request and a determination of the BLM requirements identified in Sections G.2. – G.6. (of this chapter), a “terms and conditions of use” letter shall be sent to the permittee. See Illustration VIII-9 for a sample “terms and conditions of use” letter to reply to permittee’s request.

If the lead engineer (or other designated employee) makes a determination that the BLM will maintain certain roads and will charge maintenance fees, they must ensure that the roads are included in the RMOP. A “cc” copy of this letter should be provided to MO so they can be alerted to any planned haul over roads for which the MO is responsible to maintain.

When the BLM allows the permittee to maintain U.S. roads, the maintenance requirements placed upon the permittee cannot exceed that which is described in Section G.8. directly below.

8. Permittee Requirement for Hauling on Existing Roads

The regulations at 43 CFR §2812.6-2(b) define the permittee’s responsibilities regarding use of existing roads:

(b) . . . In addition, every permittee to whom a permit is issued for the use of an existing road is required to agree: (1) to maintain such road in an adequate and satisfactory condition or to arrange therefore with the other users of the road. In the absence of satisfactory performance, the authorized officer may have such maintenance work performed as may be necessary in his judgment, determine the proportionate share allocable to each user and collect the cost thereof from the parties or the sureties on the bonds furnished by said parties. (2) Upon the expiration or other termination of his right to its use, to leave said road and right-of-way in at least as good a condition as existed prior to the commencement of his use.

If the BLM has opted to maintain the road and charge maintenance fees, the requirement stated in paragraph (b)(1) quoted above does not apply. However, under paragraph (b)(2) above, the permittee still has an obligation to leave the road “in at least as good a condition as existed prior to the commencement of his

use.” That is, if they damage the road above normal wear and tear which maintenance would address, they are responsible for repairing the damage.

9. Permittee Requirement for Road Use Reporting

Both unilateral permits and reciprocal right-of-way agreements contain requirements for the permittee reporting of road use.

The standard reciprocal right-of-way agreement template (Form OR 2812-16, Illustration V-2, page 15) includes provision No. 7. to the Exhibit A:

7. Permittee Report of Road Use to U.S. Whenever the Permittee moves any timber or other forest products over a road described in paragraph ___ above, the Permittee shall furnish a certified statement to the United States showing the land from which the timber was removed, the road that was used, and the number of M bd. ft. that was moved over such road. Such certified statement shall be furnished quarterly on the current approved “Report of Road Use” form. The Permittee shall submit a Report of Road Use indicating no hauling has occurred on a quarterly basis also. If the Permittee determines it will not haul for extended periods of time, they may notify the Authorized Office of the estimated period of inactivity and request that this reporting requirement be waived for such period. At the request of the Authorized Officer, the Permittee may be required to furnish copies of certified scale reports to validate haul.

The above provision is similar to that found in most reciprocal Permits.

The standard template for O&C unilateral permits Form OR 2812-3 (Illustration IV-1) contains the following provision regarding reporting of road use:

3. Reporting of Road Use - Permittee shall furnish a Permittee Report of Road Use (Form OR 2812-6) to the Authorized Officer showing the road segments that were used, the total amount of merchantable timber or minerals hauled over each road segment and the land from which the material was removed. The report shall be submitted by the 15th of the month following hauling and shall be accompanied by copies of all scale reports and/or mineral haul receipts. If the Permittee notifies the Authorized Officer in advance of any specific period of non-haul, this requirement is waived until such time as the Permittee indicates haul will be re-initiated. At the end of the notified haul period, the Permittee shall submit the Form OR 2812-6 certifying that no haul occurred by checking the “no hauling occurred” box and signing the form. If the hauling is for minerals only, the reporting shall be no less than semi-annually (on June 30th & December 31st of each year). If

requested, the Permittee shall supply to the Authorized Officer copies of certified scale reports for haul associated with this permit.

Whether the reporting is for a unilateral permit or reciprocal Permit, the approved form for reporting road use is Form OR 2812-6 (Illustration VIII-10). Form OR 2812-6a (Illustration VIII-11) is the continuation sheet for the Report of Road Use. All reports of road use shall be submitted only on the official Form OR 2812-6 since this form contains the official OMB information gathering approval as well as the approved wording for the certification statement by the permittee.

Some permittees prepare electronic spreadsheets and desire to submit the information on their form instead of the Form OR 2812-6. If an alternate form is requested, the AO should not accept the report as a stand-alone document but instead it should be stapled to the official Form OR 2812-6 with the required certification signature by the permittee on the form itself. In addition, alternative forms submitted as attachments to Form OR 2812-6 should not be accepted if they do not contain all of the required information as shown in the “Permittee” section of the form.

An electronic Excel spreadsheet version of the Form OR 2812-6 is available for use by permittees but a hard copy with a signature is still required.

Note that the middle portion of the form (where source of timber, volume hauled and road numbers, etc. are contained) is divided into two parts. The permittee is only required to complete the portion identified as “Information Required from Permittee.” It is the BLM’s responsibility to calculate and complete the actual fees for billing.

The BLM’s responsibilities for monitoring and processing of permittee’s Report of Road Use are outlined in Section G.11., below.

10. Permittee Report of Mineral Haul over BLM Roads

The current mineral haul policy is found in Chapter XV., Section J.1. It requires permittees to report mineral haul over BLM roads twice a year (the same as for BLM reporting mineral haul over permittee roads: 1) January 1 – June 30 and 2) July 1 through December 31).

The BLM should prepare requests letters for Reports of Road Use for mineral haul. A sample request for report of mineral haul letter is provided as Illustration VIII-12. Or, the letter can be combined with the request for Report of Road Use for timber haul (see Illustration VIII-14).

Permittee mineral haul should be reported on the same form as used for reporting timber haul (Form OR 2812-6 and Form OR 2812-6a)—see Illustrations VIII-10 and VIII-11. The current version of the Form OR 2812-6 provides the

option of identifying whether the report is for: 1) timber only, 2) mineral only, or 3) both mineral and timber.

11. Road Use Reporting, Monitoring, Billing, Collection for Permittee Use

An Office of Inspector General (OIG) audit was conducted in 1985 in which deficiencies in the BLM's reporting, billing, and collections procedures were identified. In that audit, the OIG directed the BLM to "establish records or logs of all active road use permits and agreements." In order to remedy the deficiencies and to ensure that all offices properly administer the O&C permits, certain policy and procedures (outlined below) were established which shall be followed by all offices in order to be in full compliance with the OIG findings and recommendations.

a. Requesting and Tracking Reports of Road Use

The following has been established as the required procedures for ensuring reporting of road use:

- Each District shall maintain a control register for monitoring the reporting of haul for all reciprocal O&C permits, using Form OR 2812-7 – Report of Road Use Register (Illustration VIII-13). (Districts may use their own internal tracking system (such as a data base, etc.) as long as all of the minimum elements required in Form OR 2812-7 are included.
- A letter requesting the Report of Road Use (Illustration VIII-14), along with a Report of Road Use - Form OR 2812-6 (Illustration VIII-10) shall be sent to the permittee at least one week prior to the required reporting date specified in the reciprocal right-of-way agreement.
- The permittees are required to report road use separately for each individual unilateral permit or reciprocal Permit. Each reciprocal right-of-way agreement has specific reporting requirements (monthly, quarterly, etc.) and the obligation to report is by individual permit. In addition, CBS requires that billing be done by serial number (individual permit). However, in order to simplify payment by the permittee, a consolidated billing can be generated (with one total for all permits) which has each permit total entered as a separate line item (see Section G.12.c. of this chapter).
- During any period where no haul has occurred over U.S. roads or improvements, permittees are required to submit Form OR 2812-6 by checking the "no hauling occurred" box and certifying the no haul with a signature from the permittee authorized officer. Without this submittal and certification by the permittee, there is no assurance that the permittee has accurately reported whether any volume was hauled over U.S. roads.

- As individual reports of road use are received by BLM, each report should be added to the Form OR 2812-7 - Road Use Register (Illustration VIII-13 or equivalent) as being received and routed through the appropriate staff for review and approval of the report. Refer to Section “b. Validation of Permittee Report of Road Use” below.
- If reports are not returned, a second letter, (Certified Mail—Return Receipt Requested) shall be sent to the permittee. See Illustration VIII- 15.
- If reports are still not received, the permittee is in noncompliance with the terms and conditions of its permit and a noncompliance letter should be sent out. See Chapter VI. for procedures on noncompliance.

b. Validation of Permittee Report of Road Use

The Report of Road Use needs to be validated by the BLM to ensure that it accurately reflects haul activity (all roads used are included in the report, the correct volume is reported, etc). This can sometimes be verified by aerial photo interpretation, on-the-ground inspection, or conversations with knowledgeable staff. This is a critical aspect of verification, as there could be much more volume hauled than reported, resulting in under-collection of fees. This section provides guidance on BLM’s validation of the Report of Road Use.

When the Report of Road Use is received the BLM will verify the following information:

1) Header Information

All of the information in the top portion of the form should be verified:

- permittee name,
- address,
- phone,
- “bill to” address (if different than permittee) is filled in,
- permit No.,
- serial No.,
- Haul Period (“from” and “to” filled in). Note: The hauling period should be inclusive of the required period in the specific permit. If the permittee only hauled during two weeks of the required reporting period, the report should still be inclusive of the entire reporting period.

- Page No. (x of x) – This is especially important if it is a multi-page report.

2) “Information Required from Permittee” Portion of Form

The middle portion of the form is divided into two sections: 1) “Information Required From Permittee,” and 2) “BLM responsible for this Portion.” The permittee is only responsible for completing the “Information Required from Permittee” portion which includes the following:

a) Permittee Harvest Area

This information is required and BLM needs to check for completeness and accuracy. It may need to be verified later to validate volumes, etc.

b) Permittee Project Name

This column is optional for the permittees to fill in. The column was added at the request of permittees for their own internal tracking purposes.

c) BLM Road & Segment Nos.

Verify that the road and segment numbers are correct and that the roads are all controlled by the U.S. (Or, there may be road improvements of the U.S. where use is reported because there is a deficit balance owed by the permittee on the improvement.) This information can be validated through the use of road records, the road inventory, etc. The only time the report should contain roads not owned by the U.S. are when the permittee uses a road where the U.S. has placed a capital improvement and the U.S. has rights to amortize the cost of the road improvement.

d) Length Used

Based on the harvest area, the BLM should be able to verify whether or not the entire length of a particular segment was used. Since maintenance fees are charged on a “per MBF/per mile” basis, it is important that the length used is correct.

e) Quantity hauled

The quantity of haul is reported as either:

- timber (reported in thousand board feet (MBF), long log is the usual reporting), or
- rock (reported in cubic yards (CY)).

The volume reported should be verified. Prior to severing timber on federal or private lands, the Oregon State Forest Practices Act requires operators to file a

“Notification of Operation” in order to obtain a permit to operate power driven machinery. The Notification and permit includes the legal description of the permittee land to be harvested. This information is available to the general public through the local Oregon State Department of Forestry office and should be utilized by the BLM to verify that all volume and all roads used were reported accurately. The BLM should routinely validate reported hauling (volume and area harvested) against these Notifications.

In addition to verifying information through the state permit, a field inspection should also be conducted to: 1) verify the reported information against the state permit, and 2) to conduct after-haul road condition assessments to determine that no damage has occurred to the road. This after-haul inspection can be compared to the pre-haul road condition assessment.

3) Permittee Certifications and Signatures

Verify that one of the following certification blocks is checked: a) that the report “is true and that to the best of my knowledge, a complete statement of hauling on BLM roads during the reporting period,” or b) that “no hauling occurred on any BLM roads during the above reporting period.”

a) Authority of Signor

The signature should be verified to determine whether the person signing the report has authority to sign on behalf of the permittee (check the corporate papers on file). If there is no documentation of the signor’s authority, the documentation shall be obtained from the permittee. Also ensure that the date and title of the person signing the report are filled in.

b) Reserved

c. BLM Portion of Report Completed

After all permittee information is validated, the BLM completes the report and submits the approved report to the Accounting Technician for billing. The following items are completed and verified on the Report of Road Use.

1) Verify that Roads or Lands are in the Permit

It is important to do a quick verification of whether the roads (or the underlying lands) are on the Schedule 1. If not, the permittee should be immediately notified that an amendment is needed to add the roads.

2) Determine Surface Type and Allocation Status of Roads

Using FAMS or other data sources, enter (or verify) the surface type and whether the road segment is allocated or non-allocated. Both of these items affect the maintenance and surface replacement rates that will be billed.

3) Road Amortization Records Verified & Initial Posting

In order to ensure that the correct amount of road use fees are billed, the road amortization record for each road will be checked to determine if there is any deficit balance owed by the permittee (Form OR 2812-19 – Road Amortization and Fee Record--see Illustration VIII-16). See Chapter VI. for guidance on maintaining road amortization records. See Chapter IX., Section C., for guidance on completing fee calculation supplements to determine deficit shares (and road use fees if not part of a system fee agreement).

If it is discovered that some of the reported road use was over roads that were used but for which road use fee calculations have never been completed (to establish the permittee deficit shares), the permittee should be notified immediately to submit their tributary acres and tributary volume information for those roads so that the BLM can complete the fee calculation.

However, if there is a system fee agreement involved and there is reported road use for a road for which the permittee deficit share has never been calculated, a road use fee should be calculated to establish their deficit share, which would be posted to the permittee side of the system fee ledger. If this changes the balance on the system fee ledger, and the permittee becomes the deficit party, road use fees would be billed for the report volume hauled at the system fee rate per MBF.

If a deficit share has previously been calculated and the permittee has either paid off or swapped out their deficit balance, the Report of Road Use should show zero road use fees due for such roads. However, if the BLM has placed a road improvement on a road after the original deficit share is calculated, road use fee calculations may still need to be completed to calculate the permittee's deficit share in the cost of the improvement.

If there is a remaining permittee deficit balance owed on a road at the time the Report of Road Use is submitted, the road use fees due should be calculated and entered on the form and then "pencil" posted on the road amortization record. Pencil posting prior to receiving payment is important to ensure there are no "overpayments" to deficit balances. Overpayments would create bookkeeping problems which must be corrected later. The final posting to the amortization record would occur once the payment is actually received.

If the roads used are part of a system fee agreement, and the permittee is not the deficit party (on the system fee ledger) at the time of their haul, then no road use fees are due. At the time of reported haul, if the permittee is the current deficit party in a system fee ledger, road use fees will be entered on the Report of Road Use at the negotiated rate system fee per MBF.

A deficit share should never be “overpaid”. On the Report of Road Use, if the volume times the road use fee exceeds the current deficit balance for a road or road segment, the deficit balance would be the maximum amount of payment due.

The Report of Road Use should include hauling over all BLM roads (even those that are “free use” regarding road use fees). While the permittee’s deficit share in a road segment may be fully amortized (paid off), there may still be road maintenance and surface replacement fees that must be assessed as shown below.

4) Complete Columns for Maintenance and Surface Replacement Fees

After everything else is verified, the permit administrator should complete (or verify) the calculation of maintenance and surface replacement fees and ensure that the totals that exist at the bottom of each column are correct. If there is more than one page, ensure that the totals carry forward to the first (or summary) page.

5) Approval of Report of Road Use

After the report is verified as complete and accurate, it will be signed by the AO. If the AO has delegated someone to approve the Report of Road Use, there should be a formal delegation designated in the district supplement to the Oregon/Washington 1203 – Delegation of Authority Manual, using BLM Form 1203-2. After the report is approved, it can then be given to the Accounting Technician (or other designated staff) for billing as shown in Section G.12. below.

6) Report Unit of Accomplishment for Monitoring

After the Report of Road Use has been verified and is ready to be billed, LR2000 should be updated and the action reported in the Management and Information System (MIS) as a unit of accomplishment as follows:

a) Updating LR2000

In LR2000, enter action Code 950 (compliance report approved) using the date the haul report was approved by the AO. If the case is not in LR2000, a new SRP should be created following the guidance in the Lands Data Standards for

LR2000. See Illustration VI-9. See Section 12.a.1.) below for required LR2000 data items in order for billing to occur. It is a good idea to complete the LR2000 requirements for both reporting and billing at this time.

b) Reporting in the BLM Management Information System (MIS)

Report an “NH” unit of accomplishment (under subactivity 6310) to the program lead for input into MIS. Some districts maintain a work tracking system that will automatically generate a report of accomplishments by program element & sub-activity and as long as this action is shown as completed in the work tracker it is sufficient, as the program lead will report all accomplishments throughout the year.

12. BLM Billing Procedures

Bills for O&C Logging Road Right-of-Way Permits are generated in CBS. The following sections identify the procedures that must be followed to ensure proper billing:

a. LR2000 Verification

The following information must be entered or verified in LR2000 before a bill can be generated in CBS:

1) Proprietor Code(s) Information Verified

The “proprietor code” information should be entered as follows:

- “65 - Holder/Billee” (this code is used if the permittee is billed directly);
- “61 - Billee” (this code is used if the permittee has designated another party to receive and pay bills for them);

“29 - Holder” (If there is a separate billee, then the holder (permittee) would have this as a proprietor code) instead of Code 65.

2) Correct Name and Address

The permittee (or billee) name(s) and address(es) need to be verified as correct.

3) Minimum Required Information

If the SRP generated by LR2000 has not previously been completely filled in according to the Lands Data Standards, the following minimum information is required to be entered in order to complete a billings action in CBS: a) there must be at least one line of legal descriptions; and b) there must be at least one

action code/date entered in order to do a billing. If the monitoring action code has been entered as shown above, this will suffice.

b. Prompt Billing by BLM (by Individual Permit)

The permittees are required to submit a separate Report of Road Use for each permit under which hauling occurred. After each Report of Road Use is approved by the AO, the Accounting Technician (or other designated staff) can prepare the bill(s). While there is no statutory requirement for the timeframe in which the BLM must bill the permittees, BLM policy is that prompt billing occur. The recommended time frame is within 30 days of receipt of the Report of Road Use. Failure to promptly bill can result in problems to the permittee due to their internal accounting requirements.

With each “Bill for Collection” (Illustration VIII-17) sent to the permittee, a copy of the “Credit Card Mail/Fax Form” (Illustration VIII-18) and a “Notice of Actions In Event of Delinquency” (Illustration VIII-19) is attached.

These bills are entered into the CBS as “Accounts Receivable (AR)” bills, versus a “Courtesy Bill (CB)” or “Advance Bill (AB)”. This means that if payment is not received within 30 days, the CBS system will automatically start assessing penalties and interest. Refer to the CBS manual for direction on Accounts Receivable bills versus courtesy bills.

c. Summary Billing for Multiple Permits and/or Reporting Periods

Some permittees prefer to receive one bill and make one payment. While the permittee is required to report separately by individual permit and while the bills need to be entered into CBS by permit (serial number), the BLM can accommodate the request for a single bill. This is accomplished by generating a summary bill in CBS. In this case, individual bills are still generated, but CBS is able to also prepare a summary bill which gives a total and also the amounts of the sub-bills (for the individual permits) . If a summary bill is provided to a permittee, the sub-bills should also be attached and sent along with the multi-permit summary multi-permit billing (see Illustration VIII-20).

d. Billing Disputes by Permittee

Generally, bills are generated and issued based on the actual volumes reported. However, as the Report of Road Use is verified, the BLM may discover errors (length of road, wrong road use fee/MBF, or a discovery that additional U.S. roads or improvements would have been used to harvest the reported area.) If discrepancies between what is reported and what will be billed are discovered, the BLM should notify the permittee informally of such discrepancies so they are aware that the billed amount may be different than what was anticipated. If the

permittee disputes this information they should work informally with the BLM to resolve the issues before the formal bill is issued.

If errors are discovered after a bill is received by a permittee, they should notify the BLM as soon as possible. The designated employee (permit administrator and/or the Accounting Technician) should work with the permittee to resolve any discrepancies as soon as possible. Upon review, if the BLM agrees that the bill should be adjusted, the Accounting Technician should remove the bill from CBS so that penalties and interest will not accrue until the dispute is resolved. If, upon review, the BLM AO determines the bill is correct as written, the permittee will be notified that the bill will remain in the system and that the timeframe for penalties and interest are still in effect.

If the BLM has removed the bill from CBS, once the issue(s) in dispute is/are resolved, the bill will be re-issued in CBS.

e. Posting of Payment Received

After payment is received, a “Receipt for Payment” (Illustration VIII-21) is generated from CBS and mailed to the permittee. The following records will be updated after payment:

f. Road Amortization Records

The payment of road use fees should be posted to the Road Amortization Record (Form OR 2812-19—Illustration VIII-16) for individual roads (in pen if hard copies are kept or final entry in the “AMORT” program if it is utilized in the District). (See Illustration VIII-22 for a sample updated Road Amortization and Fee Record.)

If road use is connected with a reciprocal right-of-way agreement that has a system-fee method of accounting, only one party (the BLM or the permittee) has a deficit balance for the “system” at any time. Depending on who has the balance, their road use is posted against the system ledger and not against individual road amortization records. The handling of responsibilities for the system fee ledger balance during the assignment process is found in Chapter V., Section J.5.

g. District Road Use Control Register

The payment is also posted in the district Report of Road Use Register (Form OR 2812-17 (Illustration VIII-13), or equivalent) in order to document that all requirements for that permit have been met.

h. State-Wide Road Maintenance Fee Schedule Data Tracking

Starting January 1, 2006, a state-wide agreement between the BLM and the permittees updated the State-Wide Road Maintenance Fee Schedule for a period ending January 1, 2011. The BLM agreed to track: 1) logging haul for both permittee and BLM use, and 2) cost expenditures by BLM for BLM roads. As a result, permittee haul on BLM roads that BLM is maintaining will be tracked by the BLM.

13. BLM Collections Procedures

When a permittee does not pay as requested (within 30 days of billing), the collection procedures are regulated under The Debt Collection Improvement Act of 1996 (DCIA).

If a bill is not paid within 30 days, a phone call should be made reminding the permittee that if payment is not made immediately, the Collections and Billings System (CBS) will automatically generate interest and penalties as noted in the “Notice of Actions In Event of Delinquency” enclosure that was attached to their bill.

Concurrently with the phone call (at the end of the 30 days), the Accounting Technician is required to generate the first demand letter in CBS (Illustration VIII-23) which includes the appropriate interest, penalties, and administrative fees as required (see).

After fifteen days (or 45 days from the date of the bill), the Accounting Technician will generate a second demand letter (including additional penalties, interest and administrative fees) (see Illustration VIII-24). After another fifteen days (or 60 days from the date of the bill), the Accounting Technician (or other designated staff) will generate a third demand letter (see Illustration VIII-25).

If there is no response after 60 days, the Accounting Technician will notify the AO of their options for final adjudication of the matter (including forwarding the bill to the U.S. Department of Treasury for collection).

14. Monitoring of Permittee Use

Pre- and Post-haul road condition assessments are critical to ensuring there are no disagreements between the BLM and permittees regarding the condition of U.S roads in the before and after haul condition. The following sections provide guidance for the monitoring of permittee road use.

a. General Policy on Monitoring by All Field Employees

It is critical that the BLM be pro-active in monitoring permittee use of U.S. roads to ensure that: 1) no damage is occurring to public lands or roads, and 2) all fees due the government are billed and collected as required. Collection of all fees directly affects BLM's ability to fund and operate a quality and responsive road maintenance program.

All BLM personnel who routinely travel roads in the resource area should continuously be aware of hauling activities and report any observed hauling to the reciprocal right-of-way agreement or unilateral permit administrator to: 1) ensure there is no unauthorized activity occurring, and 2) that hauling reports submitted by permittees are accurate. In addition, as BLM personnel are working with aerial photos, if it appears that significant logging has occurred on private lands which would have required hauling over U.S.-controlled roads, the BLM reciprocal right-of-way agreement administrator should be notified to determine if use was reported or if there is a possible trespass.

b. Post-Haul Condition Assessment

Assuming that a pre-haul condition assessment was performed using the Road Condition Assessment form as shown in Illustration VIII-8 (or similar), the BLM inspector should pull the pre-haul report and complete a mid- or post-haul inspection for the reporting period by comparing and validating that the permittee has left the road "in at least as good condition as existed prior to his use."

If it is determined that the permittee has damaged U.S. lands or roads, the permittee should be immediately notified and afforded the opportunity to accompany the inspector to the field and have the damage pointed out and allowed an opportunity to resolve issue informally. If the permittee fails to resolve the issue informally, a written Notice of Noncompliance (Illustration VI-1) should be sent. See Chapter VI., Section B. for detailed guidance on processing actions of noncompliance.

H. Third Party Use

This section covers the instances where the U.S. has the authority to authorize third parties to use: 1) the rights in a permit (under a tripartite agreement) when the permittee has sold its timber to a contract purchaser, 2) a road built by the U.S. on permittee land under the terms of a reciprocal Agreement, 3) permittee-constructed roads on U.S. land. Nos. 2) and 3) above are shown as road category Nos. 3 and 4 on Illustration VIII-1 - Road Ownership and Control Matrix.

1. Third Party Use of Permit Rights Under a Tripartite Agreement

Under the regulations at 43 CFR §2812.2-2, a permittee may not authorize a third party to use their rights in a permit except as shown after the words “Provided, however” below:

§ 2812.2-2 Right of permittee to authorize use by third parties.
A permittee may not authorize other persons to use the right-of-way for the transportation of forest products which are not owned by the permittee. . . . Provided, however, That upon the request of a permittee the authorized officer may, with respect to an independent contractor who desires to use such right-of-way for the transportation of forest products owned by such independent contractor and derived from timber or logs acquired by him from such permittee, waive the requirements of this sentence. . .
[Underline added.]

The above regulations allow the BLM AO to authorize rights under an O&C permit to a third party who owns timber that was purchased from the permittee. This means that if the permittee sells their timber off the stump, the BLM AO could authorize use of the permit for the removal of that timber over U.S. roads.

A Tripartite Agreement (Form OR-2812-17, Illustration VIII-26) is the approved form for authorizing this use. The tripartite agreement only authorizes the use of existing roads does not allow the contractor to independently construct new roads under the Permit. There is no provision in the 43 CFR 2812 regulations which would allow this right (for construction or roads) to be delegated to another. If the permittee wishes for the third party contractor to construct new roads on U.S. lands, the permittee must submit the necessary right-of-way plat requests to the BLM under the terms and conditions of the Permit. The BLM will hold the permittee directly responsible for such construction and the independent contractor will merely serve as the agent of the permittee. Once the road is built, it may be used by the independent contractor under the authority of 43 CFR §2812.2-2 (through the tripartite agreement) with the written permission of the BLM.

There are three parties (or signors) to the Tripartite Agreement: 1) the independent contractor, 2) the permittee, and 3) the U.S. The tripartite agreement must be executed and approved by the AO prior to any hauling over U.S. roads by the independent contractor. The independent contractor must comply with the Permit provisions the same as for as the permittee, including: 1) providing their own bonding and insurance in the amounts required in the Permit, 2) complying with the road use reporting requirements and payment of fees when billed, 3) complying with the road maintenance requirements, 4) leaving all road(s) in “at least as good a condition as existed prior to the commencement of his use.”

The BLM AO should not sign the form until the independent contractor has submitted the proper bond or insurance certificates and they have been reviewed and found acceptable. See Chapter VII. While there is no statutory requirement for the timeframe that the BLM must process a tripartite agreement, every effort should be made to process the tripartite agreement in a timely manner (as soon as the permittee and/or third party have submitted any required items (bonding, etc.). The permittee usually makes a decision to sell timber off the stump based on market conditions and timing of the tripartite agreement would be critical to their operations. However, it is also incumbent upon the permittee to notify the BLM as soon as the need for such an agreement is known (when they decide to sell their timber). BLM may not always be able to process the agreement with last-minute notification.

Issuance of a tripartite agreement would not require a NEPA analysis as the rights have already been authorized in the original permit and the tripartite agreement merely authorizes someone other than the permittee to use the Permit for removal of timber purchased from the permittee.

2. U.S. Authorization of Third Party Permittees to Use U.S.- Constructed Road on Permittee Land

This section covers category No. 3 road on Illustration VIII-1. As discussed in Chapter V, Section F.2.a., the rights in the Agreement are a special form of nonexclusive easement that runs with the land. While typical nonexclusive easements do not allow the grantee to authorize third party use, the reciprocal Agreement provisions (and the regulations) give unique rights to the U.S. to authorize third parties to use roads built by the U.S. over permittee lands (under the terms of a reciprocal Agreement).

The pertinent regulations are:

§ 2812.3-1 Rights over lands controlled by applicant.

Where, in the judgment of the authorized officer, it appears necessary in order to carry out the policy set forth in § 2812.0-6, he may require the applicant, as a condition precedent to the issuance of the permit:

(a) To grant to the United States, for use by it and its licensees and permittees, rights-of-way across lands in the O. and C. area directly controlled by the applicant; and as to lands in such area which are indirectly controlled by him, . . . [Underline added.]

The granting clause (1.a.) in the Agreement (page 24 of Form OR 2812-16, Illustration V-2) states:

a. To the United States, pursuant to 43 CFR §2812.3-1(a), rights-of-way across the following-described lands for use by the United States, its licensees and permittees, for the following specified periods of time: (Underline added.)

Therefore, if the U.S. builds a road on permittee lands under terms of a reciprocal Agreement, the U.S. both owns and controls the road (see glossary definitions for road ownership and road control). As the party who “controls” the road, the U.S. may authorize third party permittees to use roads it builds over a permittee’s lands. However, the U.S. can only authorize third party use over these roads for purposes of “logging and the manufacture of lumber” (tramroad definition).

As the road “owner,” (see glossary) the U.S. is also the party that is entitled to: 1) first right of maintenance on the road and collecting pro-rata expenses from other users (maintenance and/or surface replacement fees), or allowing for operator maintenance, 2) collect road use fees from other users for amortization of the replacement cost of the road, and 3) establishing reasonable traffic regulations for the use of the road which are applicable to all users of the road, including the U.S. Any road rules (or traffic regulations) established by BLM must be applied consistently to all users of the road (including BLM’s own use or use by its licensees).

The U.S. establishes all terms and conditions of use for third party permits issued by the U.S. over U.S. roads on permittee lands.

3. U.S. Issues Third Party Permits over Permittee-Constructed Roads on U.S. Land

This section covers category No. 4 roads on Illustration VIII-1. For category No. 4 (permittee-built road on U.S. land), the U.S. “controls” the road and the permittee “owns” the road. The issue of road control is one area where the rights in the Agreement and Permit are not truly equivalent in nature. The following regulations describe the nature of rights in the permit:

§ 2812.2 Nature of permit.

§ 2812.2-1 Nonexclusive license.

Permits for rights-of-way for tramroads, do not constitute easements, and do not confer any rights on the permittee to any material for construction or other purposes except, in accordance with the provisions of §§ 2812.6-2 and 2812.8-3, such materials as may have been placed on such lands by a permittee. The permits are merely nonexclusive licenses to transport forest products owned by the permittee. Such permits may be canceled pursuant to § 2812.8. [Underline added.]

Therefore, since the permit rights are “merely a nonexclusive license,” the permittee does not have rights of control (or the right to authorize third party use of U.S. lands). Since the road is on U.S. lands, and since the permittee does not control the road (even though they built the road), only the U.S. can authorize third party use over road built by permittees on U.S. land.

As discussed in Chapter V., Section F.1.d), any permits issued by the U.S. to third party permittees (over permittee-constructed roads on U.S. lands) shall be issued subject to the constructing permittee (road owner) rights of road ownership which include: 1) first right of maintenance on the road and collecting pro-rata expenses from other users, or allowing for operator maintenance, 2) collection of road use fees from other users for amortization of the replacement cost of the road, and 3) establishing reasonable traffic regulations for the use of the road which are applicable to all users of the road, including the road owner (see glossary definition for road ownership). The third-party permit needs to clearly state that the permit is issued subject to [name of constructing permittee] rights as identified above.

Before a third-party permit is issued, the BLM should contact the constructing permittee and inform them that a third party application has been received. This is the opportunity to resolve any potential issues of compatibility with the rights of the road owner.

The road construction was originally constructed by permittee as a nondiscretionary action and the BLM did not have sufficient rights to deny the construction and the U.S. did not retain rights of ownership (nor ability to set terms and conditions of use.)

When the permit (or right-of-way grant) is issued, the constructing permittee should be provided a copy of the permit or right-of-way grant as well as a copy of the transmittal letter to the third party so they are aware that a permit has been issued and that they have the right to set the terms and conditions of use.

For this category of road, the U.S. is not limited to authorizing third party rights only for “logging and the manufacture of lumber.” The U.S. may authorize third party rights for other uses such as residential ingress and egress, etc., as long as the use is compatible with the permittee’s rights and uses. In addition, such authorizations shall be issued subject to the rights of the constructing permittee (who is the road owner and the party who establishes the traffic regulations (road rules).

I. Road Amortization Record Keeping

See Chapter VI., Section D, for additional guidance on maintaining road amortization records.

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Illustration VIII-1
Road Ownership and Control Matrix
Page 1 of 2

Road Ownership and Control Matrix			
Road Category No.	Origin of Road	Road Control¹	Road Ownership²
1.	Roads on U.S. land: 1) constructed by the U.S., 2) constructed in trespass, 3) no documented origin, 4) constructed under an expired/released permit. ⁶	U.S.	U.S.
2.	Roads on private land where the U.S. has right of control under a permanent (exclusive) easement ³ .	U.S.	U.S.
3.	Road on O&C Permittee land constructed by the U.S. under a reciprocal right-of-way agreement.	U.S. ⁴	U.S.
4.	Road built by permittee on U.S. lands with a right-of-way plat filed under terms of a reciprocal Permit.	U.S. ⁵	Permittee
5.	Roads on Permittee land: 1) constructed by the Permittee, 2) constructed in trespass, 3) no documented origin, 4) constructed under an expired/released permit or easement.	Permittee	Permittee

¹ **Road control:** The right to use the road and authorize third parties to use the road subject to the rights of the road owner (see “road ownership” definition).

² **Road ownership:** The rights of road ownership include: 1) use of the road, 2) first right of maintenance on the road and collecting pro-rata expenses from other users (maintenance and/or surface replacement fees), or allowing for operator maintenance, 3) collection of road use fees from other users for amortization of the replacement cost of the road, and 4) establishing reasonable traffic regulations for the use of the road which are applicable to all users of the road, including the road owner.

³ **Permanent U.S easements:** Rights of the U.S. are subject to the terms and conditions of the specific easement and the rights reserved by the underlying landowner.

Illustration VIII-1
Road Ownership and Control Matrix
Page 2 of 2

⁴ **U.S. constructed road on permittee land:** U.S. cannot authorize public use or right-of-way grants for purposes other than for the management and removal of timber and other forest products under the O&C regulations.

⁵ **Permittee constructed road on U.S. land:** Any 3rd party authorizations issued by the U.S. are subject to reasonable traffic regulations established by the permittee who built the road. In addition, the 3rd party authorizations issued by the U.S. cannot interfere with the permittee's right-of-way.

⁶ **Category 1 Note:** For item No. 4), the permittee who built the road would be entitled to amortize their investment (and swap out the deficit share if desired) in the replacement cost of the road before they release and transfer their ownership to the U.S. or before the permit expires. They may also retain free use of the road after a transfer/release if they still hold an active permit..

General Note: Any traffic regulations established by either the U.S. or permittee must be applicable to all users of the road, including the road owner.

Illustration VIII-2
Short Form License Agreement for Sales Less than 50 MBF
Page 1 of 3

LICENSE AGREEMENT - ABBREVIATED
(Not to be used for Sales Exceeding 50 MBF)

LICENSOR
:

LICENSEE:

BLM Timber Sale
Name:
Duration of Sale:

Timber Sale No.:

WHEREAS, Licensee (BLM timber sale purchaser) has purchased from the United States, acting through the Bureau of Land Management (BLM) timber sale contract No. identified above.

WHEREAS, Licensor has entered into a Reciprocal O&C Logging Road Right-of-Way Permit and Right-of-Way and Road use Agreement No. _____, Serial No. OR _____ PT, with the United States, and

WHEREAS, Licensee desires access cross lands of the Licensor in order to remove the timber it purchased from the U.S.,

NOW THEREFORE, as of the _____ day of _____, 20____, Licensor hereby grants to Licensee permission to use the road(s) shown on the attached Exhibit ____ map for the removal of approximately _____ MBF of timber purchased from the U.S.

NOW THEREFORE, the parties agree as follows:

1. Licensee shall pay to Licensor road use fees in the sum of \$ _____ as detailed in Exhibit B attached hereto.
2. Licensee shall (check one):
 - maintain road(s) during period of haul and leave in condition satisfactory to Licensor following completion of use, or
 - pay to Licensor maintenance and/or surface replacement fees in the sum of \$ _____, as detailed in Exhibit B attached hereto.

Illustration VIII-2
Short Form License Agreement for Sales Less than 50 MBF
Page 2 of 3

3. During the term of this agreement, Licensee shall maintain the following types and amounts insurance (if checked):
- Commercial General Liability insurance covering all operations, including vehicles of the Licensee: (Bodily Injury: \$_____ - for injury to any one person; \$_____ - for any one occurrence);
 - Property Damage in the amount of \$_____ for any one occurrence, and
 - Loggers Broad Form B - \$_____ - for any one occurrence.

The Licensee shall deliver to the Permittee a certificate from the insurer stating that such insurance is in force and that the insurer will give the Permittee thirty (30) days notice prior to any intended or proposed cancellation or modification of such policies.

4. Licensee shall comply with all applicable laws and regulations, including, but not limited to, those relating to log hauling and transportation and the prevention, suppression and control of fire.
5. Licensor has made no representation as to the present or future conditions of its property or the character of the traffic on any of its roads, and Licensee assumes all risks of damage to property of or injury to Licensee, in connection with the exercise of rights hereunder. Licensee shall indemnify and hold harmless Licensor against all claims or liabilities asserted by third persons resulting directly or indirectly from Licensee's acts or omissions hereunder, whether negligent or otherwise.
6. The term of this License Agreement shall remain in effect for the life of the above-described timber sale contract; including extensions or modifications thereto, and until such time as the Licensor has certified that all the terms and conditions specified therein have been met.

Licensee Signature:

Licensor Signature:

Date

Date

*Note: insurance amounts cannot exceed the limits identified in Exhibit B of the reciprocal Agreement.

Illustration VIII-2
 Short Form License Agreement for Sales Less than 50 MBF
 Page 3 of 3

Exhibit B – Abbreviated License Agreement Form

ROAD USE FEE TABLE				
Road No.	Seg. No.	Volume (MBF)	Road Use Fee per MBF	Total Road Use Fees (\$)
TOTAL ROAD USE FEES:				

Road Maintenance Fees							
Road No.	Seg. No.	Length to be Used	Volume (MBF)	Maintenance Fee/MBF	Total Maint. Fees	Surface Replacement Fee/MBF	Total Surface Repl. Fees

Illustration VIII-3
BLM Request for Terms and Conditions for BLM Timber Sale
Page 1 of 8

2812(org code)
[Permit No.]
[Serial No. PT]

CERTIFIED MAIL – RETURN RECEIPT REQUESTED (_____)

[date]

We Wanna Log II, Inc.

Dear _____:

The Bureau of Land Management (BLM) is preparing to advertise the [name of timber sale] Timber Sale, which is located in T. ____, R. ____, Section(s) _____, W.M. The proposed sale date is _____, 2___. The planned duration of the sale is _____ months. Under the provisions of O&C Right-of-Way and Road Use Agreement No. __ - ____ (OR _____ PT), the BLM plans to use the following Road No(s). controlled by [permittee name]. The table below indicates whether the use will be for timber, chip, and/or mineral haul.

<u>Road No.</u>	<u>Seq.</u>	<u>Length to be Used (Mi.)</u>	<u>Timber, Chip or Mineral Haul (Or All)</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Illustration VIII-3
BLM Request for Terms and Conditions for BLM Timber Sale
Page 2 of 8

Enclosed are the following maps:

- 1) a draft timber sale harvest unit map (usually draft timber sale Exhibit A), and
- 2) a License Agreement Exhibit A map showing: a) your roads to be used, b) the timber sale harvest units that will be hauled over your roads, c) the remainder of the haul route from the harvest unit to the nearest county road (non-permittee roads), d) the location of any landings (heliport or log), heliport service landings, and e) location of any planned road improvements or renovations to your roads. This map will be attached to the executable license agreement to be provided by you.

[Use unless Permittee has indicated that they wish for BLM to fill in a draft license agreement which they will review and return as an executable License Agreement.]

Enclosed is a blank License Agreement form which is the version that has been approved for use under Agreement No. _____. No other version or modification of this form can be used without approval in writing from the BLM Authorized Officer. Please provide the terms and conditions of use for the _____ timber sale in the form of an unsigned but executable license agreement by returning three copies to our office. Please include in the license agreement whether you will be requiring a performance bond and, if you are requiring a bond, indicate the amount (not to exceed [\$10,000.00] as specified in Exhibit ___ of Right-of-Way and Road Use Agreement No. ____). The License Agreement should also indicate the amounts of any insurance you will be requiring as well as any additional terms and conditions of use such as dust abatement measures, seasonal restrictions based on road design, etc.

[Use the following paragraph if Permittee has indicated they prefer BLM to fill in an initial draft LA and have them approve it in an executable form].

You have requested that we complete a draft License Agreement in the approved form by filling in the preliminary information specific to the timber sale. You would then review it and provide three executable copies within 30 days. We have enclosed a draft License Agreement (on the form approved for use under Agreement No. _____) containing the timber sale information affecting use of your roads or lands. Please include in the License Agreement whether you will be requiring a performance bond and, if you are requiring a bond, indicate the amount (not to exceed [\$10,000.00] as specified in Exhibit ___ of Right-of-Way and Road Use Agreement No. ____). The License Agreement should also indicate the amounts of any insurance you are requiring as well as any additional

Illustration VIII-3
 BLM Request for Terms and Conditions for BLM Timber Sale
 Page 3 of 8

terms and conditions of use such as dust abatement measures, seasonal restrictions based on road design, etc.

[Select one of the following two statements regarding whether the volumes provided are estimates at this time or final cruised volumes and fill in the tables below or delete chip haul and mineral haul tables if they don't apply for this sale.]

The volumes of timber (MBF), chip or mineral material to be hauled over your roads (as shown in the following table) are only estimates at this time. The final timber volumes (which will be based on the final timber sale cruise) will be included in the final version of the executable License Agreement which is available to bidders prior to advertisement.

The volumes of timber (MBF), chip or mineral material to be hauled over your roads (as shown in the following table) are based on the actual BLM timber sale cruise volume.

Permittee Road No.	Seg. No.	Surface Type	Length to be Used	Merchantable Timber Volume (MBF)	Chip Volume (No. of Vehicles)	Mineral Volume (CY)	Remarks

[If road use fee calculations for BLM's first use are needed use the following:]

Our records indicate that road use fees will need to be calculated for the first time use of your road(s) by the United States. Therefore, we have enclosed a map for each road segment showing the tributary timber area of the United States. The United States tributary volume and acres for each road segment is shown below:

Illustration VIII-3
 BLM Request for Terms and Conditions for BLM Timber Sale
 Page 4 of 8

<u>Road No.</u>	<u>Seq.</u>	<u>MBF/ Acre</u>		<u>BLM Tributary Acres</u>	=	<u>BLM Tributary Timber for This Segment (Total MBF)</u>
_____	_____	_____	X	_____	=	_____
_____	_____	_____	X	_____	=	_____
_____	_____	_____	X	_____	=	_____
_____	_____	_____	X	_____	=	_____

Please prepare the road use fee calculations for these road segments. After we receive the fee calculations, we will have them reviewed for acceptance by the BLM on behalf of the United States. We will then include the appropriate road amortization payments (road use fees) in the final license agreement for the timber sale and make this information available to prospective purchasers prior to advertisement of the timber sale.

[If road use fee calculations have previously been done for some or all of the roads, use the following:]

The road use fees shown in the draft License Agreement are based on previously calculated road use fees and BLM’s current deficit balance according to our road amortization records.

[If heliport use is requested, use the following:]

NOTE CHECK HANDBOOK FOR DIRECTION BASED UPON WHETHER OR NOT THE HELIPORT STIP IS INCLUDED IN THE AGREEMENT]

In connection with the above sale, we are also requesting use of your land in T. __, R. ____, Sec., _____ for heliport use. The location is identified on the Exhibit A map attached to the License Agreement.

[If reconstruction of heliports is needed, use the following:]

We also wish to reconstruct and use the heliport located in _____. Please reply with an indication of your approval of this heliport use by signing below and provide any terms and conditions for this use in the draft license agreement.

Illustration VIII-3
BLM Request for Terms and Conditions for BLM Timber Sale
Page 5 of 8

[If new construction of roads, landings or heliports is required, use the following:

MAKE SURE THE PLAT HAS BEEN INTERNALLY REVIEWED AND A SIGNED COPY IS ENCLOSED]

In connection with this timber sale, we are also submitting a right-of-way plat for construction of a _____ across your land pursuant to Paragraph No. _____ of the Exhibit B to Right-of-Way and Road Use Agreement No. M-_____. The location of the proposed construction is shown on the enclosed construction plat(s). The road has been designated as road No. _____.

Provision No. ____ of the Exhibit _ [usually B] of Right-of-Way and Road Use Agreement M-____ states the following regarding disposition of right-of-way timber [CHECK SPECIFIC AGREEMENT WORDING].

Prior to the construction of a road on the lands of the other party, the timber on the right-of-way shall be cruised and paid for; provided, however, that if the right-of-way is across lands belonging to the Permittee, **the Permittee may elect to retain title to the right-of-way timber and have such timber decked along the right-of-way by giving written notice of such election to the United States. Such notice shall be given within thirty (30) days** after the map described in paragraph ____ is filed with Permittee. If Permittee elects to retain title to the right-of-way timber, it shall remove such timber within six (6) months after the road to be constructed becomes usable. **When right-of-way timber is to be paid for, it shall be cruised and appraised in accordance with the standard procedures for cruising and appraising O&C timber.**

Within 30 days of your receipt of this letter, as allowed under Provision No. ____ of the Exhibit B to Right-of-Way and Road Use and Agreement No. ____, please do one of the following:

- 1) Either sign the plat as "Received and Reviewed" where indicated (if you have no objections), or send us a letter back within 30 days indicating under what reason you object.
- 2) If you do not object to the construction, return a copy of this letter with a signature below indicating whether you wish to retain title to the right-of-way timber (and have it cut and decked), or whether you want our timber sale purchaser (Licensee) to purchase it from you.

Illustration VIII-3
BLM Request for Terms and Conditions for BLM Timber Sale
Page 6 of 8

If we do not hear from you within 30 days, we will assume there are no objections to the construction (and construction will commence under the terms of the timber sale) and the timber will be “cruised and appraised **in accordance with the standard procedures for cruising and appraising O&C timber**” as per the terms of the Agreement No. _____.

[If capital improvements to Permittee roads are planned, use the following:]

We are also planning on placing a capital improvement on your road No. _____, Segment ____ in the form of [details of improvement (depth/type of rock, culverts size/location, etc.)]. [Check the permit to determine whether the permittee is required to share in the improvement or if we are just requesting permission, etc.. If needed, add additional language as appropriate.]

[If road renovation to Permittee roads is planned, include the following:]

We plan on performing the following renovation work to your roads as follows unless you notify us that you have an objection to such work:

Road No.	Seg.	Renovation (not capital improvement) work planned

[Include in all letters]

Therefore, in accordance with 43 CFR 2812(a)(10), please provide the terms and conditions of use for our _____ timber sale within 30 days of your receipt of this letter. Please provide three copies of an executable license agreement and signed below indicating your permission to publish the terms and conditions of use.

Illustration VIII-3
BLM Request for Terms and Conditions for BLM Timber Sale
Page 7 of 8

Return three copies of the executable license agreement to _____, [title]
at the above address. If you have any questions contact _____ at (____)____ -
_____.

Sincerely,

Field Manager
_____ Resource Area

Attachments

cc: ROW Accounting

**[THE ATTACHMENTS COULD INCLUDE THE FOLLOWING AS
APPROPRIATE:]**

1. License Agreement Exhibit A map (show permittee roads to be used, harvest units that will use this permittee's roads, remainder of haul route (non-permittee roads), location of heliports, helipads, landings, road improvement or road renovation segments)—**required**.
2. Draft Timber Sale Harvest Unit Map (TS Exhibit A)--**required**.
3. The draft License Agreement (if permittee prefers for BLM to prepare the L.A.)
4. Crossing plat (and signed checklist)—if applicable.
5. Tributary Area Maps (if fee calculations for U.S. first use are required).

Illustration VIII-3
BLM Request for Terms and Conditions for BLM Timber Sale
Page 8 of 8

SIGNATURE OF PERMITTEE AND INDICATION OF PERMITTEE
PREFERENCES

The signature below confirms the decisions made by an “x” in the boxes below:

Permittee Authorized Signor Date

Title: _____

- The attached executable License Agreement represents the terms and conditions of use of [NAME OF PERMITTEE] lands or roads under the terms of the Road Use and Right-of-Way Agreement No. _____ in connection with BLM’s _____ timber sale and may be presented to prospective purchasers. The License Agreement is effective for the duration of the timber sale (including any modifications thereto), and permission is hereby granted to publish the terms and conditions. **[Make sure the License Agreement is provided in the approved form for the specific Agreement.]**

If Request includes heliport use, include the following:

- We have no objection to the use of the heliports as requested. Any special provisions are included in the draft license agreement..
- We have no objection to the reconstruction of the heliports as requested.

[If request includes construction plat, include the following:]

- We have no objection to the use of the heliports as requested. Any special provisions are attached hereto.
- We wish to have the right-of-way timber associated with construction cut and decked.
- We wish to have the BLM cruise and appraise the right-of-way timber and have it purchased by the BLM timber sale purchaser.

Illustration VIII-4
Follow-Up Letter if Permittee Fails to Provide Terms and Conditions of Use for
BLM Timber Sale
Page 1 of 3

2812(org code)
[Permit No.]
[Serial No. PT]

CERTIFIED MAIL – RETURN RECEIPT REQUESTED (_____)

[date]

We Wanna Log II, Inc.

Dear _____:

On _____ you received (by certified mail) a letter dated _____ in which the BLM requested terms and conditions of use for the BLM [name of timber sale] timber sale, which is located in T. ____, R. ____, Section(s) _____, W.M. As we indicated, the proposed advertisement date is _____, 2__ and the planned duration of the sale is _____ months.

The timber sale involves the use of the following roads controlled by [permittee name]:

<u>Road No.</u>	<u>Seq.</u>	<u>Length to be Used (Mi.)</u>	<u>Timber, Chip or Mineral Haul (Or All)</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Use of these roads by BLM's licensee would be covered under the provisions of O&C Right-of-Way and Road Use Agreement No. __-____ (OR _____ PT).

Illustration VIII-4
Follow-Up Letter if Permittee Fails to Provide Terms and Conditions of Use for
BLM Timber Sale
Page 2 of 3

The regulations require you to submit terms and conditions of use within 30 days of the request by the BLM as follows:

43 CFR §2812.6-2 – Terms and conditions of permit

(a) As to all permits: Every permittee shall agree:

. . . (10) Upon request of an authorized officer, to submit to the Bureau within 30 days with permission to publish, the detailed terms and conditions, including the fee which the permittee will ask as a condition of such licensee's use for the removal of forest products over any road or right-of-way which the United States and its licensees have acquired a right to use under §§ 2812.1-3 to 2812.1-5.

In addition, the regulations at 43 CFR § 2812.4-3(a) state: “When the United States exercises the right received under this paragraph to use or to license any person to use a road of a permittee, the permittee or his successor in interest shall not unreasonably obstruct the United States or such licensee in such use.”

Failure to submit terms and conditions as requested constitutes noncompliance with the regulations and your permit. We have not yet received an executable license agreement from you which spells out the terms and conditions of use. To prevent the delay of the advertisement of the BLM timber sale, we have prepared an executable license agreement (attached) which is based on the following assumptions:

- You have given up your first right to maintain and licensee maintenance will be assumed.
- The licensee will be required to pay surface replacement fees to you, if the roads are surfaced.
- The required bond amount will be at the “not to exceed” amount (\$10,000), as found in Exhibit B the Right-of-Way and Road Use Agreement.
- The required insurance amounts will be for the types and amounts specified in Exhibit B of the Right-of-Way and Road Use Agreement.
- The BLM will determine applicable road use fees payable to you, if any. [Since we have provided the tributary volume and acres to you for the yet-to-be-calculated roads and we have not received the fee calculations, a fee calculation will be completed and presented to you with rights of appeal.]

Illustration VIII-4
Follow-Up Letter if Permittee Fails to Provide Terms and Conditions of Use for
BLM Timber Sale
Page 3 of 3

We will be advertising the timber sale with the terms and conditions of your roads as specified above and we will make this license agreement available for inspection by prospective bidders. We will expect you to execute this license agreement (containing the above provisions) with the timber sale purchaser (licensee) once the sale is awarded.

If you have any questions, please contact _____ at ()____-_____.

Sincerely,

Field Manager
_____ Resource Area

[Attach the license agreement with the terms and conditions specified above. Make sure there is an Exhibit A map attached.]

Illustration VIII-5
Letter to Permittee Confirming Fulfillment of License Agreement Requirements
Prior to Termination of Timber Sale
Page 1 of 3

5401[Org Code]
TS No. _____
[TS Name]

[Permittee (Licensor)]

Dear _____:

BLM's Licensee [enter name of BLM TS purchaser] has completed logging operations under the [TS name] Timber Sale, Contract No. OR____-TS_____; located in Section(s) _____, T.____ S., R. ____ Willamette Meridian.

The contract provisions require the payment to you pursuant to Right-of-Way and Road Use Agreement No. _____. of the following amounts for road fees:

Road Maintenance	\$ _____
Surface Replacement	\$ _____
Road Use Fees	\$ _____
Total Payment Required:	\$ _____

[Use if there were NO modifications to timber sale.]

There were no timber sale modifications which resulted additional volume being hauled over your roads.

[Use if there WERE modifications to the timber sale]

During the life of the timber sale contract, there were ____ timber sale modifications which resulted in additional volume being hauled over your roads:

The following table represents the final total maintenance and surface replacement fees payable to you by our timber sale purchaser. This includes the additional modification volume as indicated by road.

Illustration VIII-5

Letter to Permittee Confirming Fulfillment of License Agreement Requirements
Prior to Termination of Timber Sale

Page 2 of 3

Road No.	Se g. No	Surface Type	Length Used (Mi.)	Volu me (MBF)	Indicate "Orig" or Mod. No. for volume	Main- tenanc e Fee/ MBF/Mi	Maint. Fees Due (\$) (Length x Vol. x fee/MBF/ Mi.	Surface Replacem ent Fee/MBF/ Mi.	Surface Repl. Fees Due (\$) (Length x Vol. x fee/MBF/Mi)
TOTAL MAINTENANCE AND/OR SURFACE REPLACEMENT FEES PAYABLE TO PERMITTEE FOR ORIGINAL TIMBER SALE AND MODIFICATION VOLUMES							\$		\$

[Use one of the following to address whether or not any additional road use fees are payable for timber sale modification volume.]

[If there are additional road use fees due, use the following]:

The follow table identifies the total road use (amortization) fees payable by our timber sale purchaser. This includes the additional modification volume as indicated by road.

Permittee Road No.	Seg- ment	Volume (MBF) Hauled over Segment	Indicate "Orig" or Mod. No. for volume	Road Use Fee (\$ per MBF	Total Road Use Fees Due (\$) (Fee x Volume)
TOTAL ROAD USE FEES PAYABLE TO PERMITTEE FOR ORIGINAL AND MODIFICATION VOLUMES					\$

[If there are no additional road use fees due, use the following and delete the previous paragraph]

The timber sale modification(s) identified above did not result in the need for payment of additional road use fees as all of the roads are free use to the United States.

Illustration VIII-5

Letter to Permittee Confirming Fulfillment of License Agreement Requirements
Prior to Termination of Timber Sale

Page 3 of 3

[Use in all letters]

We are now processing this timber sale contract for termination. We would appreciate your acknowledgment that all road fees shown above (maintenance, surface replacement and/or road use fees) have been received and that all other terms and conditions of the License Agreement have been satisfied.

[If operator maintenance was requirement, include the following:]

The certification below includes verification that the timber sale purchaser adequately maintained any permittee-owned roads as required under the License Agreement.

Please complete the certification block below and return one copy to us within 15 days of receipt of this certification letter. Retain the other copy for your files. Should you have any questions, please contact me at (____)____-____.

Sincerely,

[Typed name]

Contract Administrator

Licensors Certification:

[] I certify that all road fees have been received (including payments for modification volumes) and that the Licensee [enter name of BLM's timber sale purchaser], has satisfied all terms and conditions of the License agreement.

Include if operator maintenance was required on any roads owned by Permittee:

[] I certify that if operator maintenance was required, all roads have been maintained satisfactorily and have been left in at least as good of condition as prior to haul.

By: _____ Date: _____

Title: _____

cc: Accounting Tech

[pencil post additional volume to AMORT and, when letter returned, final post]

RROW Agreement file.

Illustration VIII-5a

Letter to Permittee Confirming Fulfillment of License Agreement Requirements
Prior to Termination of Timber Sale – Scaled Sale

Page 1 of 4

5401[Org Code]

TS No. _____

[TS Name]

[Permittee (Licensor)]

Dear _____:

BLM's Licensee [enter name of BLM TS purchaser] has completed logging operations under the [TS name] Timber Sale, Contract No. OR____-TS_____; located in Section(s) _____, T.____ S., R. ____ Willamette Meridian. **This timber sale is a scaled sale.**

The contract provisions estimated road fees payable to you pursuant to Right-of-Way and Road Use Agreement No. _____ in the following amounts based on the estimated volumes:

Road Maintenance	\$ _____
Surface Replacement	\$ _____
Subtotal	\$ _____
Road Use Fees	\$ _____
Total Payment Required:	\$ _____

[Use if Permittee chose to delay receipt of payment until final scale volume was determined.]

At the time you executed the License Agreement with our timber sale purchaser, you chose the option of receiving one lump-sum payment at the end of the timber sale once the final total scaled volumes were determined. The following table represents the final amounts that are payable to you for road maintenance and surface replacement fees. The volumes shown are based on the final scale tickets. The volumes are broken down by road segment.

[Use if Permittee chose to receive payment up front based on the estimated volume and then do a final adjustment of fees at the end of the timber sale once final scale volume was determined.]

At the time you executed the License Agreement with our timber sale purchaser, you chose to require an up-front payment of road fees in the amounts indicated above, with the final determination that the purchaser would either 1) have a refund due or, 2) be required to submit additional payment based on the final actual scaled volume. The following table represents the final amounts that are payable to you for road

Illustration VIII-5a
Letter to Permittee Confirming Fulfillment of License Agreement Requirements
Prior to Termination of Timber Sale – Scaled Sale
Page 2 of 4

maintenance and surface replacement fees. The volumes shown are based on the final scale tickets. The volumes are broken down by road segment.

Road No.	Se g. No	Surface Type	Length Used (Mi.)	Final Scaled Volume (MBF)	Mainte nance Fee/ MBF/Mi	Maint. Fees Due (\$) (Length x Vol. x fee/MBF/ Mi.	Surface Replace ment Fee/MBF /Mi.	Surface Repl. Fees Due (\$) (Length x Vol. x fee/MBF/ Mi)
TOTAL MAINTENANCE AND/OR SURFACE REPLACEMENT FEES PAYABLE TO PERMITTEE BASED ON FINAL SCALED VOLUME						\$		\$

[Use is there is a refund due for road maintenance/surface replacement fees.]

The purchaser paid you a total amount of \$_____ for maintenance and surface replacement fees based on the estimated volume. The payment for the estimated amount exceeds the final actual scale volume so the purchaser would be due a refund as follows:

Payment made based on estimated volume	\$
Amount of actual fees payable based on final scale volumes.	\$
Refund due for overpayment of road maintenance and surface replacement fees.	\$

[Use if there is additional payment due for road maintenance/surface replace fees.]

The purchaser paid you a total amount of \$_____ for maintenance and surface replacement fees based on the estimate volume. The payment for the estimated amount is less what is payable as shown in the above table for the actual scale volume. Our timber sale purchaser is responsible for the additional payment or road maintenance and surface replacement fees as follows:

Illustration VIII-5a

Letter to Permittee Confirming Fulfillment of License Agreement Requirements
Prior to Termination of Timber Sale – Scaled Sale

Page 3 of 4

Payment made based on estimated volume	\$
Amount of actual fees payable based on final scale volumes.	\$
Additional payment required for road maintenance & surface replacement fees	\$

[Use if there is a refund due for road use fees.]

The purchaser paid you a total amount of \$_____ for road use (amortization) fees based on the estimated volume. The payment for the estimated amount exceeds the final actual scale volume so the purchaser would be due a refund as follows:

Payment made based on estimated volume	\$
Amount of actual fees payable based on final scale volumes.	\$
Refund due for overpayment of road use fees	\$

[Use if there is an additional payment due for road maintenance/surface replacement fees.]

The purchaser paid you a total amount of \$_____ for road use fees based on the estimate volume. The payment for the estimated amount is less what is payable as shown in the above table for the actual scale volume. Our timber sale purchaser is responsible for the additional payment or road maintenance and surface replacement fees as follows:

Payment made based on estimated volume	\$
Amount of actual fees payable based on final scale volumes.	\$
Additional payment required for road use (amortization) fees based on final scaled volume.	\$

[Use in all letters]

We are now processing this timber sale contract for termination. We would appreciate your acknowledgment that all road fees shown above (maintenance, surface replacement and/or road use fees) have been received and that all other terms and conditions of the License Agreement have been satisfied.

[If operator maintenance was requirement, include the following:]

The certification below includes verification that the timber sale purchaser adequately maintained any permittee-owned roads as required under the License Agreement.

Illustration VIII-5a

Letter to Permittee Confirming Fulfillment of License Agreement Requirements
Prior to Termination of Timber Sale – Scaled Sale

Page 4 of 4

Please complete the certification block below and return one copy to us within 15 days of receipt of this certification letter. Retain the other copy for your files. Should you have any questions, please contact me at (____)____-____.

Sincerely,

[Typed name]
Contract Administrator

Licensors Certification:

[] I certify that all road fees have been received (including payments for modification volumes) and that the Licensee [enter name of BLM's timber sale purchaser], has satisfied all terms and conditions of the License agreement.

[] If a refund is due, payment has been made to the timber sale purchaser.

Include if operator maintenance was required on any roads owned by Permittee:

[] I certify that if operator maintenance was required, all roads have been maintained satisfactorily and have been left in at least as good of condition as prior to haul.

By: _____ Date: _____

Title: _____

cc: Accounting Tech
[pencil post additional volume to AMORT and, when letter returned, final post]

RROW Agreement file.

Illustration VIII-6
Form OR 2812-20 – BLM Report of Mineral Haul to Permittees
Page 2 of 2

PRIVACY ACT STATEMENT (Form OR 2812-20 page 2)

Information collected on this form may be subject to the requirements of the Privacy Act (5 U.S.C. 552a). The purpose of the Privacy Act is to balance the government's need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of their privacy stemming from federal agencies' collection, maintenance, use, and disclosure of personal information about them. Whether stored in manual/paper files or in a database, the Privacy Act requires the information collected be stored in secure locations, with access limited to those employees with a "need to know." Any information that we collect may be subject to disclosure, but will be handled in accordance with the requirements of the Privacy Act and the Freedom of Information Act to ensure the greatest protection of personal privacy in the face of any required disclosure. Except as might be required by law, we do not share any information we receive with outside parties.

Form OR 2812-20

Page 2 of 2

February 2009

Illustration VIII-7
 Permittee Request for Terms and Conditions of Use
 Page 1 of 2

2812[ORG CODE]
 [Permit No.]
 [Serial No.] FD

[Name of Field Manager]
 Bureau of Land Management
 _____ District Office

Under the terms of Right of Way & Road Agreement/Permit ___-___,
 _____ plans to remove timber from the following lands:

[Permittee harvest area]

The enclosed vicinity map shows the harvest area and the haul route to be used. In connection with the removal of this timber, it will be necessary to use the following U.S.-controlled roads under the terms of O&C Logging Road Right-of-Way permits as shown below in connection with our project:

BLM Resource Area	Permit No.	Road/Segment	Length to be Used	Anticipated Period of Haul	Anticipated Volume (MBF) to be Hauled over this Segment

[Use one or both of the following paragraphs regarding road use fees.]

Our records indicate that road use fees have already been established for road Nos. _____.

Our records indicate that road use fee calculations are necessary for our use of road Nos. _____. Attached are tributary area maps for each of these road segments. The tributary acres and tributary volume for each of these roads is shown below.

Illustration VIII-7
 Permittee Request for Terms and Conditions of Use
 Page 2 of 2

<u>Road No.</u>	<u>Seg.</u>	<u>MBF/ Acre</u>		<u>BLM Tributary Acres</u>		<u>BLM Tributary Timber for This Segment (Total MBF)</u>
_____	_____	_____	X	_____	=	_____
_____	_____	_____	X	_____	=	_____
_____	_____	_____	X	_____	=	_____
_____	_____	_____	X	_____	=	_____
_____	_____	_____	X	_____	=	_____

[If qualified reportable mineral haul over U.S. roads will apply, use the following.]

We also plan on surfacing our road No. _____ and in connection with surfacing of that road, we will be hauling mineral material over your road Nos. _____.

Please indicate whether the BLM will be maintaining the above roads and charging us maintenance and/or surface replacement fees or whether the BLM will be requiring operator maintenance or a combination of operator and BLM maintenance (indicate so on a road-by-road basis)

We request terms and conditions of use for the above roads, including any road rules such as speed limits, dust abatement measures, season restrictions based on road design, etc.

Please reply to me at _____. If you have any questions, call me at _____.

Sincerely,

Enclosures
 Vicinity Map
 Tributary area map(s)

Illustration VIII-9

BLM Letter to Permittee Providing Terms and Conditions of Permittee Use

Page 1 of 5

2812 {Org Code]

[Permit No.]

[Serial No.]

We Wanna Log II, Inc.

Dear _____:

Thank you for your letter dated _____ notifying us of your intended use of the following United States roads or improvements under the provisions of your O&C Logging Road Right-of-Way Permit No. _____, serial No. _____ FD in connection with your _____ project. The following is provided as the terms and conditions of use of the requested roads as shown below:

Road No.	Segment	Surface Type	Length

We have verified that all of the roads [except Nos. _____] are included in Schedule 1 of your Permit No. _____.

[] Use if there are some roads that are not included in Schedule 1—roads over which the permittee does not have rights]:

In connection with your use of road Nos. _____, before we can provide terms and conditions of use, these roads must be added to the permit by amendment. We are treating your request for terms and conditions of use for these (this) road(s) as a request to amend this/these road(s) into the permit. The amendment is being processed by _____ (telephone (____)____-____) and has been designated as amendment No. _____ to Permit No. _____.

Illustration VIII-9

BLM Letter to Permittee Providing Terms and Conditions of Permittee Use
Page 2 of 5

[Pre-Haul Inspection—use in all]

In connection with your use of the BLM-controlled roads you are required to leave them in at least as good of condition than what existed prior to your use. We will be conducting a pre-haul inspection of the roads and you are welcome to participate. If you wish to accompany our road inspector, please contact _____ at (____)____-_____.

[] Use if BLM Maintenance of Some/All Roads]:

BLM will perform the maintenance on [all of the above roads] [on road Nos. _____], and you will be required to pay road maintenance and/or surface replacement fees at the rate as shown in the state-wide maintenance fee schedule that is in effect at the time of haul

[] Use if operator maintenance of some/all roads:

The BLM is waiving its first right to maintain the following roads and is allowing operator maintenance on the following roads: [list road Nos.]

For the above-identified roads which you will maintain, BLM will waive maintenance fees only on these roads during your period of use. However, surface replacement and/or road use fees may still apply. You are not authorized to incur any expenses for which you will be reimbursed by BLM.

[] Use if seasonal hauling restrictions on road(s) (based on road design):

Road Nos. _____ are not designed for winter haul (between the period of _____ and _____). If you wish to haul during the winter months, it is recommended that the following winterizing procedures be performed to ensure that the road will be left in at least as good of a condition as before your haul:

[outline winterizing measures here]

If you choose to haul during the wet season all costs of winterizing the road will be at your own expense. If the recommended winterizing measures are not performed and your winter hauling causes damage to the public lands, you will be responsible for repairing the damage.

[] Road Use Fee Status—(use one of following as applicable)

Our records indicate that fee calculations have previously been completed for your use of the following roads and the current deficient balances and road use fees apply to your haul:

Illustration VIII-9
BLM Letter to Permittee Providing Terms and Conditions of Permittee Use
Page 3 of 5

Road Nos.	Segment No.	Orig. or Imp.	Current Deficient Balance	Road Use Fee per MBF

If fee calculations are required:

They need to submit tributary information.

Our records indicate that new fee calculations are required for your first use of road No(s). _____ [or your first use of the BLM capital improvement placed on road No(s). _____]. Please submit a tributary area map for each road segment showing your tributary area for each segment and provide your tributary acres and volume for each segment as well.

Or

We have tributary information and are calculating fees

We have received your tributary area maps, acres and volumes and anticipate the fee calculations for these roads being completed by _____ (phone (541)618-_____).

Snow removal

For any roads that are not limited to summer use as described above, you will be permitted to perform snow removal subject to the following conditions:

- You must notify _____ by phone at (____)____-_____ at least 24 hours prior to conducting snow removal operations. The notification shall include identification of the affected road segments.
- Removal of snow may be done by a rubber-tired grader or front-end loader. A _____-inch layer [usually four inches or as determined by AO] of compacted snow shall be left on the road surface.
- Snow shall be removed as it accumulates.

Illustration VIII-9

BLM Letter to Permittee Providing Terms and Conditions of Permittee Use
 Page 4 of 5

- Snow shall be removed to a width sufficient to provide for safe operating room, and turnouts shall be spaced to be intervisible. Provisions shall be made to provide for snow storage and to adequately drain the road surface.
- Holes shall be punched through the snow bank as directed by the Authorized Officer at periodic intervals (maximum 1,000 feet) to allow for snow melt to drain off the road surface.
- You shall be liable for reimbursement to the BLM for repairs to the road resulting from damage caused by your snow removal operations.

[] Use if dust abatement is required by AO (usually through residential areas). Note: If U.S. controls the road over an exclusive easement, check to see if there is a letter of agreement requiring dust abatement.

Prior to your use of the following roads, dust abatement shall be performed as shown below. Dust abatement is required in addition to payment of maintenance fees.

Road & Segment No.	From M.P.	To. M.P.	Type (water, lignin sulfonate, or bituminous)

Prior to application of dust palliatives, the roadbed shall be bladed and shaped to remove surface irregularities and loose material.

The prepared surface shall be visibly moist and drying just prior to application of the Lignin Sulfonate or Bituminous dust palliative.

The required dust abatement (water, bituminous, or Lignin Sulfonate material) shall be applied only when the surface temperature is 70°F (or higher and the weather is not foggy or rainy). No application shall be made when rain or cold weather is anticipated within 24 hours.

Identify other road rules or traffic regulations.

[speed limits, safety rules, etc.]

Illustration VIII-9

BLM Letter to Permittee Providing Terms and Conditions of Permittee Use

Page 5 of 5

Please contact _____ at (____)____-____ at least one week before hauling commences and also notify _____ when hauling ends for the season.

You are required to submit a Report of Road Use (Form OR 2812-6) according to the terms of your Permit, which in this case is [monthly] [quarterly]. If no use has occurred, a certified haul report is still required which indicates no hauling.

Sincerely,

Field Manager
_____ Resource Area

cc: Maintenance Operations Foreman
Lead Engineer

[ENCLOSURES AS NOTED BASED ON PARAGRAPHS SELECTED.]

Illustration VIII-12

BLM Request to Permittee to Send Report of Road Use for Mineral Haul

Page 1 of 2

2812(OR11_)

[Permit No.]/[Serial No. FD]

[date]

Dear _____:

You are the holder of O&C Logging Road Right-of-Way Permit No. _____ (serial No. OR _____ FD). In accordance with the current mineral haul policy, you are required to report haul of qualified mineral materials over U.S. roads twice annually. Attached is a "Report of Road Use" (Form OR 2812-6), which covers your use of U.S. roads for mineral haul during the last reporting period (from [enter either January 1 through June 30, 20__ or July 1 through December 31, 20__]).

In order to satisfy this mineral reporting obligation under the above permit, please complete the "Permittee" portion of the attached form as indicated, sign and date the certification and return the form no later than [enter either August 1, 20__ or February 1, 20__ based on the reporting period]. If you have not hauled any mineral material over any BLM roads during the above reporting period, you should check the block indicating that no mineral hauling has occurred and sign and return the report to this office by the above date.

You are required to submit a separate Report of Road Use for each permit if you hold multiple permits. However, if there is no mineral haul under all of your permits, we can accept a combined report. If mineral haul occurred under one or more of your permits, we can also accommodate a request for one combined bill which is broken down by permit. Please indicate so if that is your desire.

Illustration VIII-12

BLM Request to Permittee to Send Report of Road Use for Mineral Haul
Page 2 of 2

We have the Form OR 2812-6 and the continuation sheet (form OR 2812-6a) available electronically in an Excel spreadsheet. If you desire to complete your form electronically, you must attach and sign a blank signed copy referring to the printout of the Excel version, please let us know and we will send you the form electronically.

If you have been reporting by using on a spreadsheet or customized form from your accounting system, you may still continue to submit your information on that format, but you will need sign the certification section of the form and attach the form OR 2812-6 and indicate “see attached, pages _ of __.” Also, your form must include all of the information that is required on Form OR 2812-6 and Form OR 2812-6a.

The forms have been modified to accommodate your reporting of mineral haul with your report of timber haul. If you desire to do this, just check the appropriate box at the top of the form.

The Report of Road Use should be submitted to the attention of _____.
Thank you for your cooperation. If you have any questions, please
_____ at (541) ____-_____.

Sincerely,

Field Manager
_____ Resource Area

[The enclosure is the OR 2812-6 form.—If the Permittee has already reported mineral haul under their quarterly or monthly report of road use, do not send this letter.]

Illustration VIII-14
BLM Request to Permittee to Submit Report of Road Use
Page 1 of 2

2812(OR11_)
[Permit No.]
[Serial No. FD]

Dear _____:

You are the holder of O&C Logging Road Right-of-Way Permit No. _____
(Serial No. OR _____ FD), which requires you to submit a certified statement as
to your commercial hauling over BLM-controlled roads on a [monthly][quarterly]
basis.

Attached is a "Report of Road Use" (Form OR 2812-6), which covers your use of
United States roads for the commercial hauling of timber for the last reporting
period (from _____ to _____). In order to satisfy the reporting
obligation under the above permit, please complete the "Permittee" portion of the
attached form as indicated, sign and date the certification and return the form no
later than _____. If you have not hauled on any BLM roads during the
above reporting period, you should check the block indicating that no timber
hauling has occurred and sign and return the negative haul report to this office
within ten (10) days.

If the request is just for timber haul include this:

This request is for reporting your timber haul. Under the mineral haul policy, you
will be receiving a similar letter for the two reporting periods for mineral haul
(June 30 and December 31).

You are required to submit a separate Report of Road Use for each permit if you
hold multiple permits. However, if you indicate "no haul" for ALL of your permits,
you may submit one report with all permits listed. In addition, we can

Illustration VIII-14
BLM Request to Permittee to Submit Report of Road Use
Page 2 of 2

accommodate a request for one combined bill which is broken down by permit. Please indicate so if that is your desire.

We have this form available electronically in an Excel spreadsheet. If you desire to complete your form electronically and attach a blank signed copy referring to the printout of the Excel version, please let us know and we will send you the form electronically. If you have been reporting by use of a spreadsheet or customized form from your accounting system, you may still continue to submit your information on that format, but you will need sign the certification section of the form and attach the form OR 2812-6 and indicate "see attached, pages _ of ___."

In order to prioritize maintenance needs on BLM roads, we are requesting the Permittees to submit a list of roads well in advance of the planned hauling activity. If you have not yet submitted a request for terms and conditions for any roads you will be using in the near future, please do so at this time.

The Report of Road Use should be submitted to the attention of _____. Any request for terms and conditions of use should be submitted to _____ at the above address. Thank you for your cooperation. If you have any questions, please _____ at (541) ____ - ____.

Sincerely,

Field Manager
_____ Resource Area

[THE ENCLOSURE IS THE REPORT OF ROAD USE]

Illustration VIII-15
Second BLM Request to Permittee to Submit Report of Road Use
Page 1 of 1

2812 (Org Code)
[Permit No.]/[Serial No.]

Certified Mail – Return Receipt Requested {#####}

Mr. Sam Sawyer
We Wanna Log II, LLC
500 Log Pond Lane
Loggerville, OR 97777

Dear Mr. Sawyer:

This is your second reminder to provide certification of haul under your O&C Logging Road Right-of-Way Permit No(s) _____. Attached is a "Report of Road Use" Form OR 2812-6 which covers use of BLM roads under the authority of the above Logging Road Right-of-Way Permits for the period of _____ through _____. This report is required in satisfaction of the obligation under your right-of-way permits to provide a certified statement regarding hauling over BLM-controlled roads during the above period. Failure to submit the above reports could result in a non-compliance action under the terms of your permit.

If you have hauled on any BLM roads during the above reporting period, please complete the Permittee portion of the form OR 2812-6 and return the form, signed by an authorized officer, to this office no later than _____. According to direction from the Office of the Inspector General, a Report of Road Use should be submitted to certify that no haul has occurred as well. If you have not hauled on any BLM roads during the above reporting period, you should check the block indicating that no timber hauling has occurred and sign and return the "no haul" report to this office within ten (10) days of your receipt of this letter.

Thank you for your cooperation. If you have any questions, please call _____ at (____) ____-_____

Sincerely,

Field Manager
_____ Resource Area

[THE ENCLOSURE IS THE REPORT OF ROAD USE]

CHAPTER VIII – ROAD USE
(U.S., PERMITTEE AND THIRD PARTIES)

VIII-89

Illustration VIII-17
Bill for Collection
Page 1 of 1

UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT Bill for Collection		Bill Number: 2008001002 <hr/> Date: 01/22/2008
***** This is a Test Bill (obstraining) and NOT an Official Record *****		
Make Remittance Payable To <i>DOE/BLM</i> and Mail To: MEDFORD DISTRICT 8040 BIDDLE ROAD MEDFORD, OR 97504-4119 (541)618-2286		Please include bill number on all remittances.
Payor: LETS LOG TIMBER CO. 1042 LOGGING ROAD MEDFORD, OR 97504		

DATE	DESCRIPTION	AMOUNT
	OROR 061191 PERMIT NO. _____ ROAD MAINTENANCE FEES DUE \$100.00 SURFACE REPLACEMENT FEES DUE \$100.00 ROAD USE FEES DUE. \$100.00 FOR A BREAKDOWN BY ROAD NUMBER SEE ATTACHED ROAD USE FORM	\$300.00
	BLM CONTACT: TANYA L DENT, (541)618-2477	
AMOUNT DUE THIS BILL:		\$300.00
DATE DUE:		02/21/2008
<ul style="list-style-type: none"> - Interest will be assessed at the rate of 4% per year if full payment is not made. - See attached Notice of Actions in Event of Delinquency. - Payment can be made by cash, check, money order or credit card. We accept Visa, Mastercard, Discover, and American Express. If paying by phone, please call the office number listed above. - If the above name and address is incorrect, please contact the BLM office listed above. 		

This Bill was generated by the automated BLM Collections and Billing System and is a paper representation of a portion of the official electronic record contained therein.

Illustration VIII-19
Notice of Actions in Event of Delinquency
Page 1 of 1

6-23-04:10:26AM:

: 2

3/ 3

NOTICE OF ACTIONS IN EVENT OF DELINQUENCY

If payment is not received by the due date, the Bureau of Land Management will pursue collection by appropriate methods, and will assess interest, administrative charges, and penalties on past due amounts.

1. Interest charges accrue from the date of the bill, in addition to administrative charges of \$15 per demand letter, and actual administrative costs incurred in collecting the debt. A penalty of 6% per year is assessed on any portion of the debt more than 90 days past due.
2. The delinquent account will be sent to the Department of the Treasury, for referral to collection agencies, credit reporting bureaus and possible salary or administrative offset. Debts may be sent to the Internal Revenue Service for inclusion as income to the debtor on form 1099C or offset from debtor's tax refund.
3. You may request a full explanation of the bill and you have the right to inspect and copy government records relating to your debt, other than investigative, security or privacy act files. You may dispute information in BLM records and have the right to administrative appeal or review of the claim, in accordance with 43 CFR Part IV and applicable legislation.
4. You may enter into a written repayment agreement with the Bureau of Land Management, if the agreement is acceptable to the BLM. Your request must be submitted to the BLM office at the address shown on the bill.

Authority: Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982.

CHAPTER VIII – ROAD USE
(U.S., PERMITTEE AND THIRD PARTIES)

VIII-92

Illustration VIII-20
Summary Multi-Permit Bill
Page 1 of 1

UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT Bill for Collection		Bill Number: 2005002587
		Date: 11/19/2004
Make Remittance Payable to DOI/BLM and Mail To: EUGENE DISTRICT P.O. BOX 10226 EUGENE, OR 97440 (541)683-6600		Please include bill number on all remittances
Payor:	[REDACTED]	

DATE	DESCRIPTION	AMOUNT
	E- [REDACTED] ROAD USE REF NO. [REDACTED]	\$1,090.89
	E- [REDACTED] ROAD MAINTENANCE REF NO. [REDACTED]	\$869.86
	E- [REDACTED] ROCKWEAR REF NO. [REDACTED]	\$427.80
	BLM CONTACT: [REDACTED]	
AMOUNT DUE THIS BILL:		\$2,388.55
DATE DUE: 12/19/2004		
<ul style="list-style-type: none"> • Interest will be assessed at the rate of 1% per year if full payment is not made. • See attached Notice of Actions in Event of Delinquency • Payment can be made by cash, check, money order or credit card. We accept Visa, MasterCard, Discover, and American Express. If paying by phone, please call the office number listed above. • If the above name and address is incorrect, please contact the BLM office listed above. 		

This Bill was generated by the automated BLM Collections and Billings System and is a paper representation of a portion of the official electronic record contained therein.

CHAPTER VIII – ROAD USE
(U.S., PERMITTEE AND THIRD PARTIES)

VIII-93

Illustration VIII-21
Receipt for Payment
Page 1 of 1

United States Department of the Interior
Bureau of Land Management
MEDFORD DISTRICT
3040 BIDDLE ROAD
MEDFORD, OR 97504 -4119
Phone: (541) 618-2286

Receipt
This is a Test Receipt (abstraining) and
NOT an Official Record

No: 1452144

Transaction #: 1500850	
Date of Transaction: 06/20/2008	
CUSTOMER:	LETS GO LOG TIMBER COMPANY 9110 LOGGERS WAY CENTRAL POINT,OR 97502

LINE #	QTY	DESCRIPTION	REMARKS	UNIT PRICE	TOTAL
1	1.00	LANDS & REALTY MANAGEMENT / RIGHTS OF WAY-OTHER / ROAD USE PERMIT ROAD USE FEE-O&C LANDS (755) CASES: OROR 057653/\$540.00	ROAD USE FEES FOR PERMIT NO. _____	- n/a -	540.00
2	1.00	LANDS & REALTY MANAGEMENT / RIGHTS OF WAY-OTHER / ROAD USE PERMIT ROAD MAINT-O&C LANDS (9110) CASES: OROR 057653/\$1020.00 PROJECT: 4000	MAINTENANCE FEES FOR PERMIT NO. _____	- n/a -	1020.00
3	1.00	LANDS & REALTY MANAGEMENT / RIGHTS OF WAY-OTHER / ROAD USE PERMIT ROAD MAINT-O&C LANDS (9110) CASES: OROR 057653/\$600.00 PROJECT: 4000	SURFACE REPLACEMENT FEES FOR PERMIT NO. _____	- n/a -	600.00
TOTAL:					\$2,160.00

PAYMENT INFORMATION			
1	AMOUNT:	\$2,160.00	POSTMARKED: N/A
	TYPE:	CHECK	RECEIVED: 06/20/2008
	CHECK NO.:	0001	
	NAME:	LETS GO LOG TIMBER COMPANY 9110 LOGGERS WAY CENTRAL POINT OR 97502	

REMARKS

This receipt was generated by the automated BLM Collections and Billing System and is a paper representation of a portion of the official electronic record contained therein.

Illustration VIII-22
Road Amortization Records Updated for Payment and/or Swap-outs
Page 4 of 4

UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT ROAD AMORTIZATION AND FEE RECORD										
Road User		Share		Road Use		Sys.		Int./M		
BLM		0.0 % \$ 2,515.26		Fee/M 0.03		Fee/M.				
		% \$								
		% \$								
		% \$								
		% \$								
Date	Accounting Reference	Vol. Hauled (Mhd. ft)	Rate	Total	Principal Running	Interest Status	BLM Deficient Investment	Deficient Investment	Deficient Investment	Deficient Investment
7/15/1963	balance per orig amorts	2602	0.03	0.00	0.00		2,515.26			
8/2/1963	11-974	3151	0.03	78.06	78.06		2,437.20			
8/5/1963	11-983	175	0.03	94.53	172.59		2,342.67			
9/26/1963	11-888	2069	0.03	62.07	239.91		2,275.35			
2/3/1965	11-1246	19	0.03	0.54	240.45		2,274.81			
3/1/1965	11-1236	40	0.03	1.20	241.65		2,273.61			
12/15/1965	11-1236	4397	0.03	131.92	373.57		2,141.69			
12/17/1965	11-974	83	0.03	2.63	376.20		2,139.06			
4/22/1966	swap out		0.03	2,139.06	2,515.26		0.00	free use		

SAMPLE AMORTIZATION RECORD FOR BLM USE OF PERMITTEE (LGL, Inc.) ROAD

SHOWS BLM DEFICIT BALANCE IN ORIGINAL ROAD AND INCLUDES POSTING OF PAYMENTS UNDER BLM TS LICENSE AGREEMENT AS WELL AS A SWAP OUT OF THE REMAINING BLM BALANCE

Road No. 34-2E-7 Segment A

Road Name Clark Creek

Length 0.59 Surface Type (ACQ)(TS)

Fund Status BLM

Road Control LGL Inc Deficit Control

Deficit Type: BASE

Illustration VIII-23
First CBS-Generated Demand Letter
Page 1 of 2



First Demand Letter
United States Department of the Interior
BUREAU OF LAND MANAGEMENT
_____ DISTRICT

In Reply Refer to:
1375 (OR110)

February 15, 2008

Let's Go Log Timber Company
9110 Loggers Way
Central Point, OR 97502

Dear Lets Go Log Timber Company,

According to our records, we have not received payment on Bill for Collection No. 200881111, dated January 14, 2008, which was issued to you in the amount of \$150.02. This bill is now past due. Additional charges were calculated on the balance as of February 15, 2008.

Principal	\$150.02
Interest at 4% per year	\$1.45
Administrative Handling Charge	\$15.00
Total Now Due	\$166.47

Payment in full is due within 15 days of the date of this letter, unless other payment terms are arranged. Interest and administrative charges will continue to accrue on the unpaid balance. Bills older than 90 days incur a 6% penalty from date of bill.

In accordance with the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, if we do not receive payment, we will send this account to the Department of the Treasury. They will refer the account to collection agencies and credit reporting bureaus, or possibly perform a salary or administrative offset. Collection will be pursued from any Federal and State payments, including payments of goods or services, lump sum leave payments, travel reimbursements, federal and state tax refunds, and retirement payments. The debt may be sent to the Internal Revenue Service for inclusion as income to you on form 1099C, Cancellation of Debt.

If you believe the BLM billed you in error, you may request a review. Please send a detailed explanation to the BLM office listed above. You have the right to inspect and copy government records relating to your debt, other than investigative, security and privacy act files.

You may request a written agreement with the Bureau of Land Management for a repayment schedule.

Illustration VIII-23
First CBS-Generated Demand Letter
Page 2 of 2

Payments can be made by check, money order, or credit card (VISA, MasterCard, Discover and American Express). You may use debit cards with the VISA or MasterCard logo. Make checks or money orders payable to Department of Interior/BLM and send to the address above. Write the bill number on the payment or include a copy of the bill or notice. To pay by credit card, please call (541)____-____.

If you have questions concerning this bill or if you have already made payment, please contact (district accounting technician) at (541)____-____.

Sincerely,

Field Manager
_____ Resource Area

Illustration VIII-24
Second CBS-Generated Demand Letter
Page 1 of 2

In Reply Refer to:
1375 (OR110)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

March 02, 2008

Lets Go Log Timber Company
9110 Loggers Way
Central Point, OR 97502

Dear Lets Go Log Timber Company,

According to our records, we have not received payment on Bill for Collection No. 2008881111, dated January 14, 2008, which was issued to you in the amount of \$150.02. This bill is now past due. Additional charges were calculated on the balance as of March 02, 2008.

Principal	\$150.02
Interest at 4% per year	\$1.78
Administrative Handling Charge	\$30.00
Total Now Due	\$181.80

Payment in full is due within 15 days of the date of this letter, unless other payment terms are arranged. Interest and administrative charges will continue to accrue on the unpaid balance. Bills older than 90 days incur a 6% penalty from date of bill.

In accordance with the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, if we do not receive payment, we will send this account to the Department of the Treasury. They will refer the account to collection agencies and credit reporting bureaus, or possibly perform a salary or administrative offset. Collection will be pursued from any Federal and State payments, including payments of goods or services, lump sum leave payments, travel reimbursements, federal and state tax refunds, and retirement payments. The debt may be sent to the Internal Revenue Service for inclusion as income to you on form 1099C, Cancellation of Debt.

If you believe the BLM billed you in error, you may request a review. Please send a detailed explanation to the BLM office listed above. You have the right to inspect and copy government records relating to your debt, other than investigative, security and privacy act files.

Illustration VIII-24
Second CBS-Generated Demand Letter
Page 2 of 2

You may request a written agreement with the Bureau of Land Management for a repayment schedule.

Payments can be made by check, money order, or credit card (VISA, MasterCard, Discover and American Express). You may use debit cards with the VISA or MasterCard logo. Make checks or money orders payable to Department of Interior/BLM and send to the address above. Write the bill number on the payment or include a copy of the bill or notice. To pay by credit card, please call (541) xxx-xxxx.

If you have questions concerning this bill or if you have already made payment, please contact (accounting technician (541) ____-____).

Sincerely,

Field Manager
_____ Resource Area

Illustration VIII-25
Third and Final CBS-Generated Demand Letter
Page 1 of 2

In Reply Refer to:
1375 (OR110)

March 17, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Let's Go Log Timber Company
9110 Loggers Way
Central Point, OR 97502

Dear Lets Go Log Timber Company,

According to our records, we have not received payment on Bill for Collection No. 2008881111, dated January 14, 2008, which was issued to you in the amount of \$150.02. This bill is now past due. Additional charges were calculated on the balance as of March 17, 2008.

Principal	\$150.02
Interest at 4% per year	\$2.55
Administrative Handling Charge	\$45.00
Total Now Due	\$197.57

Payment in full is due within 15 days of the date of this letter, unless other payment terms are arranged. Interest and administrative charges will continue to accrue on the unpaid balance. Bills older than 90 days incur a 6% penalty from date of bill.

In accordance with the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, if we do not receive payment, we will send this account to the Department of the Treasury. They will refer the account to collection agencies and credit reporting bureaus, or possibly perform a salary or administrative offset. Collection will be pursued from any Federal and State payments, including payments of goods or services, lump sum leave payments, travel reimbursements, federal and state tax refunds, and retirement payments. The debt may be sent to the Internal Revenue Service for inclusion as income to you on form 1099C, Cancellation of Debt.

If you believe the BLM billed you in error, you may request a review. Please send a detailed explanation to the BLM office listed above. You have the right to inspect and copy government records relating to your debt, other than investigative, security and privacy act files.

Illustration VIII-25
Third and Final CBS-Generated Demand Letter
Page 2 of 2

You may request a written agreement with the Bureau of Land Management for a repayment schedule.

Payments can be made by check, money order, or credit card (VISA, MasterCard, Discover and American Express). You may use debit cards with the VISA or MasterCard logo. Make checks or money orders payable to Department of Interior/BLM and send to the address above. Write the bill number on the payment or include a copy of the bill or notice. To pay by credit card, please call (541) xxx-xxxx.

If you have questions concerning this bill or if you have already made payment, please contact (accounting technician at 541-____-_____).

Sincerely,

Field Manager
_____ Resource Area

Illustration VIII-26
Form OR 2812-17 - Tripartite Agreement
Page 1 of 3

UNITED STATES
DEPARTMENT OF THE INTERIO
BUREAU OF LAND MAANGEMENT

TRIPARTITE AGREEMENT

THIS AGREEMENT, entered into on this ____ day of _____, 20____, by and between THE UNITED STATES OF AMERICA, acting through the BUREAU OF LAND MANAGEMENT, hereinafter called BLM, and _____, hereinafter called INDEPENDENT CONTRACTOR, AND _____, hereinafter called PERMITTEE.

WHEREAS, PERMITTEE, has entered into O. and C. Logging Road right-of-Way Permit No. _____ (Serial No. _____ FD) (hereafter called PERMIT), with the BLM; and

WHEREAS, INDEPENDENT CONTRACTOR, has purchased from PERMITTEE certain timber located in the _____ County, Oregon, under contract dated _____, 20____; and

WHEREAS, PERMITTEE requests that the INDEPENDENT CONTRACTOR be allowed access to haul the above-described timber across the lands of the United States under the terms and conditions of said PERMIT; and

WHEREAS, BLM is willing, pursuant to 43 CFR §2812.2-2, to allow INDEPENDENT CONTRACTOR to use the above PERMIT rights, subject to the terms and conditions set forth herein;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. BLM hereby authorizes PERMITTEE to allow INDEPENDENT CONTRACTOR to use the existing PERMIT roads shown on the attached Exhibit A for the hauling of the above-described timber which was purchased by INDEPENDENT CONTRACTOR from PERMITTEE.
2. PERMITTEE hereby authorizes INDEPENDENT CONTRACTOR to use the existing PERMIT roads shown on the attached Exhibit A for the hauling of the above-described timber which was purchased by INDEPENDENT CONTRACTOR from PERMITTEE.
3. In the exercise of this right, INDEPENDING CONTRACTOR agrees to be bound by the terms and conditions of the above said PERMIT.
4. The right to use the above PERMIT is personal to INDEPENDENT CONTRACTOR and may not be assigned to another entity.

Illustration VIII-26
Form OR 2812-17 - Tripartite Agreement
Page 2 of 3

5. When INDEPENDENT CONTRACTOR exercises any rights under the PERMIT, it shall provide a performance bond in the amount required by said PERMIT in favor of the United States. It shall also provide to BLM proof of insurance in the types and amounts specified under the terms and conditions in the PERMIT.

6. INDEPENDENT CONTRACTOR shall pay BLM all road use and maintenance fees (including surface replacement fees) required under the PERMIT for timber which it hauls over PERMIT roads under this authorization. PERMITTEE shall receive credit for the amount of road use fees paid as prescribed in its O. and C. Logging Road Right-of-Way Permit. No. ____.

7. INDEPENDENT CONTRACTOR shall furnish a certified statement to BLM showing the volume of merchantable timber hauled over the PERMIT roads. Such statement, together with payment of appropriate road use and maintenance fees (including surface replacement fees), shall be furnished monthly for hauling the previous month.

8. All of INDEPENDENT CONTRACTOR'S equipment operating upon the PERMIT road(s) shall be maintained in good and safe operating condition and shall be operated carefully so as to minimize accident hazards.

9. INDEPENDENT CONTRACTOR and PERMITTEE shall indemnify and save harmless the UNITED STATES from any and all damages, claims, costs, expenses, and attorney's fees which may be made against or be incurred by the United States because of injury or death of persons or damage to property caused by or arising from the negligence of INDEPENDENT CONTRACTOR, its agents and servants in its operations under this Agreement, or breaches of the terms and conditions of this Agreement.

10. If default shall be made by INDEPENDENT CONTRACTOR in the performance of any of its obligations hereunder and with default shall continue for a period of sixty days after written notice by BLM to INDEPENDENT CONTRACTOR and PERMITTEE, BLM may suspend the rights granted by this Agreement during the period of the default by giving written notice thereof to INDEPENDENT CONTRACTOR and PERMITTEE, provided, however, that, if as a result of the default, an emergency is created which endangers BLM's timber, roads or other property, BLM may immediately suspend all rights granted herein by giving written notice thereof to INDEPENDENT CONTRACTOR and/or PERMITTEE. The election by BLM of the remedies provided for above shall be without prejudice to its right to institute legal or equitable proceedings against INDEPENDENT CONTRACTOR and/or PERMITTEE to obtain such other relief as may be appropriate, including, without limitation, damages incurred directly or indirectly as a result of the default of INDEPENDENT CONTRACTOR.

Illustration VIII-26
Form OR 2812-17 - Tripartite Agreement
Page 3 of 3

Unless sooner terminated in accordance with paragraph 10., the terms of this Agreement shall be from the date hereof until _____.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS Agreement in triplicate originals of the day and year first above written.

BLM:	INDEPENDENT CONTRACTOR	PERMITTEE:
By: _____	By: _____	By: _____
Title: _____	Title: _____	Title: _____

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CHAPTER IX – SUPPLEMENTS:
(RIGHT-OF-WAY PLATS AND FEE CALCULATIONS)

TC-IX-4

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IX. SUPPLEMENTS (RIGHT-OF-WAY PLATS AND FEE CALCULATIONS)

A. Purpose

This chapter provides definitions, policy and processing of “supplements” to reciprocal right-of-way agreements. The term “supplements” as used herein refers to those formal actions which require approval by one or both parties subsequent to the execution of a reciprocal right-of-way agreement. This chapter limits supplements to two types: 1) right-of-way plats (construction, improvement, and tramway) covered in Section B., and 2) road amortization fee calculations, covered in Section C.

There are some additional post-agreement approvals which are covered in other chapters but are not considered to be supplements within this chapter. These post-agreement approvals include such things as terms and conditions of use (see Chapter VIII.), swap-out of road use deficit balances (see Chapter VI.), agreements to transfer road maintenance responsibility (see Chapter XV.) or other actions requiring bi-lateral approvals.

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B. Right-of-way Plat Supplements (Road Construction, Tramway, and Improvement)

1. Purpose

From time to time, either the BLM or a permittee has the need to exercise their rights under the Agreement or Permit in order to: 1) construct a road or tramway on each other's property, or 2) to improve or renovate a road owned by the other party. This section provides guidance on the preparation, processing and review of road construction, tramway, and road improvement requests. This section provides guidance for road construction requests by either the permittee or the U.S. under reciprocal right-of-way agreements.

2. Rights in Reciprocal Right-of-Way Agreements are Floating Easements

Under most reciprocal right-of-way agreements, each party has been granted a "floating" right-of-way (subject to certain rights to object as uniquely stated in each **agreement) for construction of roads over the other party's lands which are** included in a particular reciprocal right-of-way agreement Schedule of Lands. A "floating" right-of-way as used here means that the exact location of the right-of-way to be constructed is yet to be determined, as long as it is located over and across lands that are already in a Schedule of Land over which the constructing party has rights. The ability of either party to exercise that right must not be unnecessarily denied.

Although the BLM can object to a right-of-way plat for specifically defined reasons in the individual permit, the Regional Solicitor's Office reminds that the BLM should act reasonably to avoid frustrating the intent of the reciprocal right-of-way agreement and 43 CFR 2812 regulations.

3. Construction Standards and Requirements

It is the intent of the reciprocal right-of-way agreements that a common standard be applied to various construction items and to both parties to an equal degree. The standard is one of "reasonableness" which may change as conditions and general standards change. The standard is not based on the particular needs or desires of one party over the other. An unusually high or low standard adopted by one party to the agreement does not control the other party.

A reasonable standard for the location and construction of forest roads is found in the Forest Practice Rules which implement the Oregon Forest Practices Act (OFPA) of 1971. The federal Environmental Protection Agency (EPA) has accepted the Forest Practice Rules as "best management practices" (BMPs) for control of non point source water pollution on forest lands in Oregon. Therefore, in

accordance with Section 208 of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92–500), BLM has agreed to meet the standards set by those Forest Practice Rules which pertain to protection of water quality on federal lands.

For those actions in which BLM has discretion to approve or deny, BLM may establish design standards and best management practices for its construction of roads and transportation facilities on BLM-administered lands which are higher than those identified as "best management practices" by the Oregon Forest Practices Act. Examples would include the construction requirements for bridges and stream right-of-ways on public lands.

When agency standards exceed OFPA requirements, it would be inappropriate to apply them to nondiscretionary right-of-way plat supplements under a typical reciprocal right-of-way agreement without first obtaining agreement with the permittee.

For example, the OFPA requires a 50-year flood event design standard for culvert placements. The BLM standard is based on a 100-year flood event design standard. The BLM cannot impose this 100-year flood event design standard to a permittee's non-discretionary right-of-way plat.

Any such standards which are not arbitrary may be applied to new (or discretionary) right-of-way applications.

4. Construction Provisions in Reciprocal Right-of-Way Agreements (Includes Reasons to Object)

Each reciprocal right-of-way agreement contains common language regarding, 1) specifications for road right-of-way plats, 2) disposition of right-of-way timber, and 3) rights to construct on each other's land. Not all reciprocal right-of-way agreements are the same and each reciprocal right-of-way agreement needs to be checked for the specific language.

The following provision is found on the face sheet of the standard template for reciprocal right-of-way agreements (Form OR 2812-16, Illustration V-2 - page 2).

The routes and construction specifications for roads to be constructed by the Permittee over the lands described in Schedule 1 shall be prepared in accordance with 43 CFR §2812.1-2(c) and filed with the Authorized Officer. No construction shall be commenced until such routes and specifications have been approved by the Authorized Officer. Upon receipt of such approval, unless the Authorized Officer shall otherwise direct, the Permittee shall forthwith, to the extent that conditions of weather permit, initiate construction of such roads in accordance with the approved route

and construction specifications and diligently prosecute such construction to completion. [Underline added.]

This provision requires that right-of-way plats that are submitted by the permittee must meet the standards in the regulations. In addition, the wording above says “No construction shall be commenced until such routes and specifications have been approved by the AO.” If no additional provisions existed in reciprocal right-of-way agreements, as shown below, each plat would have to be “approved” by the AO. However, since the following provisions are found in most semi-detailed agreements, the parties have agreed to allow road construction (as a floating easement as described in Section B.2. above) across each other’s land, subject to limited reasons to object.

The following (or similar) language is found in most reciprocal right-of-way agreements and provides the basis for the right to construct roads on each other’s land. This is found in the standard reciprocal right-of-way template (Form OR 2812-16, Illustration V-2, provision No. 10 of the Exhibit B on page 35 of the form):

Prior to the construction of a road on the lands of the other party, a map shall be filed with the landowner. Such map shall be prepared in accordance with 43 CFR §2812.1-2(c) and shall show the route and specifications of the road intended to be constructed. Construction may be commenced after the expiration of a thirty (30) day period following the filing of such map unless in the intervening period the landowner shall object to such construction. The landowner may object to the proposed construction only if:

- (1) It does not constitute the most reasonably direct route for the removal of forest products from the lands of the road builder, taking into account the topography of the area, the cost of road construction and the safety of use of such road;
- (2) The proposed road will substantially interfere with existing facilities or improvements on the lands of the landowner; or
- (3) Would result in excessive erosion to lands of the landowner.

The following additional reasons to object are also part of the standard template, but older semi-detailed agreements do not contain these reasons. Or, if these reasons to object are found, they were usually added by amendment and apply only to specific lands added by amendment at that time or later. READ THE PERMIT.

- (4) An existing road is available and suitable for removal of timber tributary to the proposed road;

and/or

(5) May affect a species listed as "threatened or endangered" under the Endangered Species Act. In the event the objection is made on the basis that a threatened or endangered species is affected, construction of the road will be delayed until consultation with the U.S. Fish and Wildlife Service or National Marine Fisheries Service under Section 7 of the Endangered Species Act has been completed on the proposed road. Based on the biological opinion received from the Fish and Wildlife Service or National Marine Fisheries Service, the objection may be withdrawn, modified, conditioned, or continued.

The above provision gives each party to a reciprocal right-of-way agreement the right to construct roads across the lands of the other, unless the landowner objects within a specific time (usually 30 days), and only for the limited reasons listed in the specific permit. This right to construct is exercised when one party submits a map (right-of-way plat) to the other party.

5. Discretionary vs. Nondiscretionary

The guidance in this chapter section primarily has to do with processing nondiscretionary right-of-way plats associated with reciprocal right-of-way agreements. To understand the processes identified herein, an understanding of the term "nondiscretionary" is needed. Whether the action is nondiscretionary or not will determine if certain environmental laws (including NEPA) are applicable. If the action is determined to be nondiscretionary, BLM can only "object" based on reasons in the specific Permit.

The determination of whether a right-of-way plat is a nondiscretionary action is based on two simple questions:

1) Does the permittee have rights over the underlying lands? Are the lands on Schedule 1 and/or shown with a legend type on the Exhibit C map which indicates they are on Schedule 1)?

2) Does the reciprocal right-of-way agreement contain language (usually in Exhibit B) similar to the one in Section B.4. above, in which the U.S. has limited discretion to authorize or deny? (Can the permittee "commence with construction" if the BLM does not "object" based on one of the limited reasons in the Exhibit B (within a specified period of time (usually 30 days))?)

a. Nondiscretionary

If the answer to both of these questions is "yes," then the processing of the right-of-way plat is nondiscretionary and the procedures in this handbook section apply.

However, even if the request for right-of-way is determined to be nondiscretionary, if the ESA reason for objection is in the Permit (reason No. (5) in Section B.4. above), the following applies:

1) Does the ESA reason to object apply to the specific lands being crossed (it may only apply to specific lands that are on Schedule 3)?

2) If the ESA reason for objection does apply to the specific lands, BLM must conduct surveys as applicable to make ESA “effect” determinations. However, these studies must be accomplished and a formal “may affect” determination made and written notice of objection to the permittee within the 30 days.

This is because the language in the ESA reason to object states that the landowner may object if the proposal:

“ . . . may affect a species listed as “threatened or endangered” under the Endangered Species Act. In the event the objection is made on the basis that a threatened or endangered species is affected, construction of the road will be delayed until consultation . . . is completed.” [Underline added.]

The provision language does not imply that the BLM can object merely because it believes the action “might” affect a listed species. Neither can the BLM object merely because it needs more time to conduct “effect” studies. The provision implies that a formal (written) “may affect” determination must be made in the permit timeframe in order to object. The determination can be made from available resource data.

See Section B.12. of this chapter for processing permittee nondiscretionary right-of-way plats.

b. Discretionary

If the U.S. lands being crossed are not found in the permit, the action is discretionary and subject to full NEPA analysis. In this case, the request should be processed as a discretionary amendment to the Permit. See Chapter XII. for processing discretionary amendments.

If the action is discretionary, the BLM is responsible to ensure that the proposed construction is in compliance with NEPA, ESA and other applicable laws. In this case, the BLM should notify the permittee immediately that proposed construction request is outside the scope of the terms and conditions of the reciprocal right-of-way agreement and will not be approved until the requirements of applicable laws and regulations are met. The permittee can elect to either amend the reciprocal

right-of-way agreement to add the U.S. lands covered by the plat or to apply for a new O&C unilateral permit. However, the BLM should not be processing unilateral permits as a stop-gap while an amendment is being prepared. The time-consuming aspect of discretionary amendments is with the NEPA and ESA clearances. Once the NEPA and ESA clearances are done it should take no longer to process an amendment than it does to process a unilateral permit.

If the permittee is not notified within the 30 days, they might assume the lands are in the Permit. Since no objection was received, the permittee might begin construction. It is important to verify the discretion and notify the permittee as soon as possible. However, if the cutting of O&C right-of-way timber is involved and they proceed without purchasing the timber, the permittee would be in violation of the regulations, and thus in noncompliance with the permit.

The BLM should check the permit carefully to determine if the permittee has rights over the lands. A check should be made of both the Schedule 1 (original and all amendments), as well as the Exhibit C map (and any amendments thereto).

If the lands are not located in the Schedule 1, but they are identified on the Exhibit C map with a certain legend type as being Schedule 1 lands, then the lands are considered to be in the permit and the right-of-way would be a nondiscretionary action.

If this situation occurs, an amendment should be made to correct the Permit by adding to the actual Schedule 1 the lands showing on the Exhibit C map as being Schedule 1 lands. This would be a nondiscretionary amendment to correct an error (see Chapter XII.)

6. Applicability of Certain Environmental Laws to Nondiscretionary Right-of-way Plats

When processing nondiscretionary plats, it is important to understand the applicability (or lack thereof) of certain environmental laws.

a. Endangered Species Act (ESA)

Over the years, after passage of the ESA the BLM has received guidance and direction on the applicability of Sec. 7 of the ESA to nondiscretionary right-of-way plats associated with the reciprocal right-of-way agreement.

The following provides a synopsis of a court case, a Regional Solicitor opinion, BLM manual policy, and an Interagency MOU regarding the issue of the applicability of Sec. 7 of the ESA to nondiscretionary actions in reciprocal right-of-way agreements.

- Regional Solicitor Opinion - 9/1/1991. Summary: The requirements of Sec. 7 of ESA apply only to federal agency actions in which there is discretionary involvement or control. The opinion went on to state:
 - 1) “. . . the BLM has not retained sufficient discretionary control over the reciprocal right-of-way agreements and permits to require consultation under Sec. 7. . . , and 2) “As part of its general duty to promote conservation of the species, the BLM should, however, alert permittees to particular situations which may result in an incidental take and to the prohibitions and enforcement provisions contained in the ESA.”
- 9th Circuit Court Decision – 1995 - Sierra Club; Headwaters, Inc., Forest Conservation Council; and Oregon Natural Resources Council v. Bruce Babbitt, Secretary, U.S. Department of Interior. (Seneca Sawmill was a defendant-Intervener-appellant). The court ruled, “. . . (4) Under applicable regulations, Sec. 7 [of ESA] applies to actions in which there is discretionary federal involvement or control. . . (5) . . . When the federal agency lacks discretion to influence the private action; consultation would be a meaningless exercise; the agency had no ability to implement measures that would benefit the protected species. . . (7) BLM’s duty under Section 7(a)(1) [of the ESA] to conserve listed species does not expand the powers conferred on it by its enabling act. . . “
- BLM Manual 6840 Policy – January 17, 2001. The BLM policy for special status species as found in BLM Manual 6840 also limits management objectives (and applicability of Section 7 of the ESA) to those actions where agency authorization (approval) is required. (See BLM Manual 6840 Sections .02, .06, and .12).
- Interagency MOU – January 2003. The Interagency Memo entitled “Application of the Endangered Species Act to Proposals for Access to Non-federal lands Across Lands Administrated by the Bureau of Land Management and the Forest Service,” was signed by various agencies in January, 2003. (A copy of this MOU is found at Illustration III-3). This MOU states the following: “Application of the ESA to a ROW proposal depends on the discretion available to BLM and the [USDA-] FS under applicable statutory ROW authorities and on the nature of legal rights held by the applicant. If BLM or the [USDA] FS has a mandatory duty to issue a ROW [right-of-way] with no discretion under applicable law, no consultation is required under ESA.”

In summary, all of the above references clearly indicate that consultation under Sec. 7 of the ESA only applies to those actions for which BLM has discretion to authorize. ***In the case of nondiscretionary right-of-way plats filed under O&C reciprocal right-of-way agreements, the BLM does not have discretion to***

authorize or control the action, so consultation under Sec. 7 of the ESA is not applicable.

While the above guidance makes it clear that consultation under Section 7 of the ESA does not apply to nondiscretionary right-of-way plats, the AO needs to determine whether the ESA reason to object (reason No. (5) in Section B.4.), above, is in the Permit and applies to the lands being crossed.

**1) Permit Does Not Contain the ESA Reason for Objection
(Or, it Does Not Apply to the Specific Lands)**

If the ESA reason to object is not included in the Permit, then ESA Section 7 consultation is not required. Follow the process identified in Section B.12. below.

Sometimes the ESA reason for objection was added to the permit by amendment, but the reason for objection only applies to lands which were added at the time of the amendment or later. In this case, consultation would only apply to the Schedule 3 lands that are covered by the new provision. If the ESA provision does not apply to the lands in Schedule 3 because they were included prior to the time the provision was added, ESA Sec. 7 consultation would not apply and the same process identified in Section B.12. of this chapter should be followed.

**2) Permit Does Contain the ESA Reason for Objection and it
Applies to the Specific Lands**

There are times that a right-of-way plat is determined to be nondiscretionary (BLM can only “object” based on the limited permit reasons), but the ESA reason for objection (No. (5), Section B.4. of this chapter) is found in the specific Permit and it applies to the specific lands underlying the right-of-way plat. In this case, while the AO cannot “deny” the action (and the action is not subject to a new NEPA analysis), the fact that the AO can “object” requires a different process than above.

In this case, the BLM must make the “may affect” determination and must notify the permittee that the BLM objects based upon this reason within 30 days (or other specific Permit timeframe). If the permittee is not notified of the objection within 30 days, construction can commence. An objection cannot be made for this reason unless there is a formal “may affect” determination for a species. See Section B.12. of this chapter for process and samples.

b. Other Environmental Laws

The following provision is found as provision No. 10 to the Exhibit B of the standard reciprocal right-of-way template (Form OR 2812-16—Illustration V-2 pages 16 and 17) and is required to be included in all new reciprocal right-of-way agreements:

10. Compliance with Environmental Laws. The Permittee agrees that in all operations under this permit, during the life of this permit he shall comply with:

A. All provisions of the State and Federal Water Quality Standards as they may apply to any waterway, stream, lake or reservoir, on or near the permit area, together with all applicable State and Federal laws and regulations. The Permittee shall also undertake every reasonable measure to minimize damage to waterways, streams, lakes or reservoirs on or near the permit area in connection with any operations under this permit.

B. All applicable state and federal laws and regulations concerning the use of poisonous substances including insecticides, herbicides, fungicides, rodenticides, and other similar substances. Prior to the use of such substances on or near the right-of-way, the Permittee shall obtain from the Authorized Officer approval of a written plan for such use. The plan shall state the type and quantity of material to be used, the pest to be controlled, the method of application and such other information as the Authorized Officer may require. All use of such substances on or near the right-of-way shall be in accordance with the approved plan. If the use of a poison is prohibited by the Secretary of the Interior, it shall not be used. If use of a poisonous substance is limited by the Secretary of the Interior, it shall be used only in accordance with that limitation.

C. If in connection with his operations under this permit, across the lands of the United States, the Permittee encounters or becomes aware of any objects or sites of cultural value, such as historical or pre-historical ruins, graves, grave markers, fossils, or artifacts, the Permittee shall immediately suspend all operations in the vicinity of the cultural value and notify the Authorized Officer of the findings. The Permittee's operations may resume at the discovery site upon receipt of written instructions and authorization by the Authorized Officer.

D. All other applicable state and federal environmental laws, regulations, and standards.

The Permittee shall immediately discontinue all construction or other operations under this permit upon receipt of written notice from the Authorized Officer that such operations or any part thereof are in violation on this provision.

If the above provisions (or similar) are found in the specific Permit (usually in Exhibit A), they have no effect on whether an action is nondiscretionary. These

provisions give rise to issues of noncompliance in Permit administration. In relation to nondiscretionary right-of-way plats, noncompliance is generally triggered only if they are cited by the regulatory agency.

The flowchart at Illustration IX-1 and the Review of Plat for Permit Compliance Issues (Illustration IX-2) are tools created to aid in determining the applicability of these provisions when processing nondiscretionary right-of-way plats. See Section B.12. of this chapter for processing guidance.

c. Cultural Resources

In the case of cultural resources (item C. in the above suite of environmental provisions) the provision requires the permittee to suspend their own operations if objects of cultural or historic value are encountered. In most instances, a discovery of cultural resources is made inadvertently during construction work, road maintenance, or other ground disturbing activities. In areas of known or suspected cultural resources, the BLM should notify the permittee accordingly as well as remind the permittee of the requirements of this provision (if it exists in the Permit and applies to the specific lands). Failure of a permittee to comply with this provision should be treated as a Permit noncompliance action (see Chapter VI., Section B.).

If the provision is not present in the Permit, the permittee still has obligations under various laws (Antiquities Act, Archaeological Resources Protection Act, etc.) to not destroy cultural resources on public lands. However, if the BLM AO becomes aware that the permittee has encountered objects of cultural or historic value, even if the provision is not present, it is not a permit compliance issue, but instead should be referred to law enforcement if the permittee refuses to suspend their operations after being notified of the site.

See Section B.12. (of this chapter) for guidance on the process.

7. Right-of-way Plat Preparation and Filing Requirements (Applies to Both Parties)

The filing requirements for road construction maps (plats) filed by either the U.S. or permittee are found at 43 CFR §2812.1-2(c). The same requirements apply to construction under a unilateral permit or a reciprocal right-of-way agreement. Each plat should comply with the following regulatory requirements, “. . . except as the AO may waive in any particular instance all or any of such requirements”:

- Courses [bearings] and distances of the centerline, with courses [bearings] being in true meridian and distances in feet and decimals thereof are clearly identified.

- The beginning and ending points of the survey must be accurately connected by course and distance to the nearest readily identifiable corner of the public land surveys, or to a prominent monument or a natural landmark if no survey corners exist within two miles.
- All subdivisions of the public lands surveys, any part of which is within the limits of the survey, should be shown in their entirety, based upon the official subsisting plat with subdivisions, section, township, and range clearly marked.
- The width of the right-of-way should be given, and if not of uniform width, the locations and amount of change must be definitely shown.
- There shall be a statement on the face of or appended to the map indicating the grade and usable width of the road to be constructed, the type of material which will be used for the surface, the type and extent of the drainage facilities, and the type of construction and estimated capacity of any bridges.
- Per 43 CFR §2812-1-2(c), “The map should bear upon its face the statement of the person who made the survey, if any, and the certificate of the applicant; such statement and certificate should be as set out in forms as approved by the Director.” In today’s times neither the BLM nor the permittees typically have licensed registered surveyors preparing these plats. To meet this requirement, the name and title of the person preparing the plat should suffice. If they are a licensed surveyor they should include that information.

While not required by the regulations, the plat should also bear the signature and title of the person who has delegated authority to formally transmit the plat for review by the landowner.

In addition, it is desirable for the map to have an arrow showing true north and a legend by which map symbols and scales can be interpreted.

While the regulations allow for a waiver of the above provisions, for a full road right-of-way plat, the AO should seriously consider whether a waiver of any of the requirements would be in the best interest of the government.

8. Tramroad and Tramway Construction under O&C Permits and Agreements

The definition for tramroads (as shown in the glossary) and as defined in 43 CFR §2812-0.5(f) is:

(f) *Tramroads* include tramways, and wagon or motor truck roads to be used in connection with logging, and the manufacturing of lumber; it also includes railroads to be used principally for the transportation, in connection with such activities, of the property of the owner of such railroad.

Construction of tramroads and tramways are identified in the above regulations as an allowable use under the O&C regulations. However, the regulations did not define the term “tramway.” For purposes of this handbook, a glossary definition for tramway has been developed as:

tramway: A system for carrying logs or other forest products using traveling carriages or cars suspended from an overhead cable or cables and supported by one or more towers, hangers, anchors, guylines, etc.

This system is typically referred to in modern logging terminology as a skyline or hi-lead harvesting system. Rights-of-way are also required for operation of these systems (including yarding corridors, guyline requests, tailhold requests, etc.).

The right-of-way plat preparation and filing requirements for roads or any of the above-described tramway rights-of-way are the same as for road construction above (see Section B.7., above). However, the AO can waive any of the requirements for these tramway plats.

Illustration Nos. IX-3, IX-4, IX-5, and IX-6 are sample requests for construction across each other’s lands (including sample right-of-way plats) or requests to improve each other’s roads.

9. Rights to Improve Each Other’s Roads

Permittee improvements to BLM roads are authorized by 43 CFR §2812.1-2(d) as follows:

Where the application is for the use of an existing road, a map adequate to show the location thereof will be required, together with a statement of the specific nature and location of any proposed improvements to such road. A blank map suitable for most cases may be procured from the appropriate district forester.

At times either party may desire to place an improvement on a road owned by the other party. Most reciprocal right-of-way agreements do not provide for the specific inherent right to improve each other’s roads. This is again a situation where the provisions in the reciprocal right-of-way agreement need to be checked for how improvements are handled. The standard template for reciprocal

right-of-way agreements (Form OR 2812-16, Illustration V-2) contains wording in the amortization paragraphs, as follows:

a. Exhibit A of the Permit

The following provision refers to the situation where the permittee improves a U.S. road. In this case, it clearly states that permission is needed from the U.S. in order for the permittee to place such an improvement.

3. Amortization Formula for U.S. Buy-in to Cost of Improvement Placed by Permittee on U.S.-Controlled Road. If the Permittee, **with the approval of the United States**, makes any future capital expenditure upon a road described in paragraph No. 1 above, and the United States or its licensees uses such road after the capital expenditure is made, the Permittee may charge a road use fee to be computed as follows:

b. Exhibit B of the Agreement

The following provision refers to the situation where the U.S. improves a permittee road. In this case, the provision clearly states that permission is needed from the permittee for the U.S. to place such an improvement.

3. Amortization Formula for Permittee Buy-In to Cost of Improvement Placed by U.S. on Permittee-Controlled Road. If the United States or its licensees, **with the approval of the Permittee**, makes any future capital expenditures upon a road described in paragraph(s) __ above, and the Permittee uses such road after the capital expenditure is made, the United States may charge a road use fee to be computed as follows:

Unless a particular reciprocal right-of-way agreement contains language similar to those shown above, such improvements were not contemplated and are beyond the intended scope of the agreement. Therefore, neither party can improve each other's roads without the specific written permission to do so. In this circumstance, the matter of sharing in the improvement costs is negotiable and not required as a condition of placing or using the improvement.

The approval of a road improvement request does not change road ownership or control (see glossary definitions) The party who controls the base road continues control of use of the road by third parties after the improvement is placed—that party's control being diluted only by that to which it agrees in writing with the improving party.

However, the party placing the improvement may have the right to amortize its investment (with third party permittees and/or the landowner cost sharing)

depending on the particular wording in the permit provision or permission granted by the landowner on a case-by-case basis in writing.

The request to place an improvement is considered a supplement. The filing requirements for improvements are less stringent as shown in the regulations above. In the case of an improvement, the party wishing to make the improvement can file with their letter a map, “. . . together with a statement of the specific nature and location of any proposed improvements to such road. A blank map suitable for most cases may be procured from the appropriate district forester.”

10. Construction of Heliports, Helipads and Heliponds

As noted in Chapter VIII., Section D., both construction and use of each other's lands for helicopters is considered a legitimate use of the reciprocal right-of-way agreements.

a. Provision in Arbitration Agreements

Also as noted Chapter VIII., the following provision is found in many arbitration and some semi-detailed agreements:

The Permittee and the United States agree that each party may construct, improve and maintain heliports, heliponds with supporting water supply systems and temporary logging landings upon the other party's lands described in Schedules 1 and 2, for forest management use by the constructing party, its agents, contractors and in the case of the United States its licensees; provided, however, that prior to the construction of a heliport, helipond or temporary log landing, approval of the location, design, access and flightways (if applicable) must be obtained in writing from the landowner and agreement must be reached as to the disposal of any timber on the site and provided further, that said heliports and heliponds shall not be used for aerial logging or log transportation, the storage of fuel and other petroleum products or log transportation, the storage of fuel and other petroleum products or as a site for the construction of any hangar, shop or other buildings without the written approval of the landowner and subject to such additional terms and conditions as he may require. The Permittee and the United States also agree that each party, its agents, contractors and in the case of the United States its licensees, may use the other's heliports and heliponds constructed upon any lands described in Schedules 1 and 2, under terms and conditions to be mutually agreed upon.

b. Construction of Heliports and Helipads If Provision is in the Reciprocal Right-of-Way Agreement

If the above provision is present in a particular reciprocal right-of-way agreement and a permittee submits a right-of-way plat which specifically identifies that the request is for construction of a “heliport, helipond or temporary log landing” as shown above, the request is then treated as a discretionary action as the provision specifies:

. . . that prior to the construction of a heliport, helipond or temporary log landing, approval of the location, design, access and flightways (if applicable) must be obtained in writing from the landowner . . .

With this provision, written approval is necessary, thus making it subject to full NEPA compliance.

c. Construction of Heliports and Helipads If Provision is Not in the Reciprocal Right-of-Way Agreement

If the above provision is absent in the reciprocal right-of-way agreement, construction requests for heliports and helipads are to be filed with a right-of-way plat same as for road construction described in this chapter.

If the lands are present within Schedule 1 or Schedule 2 of the reciprocal right-of-way agreement, the plat would be considered a nondiscretionary action (with limited reasons for the landowner to “object” to the construction) as determined by the specific agreement.

If the lands are absent from Schedule 1 or 2, a permittee request would be processed by BLM as a discretionary action, subject to full compliance with NEPA and other environmental laws and review. The plat would be treated as a discretionary amendment adding the specific right-of-way location to the Permit. See Chapter XII. for guidance on processing amendments for construction.

11. Processing Steps - BLM Requests Over Permittee

The following provides guidance on BLM filing requests to construct on permittee’s lands or improve a permittee’s roads.

a. BLM Request to Improve Permittee Roads

The provision in Section B.9.b., above, provides for the permittee cost sharing in a BLM improvement to a permittee-owned road.

As stated in this provision, the U.S. cannot place an improvement on a permittee road without their approval. However, there are a very few reciprocal right-of-way

agreements which contain a provision similar to the one above without the requirement for approval by the permittee. In this circumstance, the BLM has the right to improve and the permittee is obligated to share in improvement costs which are directly related to the removal of timber and forest products.

It is important that BLM plans for the improvement of a permittee road be tempered by reasonable necessity. A permittee who built the road and is using it or has used it for hauling of forest products may not see a need for road improvements such as realignment, widening, additional drainage structures, additional surfacing, etc.

The process by which BLM exercises this provision is with a letter of request (see Illustration IX-5) which contains the following information:

- statement of consent to having BLM make an improvement to their road (signature block),
- improvement specifications (gradation and depth of surfacing, location & size of culverts, etc.),
- design specifications for major improvements (i.e. bridges, major culvert),
- cost of the improvement,
- determination of whether permittee is willing to share in the costs (or to what extent they are willing to share), and if they are willing to share, the percentage share of the improvement cost attributable to the U.S., the permittee and other users. (The permittee's share is the same as its share of the total volume of currently merchantable timber which probably will be moved over the road after the improvement is made. In the event that the permittee has no merchantable timber, there will be no permittee percentage share of the improvement),
- statement that the permittee's consent to the U.S. improvement does not affect the permittee's ownership or control of the road. The permission merely allows the U.S. to amortize the road improvement cost , and
- an attached map showing the road segments to be improved and the location of the proposed improvements.

Duplicate copies of both the letter and the map are submitted to the permittee for approval, and one approved copy is to be returned to BLM for its records. When improvement approval letters are returned, ensure that the person signing on behalf of the permittee has signing authority to bind them to cost share and to give permission to improve.

Unless the rare “obligatory” clause is found in the Agreement (in which the BLM can place the improvement without the consent of the permittee), if BLM cannot reach a satisfactory agreement regarding improving the permittee road, four alternatives remain:

- (1) Use the permittee road as it is;
- (2) Don't use the road;
- (3) Obtain road control by easement acquisition. Any such easement would be a “negotiated” easement (if the obligatory clause is not found in the Agreement) in which case the permittee would be entitled to just compensation; or
- (4) With the consent of the permittee, place the improvement without the permittee being required to cost share but with the right to amortize the U.S. investment with third party users.

Regardless of which provision is found (or is absent), the U.S. should never require the permittee to share in the cost of improvement design elements which are directly attributable to or designed solely for uses other than management and removal of timber and other forest products.

For example, if the BLM needs to place a larger culvert than would be needed for the transportation of forest products (e.g., for fish passage), the BLM should only require the permittee to cost share only the portion which is required under the Oregon Forest Practices Act (OFPA).

If the improvement involves significant investment in the road, such as a road realignment or placement or replacement of major culverts or structures, the BLM should obtain rights sufficient to allow the first right of maintenance, collect road use/maintenance fees from third parties, and to establish terms and conditions of use. However, if it is BLM's desire to control the road after the improvement is in place, that can only be accomplished by negotiating with the permittee either: 1) a release (see Chapter XII., Sections J.,K. and L.), or 2) an easement transferring control.

BLM has no authority to collect maintenance and/or surface replacement fees on a permittee road just because the BLM placed the road improvement. The BLM can only collect surface replacement fees if the permittee gives up their first right to maintain the road (thus allowing BLM to collect pro rata maintenance fees from other users of the road). In addition, a permittee may waive its right to maintain the road but may choose to still collect surface replacement fees.

b. BLM Request to Construct on Permittee Land

The request for BLM to construct a road on permittee land is processed via a letter and plat sent to the permittee. The plat should be prepared by BLM to the same standards listed in Section B.7., above. The checklist as shown in Illustration IX-7 should be used to evaluate the plat before it is sent to the permittee. Illustration IX-5 is a sample BLM letter which includes required wording. Illustration IX-8 is a sample BLM right-of-way plat which meets all the requirements in the 43 CFR 2812 regulations. See Section B.12.b. of this chapter for a discussion of options for the disposal of permittee timber within the BLM's right-of-way.

12. Processing Steps - Permittee Requests Over BLM

The request from the permittee to construct or improve a road on BLM land is handled via transmittal of a plat which contains all the necessary requirements cited above. The checklist included as Illustration IX-7 should be used by BLM to review the plat for sufficiency. The permittees should be provided a copy of this checklist for their use in reviewing plats before they are submitted to minimize any delays once it is received by BLM. Illustrations IX-3 and IX-4 are sample request packages from the permittee (one for construction, one for improvement). See Section B.17.a. of this chapter for a discussion of the disposal of U.S. (O&C) timber within the permittee's right-of-way.

a. Permittee Request to Improve U.S. Roads

A counterpart provision regarding road improvement is contained in Exhibit A of some Permits as follows:

If the Permittee, with the approval of the U.S., makes any future capital expenditure upon a road described in paragraphs ___ above, . . . and the United States or its licensees use such road after the capital expenditures is made, . . . the Permittee may charge a road use fee to be computed as follows . . . [Refers to standard amortization formula for capital improvements.]

As stated in this provision, the permittee cannot place an improvement on a U.S. road without approval of the U.S. However, there are a few Permits which contain a provision similar to the one above but without the requirement for approval by the U.S. In this case, the permittee has the right to place the improvement and BLM is obligated to share in the expense according to the amortization formula.

Permittee improvement of a BLM owned road follows similar procedures to those outlined above for BLM improvement of a permittee road – only the roles are reversed. To avoid misunderstandings, it is important that standards be agreed upon in writing between the permittee and the BLM regarding improvement

specifications, amortization, maintenance responsibilities, and control. READ THE SPECIFIC PERMIT.

The permittee request should include the same items as for the BLM request to improve permittee roads as shown in Section B.11.a.

See Illustration IX-4 (page 1) for sample of permittee request that includes a request to improve BLM roads.

b. Permittee Request to Construct on U.S. Land

The request for permittees to construct a road on U.S. land is processed via a letter and plat sent to BLM. The plat should be prepared by the permittee to the same standards listed in Section B.3.. of this chapter.

It is a good idea for permittees to also utilize the checklist shown in Illustration IX-7 to ensure that the plat meets the minimum standards required by the 2812 regulations and to minimize the chance of delay on the part of BLM due to an inadequately filed plat.

Illustration IX-3 is a sample permittee letter. See Section B.17.a. of this chapter citing the regulatory requirement for the permittee to purchase any needed right-of-way timber. The BLM does not have an option to have the O&C timber cut and decked.

The permittee request should also indicate whether or not they believe the lands are in the Schedule 1, and, if they are, they should indicate whether they are in the original Permit or if added by amendment, which amendment. This will help to expedite the review process.

c. BLM Review of Permittee Right-of-way Plats for Proper Filing

As stated above, most reciprocal right-of-way agreements contain a provision granting rights to the other party to construct roads on the other party's land. When a plat is filed with the BLM, subsequent processing action will depend on the following:

- Is the BLM land included in the reciprocal right-of-way agreement (Schedule 1)?
- Is the plat properly prepared and filed?
- Did the BLM retain discretion to approve/disapprove the action? This will determine the extent of review (NEPA, ESA, etc.) and documentation requirements.

- Are there specific reasons for objection contained within the reciprocal right-of-way agreement?
- Does the reciprocal right-of-way agreement contain environmental provisions in Exhibit A or B? The Permit should be reviewed to determine if provisions similar to provision No. 10 on the Exhibit A of the standard reciprocal right-of-way template (Illustration V-2) exist. These provisions are shown in Section B.6.b. above.

The BLM must support the evaluation of a construction right-of-way plat request with the appropriate level of documentation, particularly if the evaluation reveals factors which may lead to an objection based on one or more of the limited reasons to object found in the specific reciprocal right-of-way agreement.

A “Review of Right-of-way Plat” (ROCP) template has been developed as Illustration IX-9 to provide a review process which will ensure consistency with regulatory, permit, and policy guidance.

The following are the necessary steps to ensure permittee right-of-way plats are processed in the most efficient manner:

A flowchart is provided in Illustration IX-1 (pages 1-3) to aid in determining the BLM’s discretion and level of analysis (NEPA, ESA, etc.) and documentation requirements.

1) Plat Meets Filing Standards

The first step in reviewing a permittee request is to determine if it meets the regulatory standards. In order to determine if the right-of-way plat is properly prepared and contains all the items specified in the applicable regulation, the BLM AO should review the plat utilizing the checklist shown in Illustration IX-7. Review for regulatory consistency should be done as quickly as possible upon receipt of the plat. If the plat has not been properly filed, the permittee should be notified immediately of the deficiencies and requested to re-submit a corrected plat. The 30-day review response time (or specific permit timeframe) does not take effect until there is a properly filed plat. However, if the permittee is not notified that the plat is deficient (or if they do not receive an objection), the permittee may assume that the 30-day clock has started and may commence construction on the 31st day.

2) Determination of BLM’s Discretion

The next step is to determine BLM’s discretion. See Section B.5. above for guidance in whether an action is discretionary or nondiscretionary. A check of the Schedule 1 and the Exhibit C map is necessary.

Are the lands shown on Schedule 1 of the original Permit or later added by amendment?

If the lands are not shown on Schedule 1, are they designated on the Exhibit C map with a legend type which indicates that they are Schedule 1 lands? (Sometimes they were inadvertently left off the schedule, but are designated on the Exhibit C map as being Schedule 1 lands.) It should be remembered that the grant for construction (for both the BLM and the permittee) was made at the time the reciprocal right-of-way agreement was executed. That right is exercised when the right-of-way plat is filed with the other party.

If the lands are determined to be within the Schedule 1 of the Permit, the action is considered nondiscretionary. BLM did not retain discretion to approve the right-of-way. The AO can only “object” (if there are grounds based on the specific limited reasons in the Permit). There is no discretion to “approve” or “deny” the plat.

If the lands are not in the Schedule 1 of the Permit, the BLM AO has full discretion to approve or deny the right-of-way and the request is then processed as a discretionary amendment to the Permit to add the specific right-of-way location to Schedule 1 of the permit. In this case the permittee should be notified immediately that their request is being processed as a discretionary amendment. In most cases, the permittee is already aware of whether the lands are in the Permit or not and their request will usually so state.

3) Response (Review) Time Limitations

It is important to verify the time frame in the specific permit in which the BLM must “object”. Typically most permits have a 30-day window, after which the permittee may commence with construction unless the BLM has “objected.” Although a written response is not required, a written response should be provided to the permittee whether or not the BLM objects so there is no doubt. **READ THE PERMIT.**

The first step is to review known resource data as outlined below.

d. Process to Review for Objections (if ESA is Not One of Reasons to Object)

While Section 7 consultation under the Endangered Species Act (ESA) does not apply to nondiscretionary right-of-way plats (see Section B.6.a. above), the following steps will be taken to ensure the BLM fulfills its general duties under the ESA to promote conservation of listed species.

1. When a plat is received, and it is verified that the U.S. lands are included in Schedule 1 of the permit, available resource data (habitat maps, inventories, known T&E sites, etc.) shall be reviewed to determine if the action has potential to

affect a listed species. The resource area personnel will not conduct additional surveys or make ESA “effect” determinations.

2. The plat should also be reviewed to determine (based on available resource data (site maps, inventories, etc.)) whether the action has the potential to disturb objects or sites of cultural or historical value.

3. As soon as possible, the lead engineer or right-of-way specialist (or other designated employee) would meet the permittee in the field to determine if there are any “reasons to object” (limited to the specific reasons in the permit).

4. The BLM employee shall share with the permittee any information from the existing resource data which may indicate that construction of the right-of-way in its proposed location: 1) has the potential to affect a listed species (e.g., an existing map shows that the right-of-way includes a known Northern Spotted Owl nest tree.), or 2) has the potential to disturb objects or sites of cultural or historic value.

5. The designated employee shall determine if the permittee is willing to voluntarily modify the proposed construction to avoid any areas which have the potential to affect a listed species or cultural site. In most cases, permittees are willing to make minor modifications or relocations. The earlier the permittee can be notified, the better, as most permits only allow a 30 days period for objection, limited to specific reasons for objection as found in the permit.

1) If There are No Grounds for Objection (Based on Permit Limitations)

After the proposal has been reviewed to determine if there are grounds for objection and the AO determines there are no grounds to object for any one or more of the reasons in the Permit,

- but the action: 1) may affect a listed species; or 2) may disturb a cultural site, and
- there no other options to relocate the right-of-way; or
- if the permittee is unwilling to relocate their right-of-way location to avoid the potential effect of a listed species or cultural site, then,

A “Notice of Non-Objection” letter (see Illustration XIII-8) shall be sent to the permittee. In this case, the letter shall include notification to the permittee of the potential for the proposal to: 1) affect a listed species, or 2) disturb a cultural site.

The two tables in the Notice of Non-Objection found at Illustration XIII-8 contain the required wording that shall be used for this purpose. One table is for

notification of potential affect of a listed species and the other is for potential disturbance of a cultural site.

A “cc” copy of the letter shall be sent to the appropriate regulatory agency (USFWS, NOAA/NMFS for ESA), and to BLM law enforcement (for cultural resources).

If, based on available resource data, the AO finds no potential effect to a listed species, or to cultural resource sites, do not include the wording in the tables shown in Illustration XIII-8 in the non-objection letter to the permittee.

If there are no grounds for objection and there is O&C right-of-way timber involved, the timber should immediately be cruised in preparation for disposal. See Section B.17. below for guidance and processing for handling disposal of the right-of-way timber.

2) If There Are Grounds to Object (Based on Permit Limitations)

After the proposal has been reviewed to determine if there are grounds for objection and the AO determines there ARE grounds to object for one or more of the reasons found in the Permit, a Decision Objecting to Nondiscretionary Right-of-Way Plat Objection (see Illustration XIII-9) shall be sent to the permittee within the 30 days (or permit timeframe). The Notice of Objection shall contain the permittee’s appeal rights.

The notice should contain sufficient rationale for the objection based on one of the specific reasons in the permit. See Section B.12.d. below for discussion of specific reasons.

e. Process to Review for Objections if ESA is One of the Reasons to Object in the Permit and it Applies to the Specific Lands

If the ESA provision is present in the permit and it applies to the specific lands being crossed by the proposed construction right-of-way, the BLM may object to the construction if it “may affect” a listed species.

If the above reason to object is included and a “may affect” determination has been made, BLM must object to the plat within the specified timeframes and promptly request consultation with the appropriate regulatory agency/agencies. An actual “ESA Effect” determination MUST BE made in writing by the BLM (within the specified time frame for objection) in order to object for this reason. If this formal determination has been made, it is important that the BLM notify the permittee that the proposal may affect a listed species and therefore the BLM is

“objecting” to the construction based on this reason. Construction may not proceed pending the completion of consultation. (See Illustration XIII-8.)

f. Review for Other Permit Reasons to Object

The following sections provide guidance on what information should be provided to the permittee if the BLM determines it has grounds to object for other reasons in the permit. The permittee should always be contacted by phone immediately once a reason to object has been discovered. Often, they are willing to modify their proposal to avoid the objection.

1) Does Not Constitute Most Direct Route

This is usually reason No. (1) in the Exhibit B:

(1) it does not constitute the most reasonably direct route for the removal of forest products from the lands of the road builder, taking into account the topography of the area, the cost of road construction and the safety of use of such road.

This is sometimes a point of disagreement between the parties, particularly when alternate routes are suitable to access the same tributary area. Professionals with experience in forest road engineering and logging systems should drive this analysis.

If the AO determines there are grounds to object based on this reason, a formal decision with rights of appeal must be prepared and it should contain sound and detailed rationale regarding the alternate route, topography, cost of construction, safety, etc.

A sample Decision Objecting to Nondiscretionary Right-of-way Plat is found as Illustration XIII-9. The notice must include the permittee’s right to appeal.

2) Will Interfere with Existing Facilities

This is usually reason No. (2) in the Exhibit B:

(2) the proposed road will substantially interfere with the existing facilities or improvements on the lands of the landowner.

Examples of “facilities or improvements” may include existing roads, trails, campgrounds, communication sites, rock quarries, progeny test sites, or other similar developments.

If the AO determines there are grounds to object based on this reason, a formal decision with rights of appeal must be prepared and it should contain sound and

detailed rationale including a description of the “facility or improvement” to which the proposed right-of-way will interfere.

A sample Decision Objecting to Nondiscretionary Right-of-way Plat is found as Illustration XIII-9.

3) Would Result in Excessive Erosion

This is usually reason No. (3) in the Exhibit B:

(3) would result in excessive erosion to lands of the landowner."

The AO makes the final determination based on documented information from various interdisciplinary specialists such as the soil scientist, hydrologist, or geotechnical specialist. Some examples of plat locations which may form the basis for an objection under this provision include slump or slide-prone areas, headwalls, fragile soil areas, high water table, etc.

If the AO determines there are grounds to object based on this reason, the permittee must be provided with a formal Decision with rights of appeal within the 30 days. The Decision should include information from the resource specialist to fully support this finding.

A sample Decision Objecting to Nondiscretionary Right-of-way Plat is found as Illustration XIII-9.

4) Existing Road Available

The following provision is found less often in Exhibit B's. If it is included in the Exhibit B it was usually added by amendment and applies only to specific lands identified on a Schedule 3. The permit needs to be evaluated closely to see if this applies to the specific lands.

If this reason is included, it is usually reason No.(4):

(4) An existing road is available and suitable for the removal of timber tributary to the proposed road.

This objection would apply when there is an actual existing road which would allow timber removal from the tributary lands, even if it were not the most direct route. As with a) above, the “prudent man” theory should drive the decision on whether this objection should be made. (This provision was specifically written to avoid the development of parallel road systems to the same tributary area.)

As with other reasons to object, if the AO determines there are grounds to object, a formal Decision with right of appeal must be provided to the permittee within the

30 days. The Decision should include the rationale and description of the alternate route.

A sample Decision Objecting to Nondiscretionary Right-of-way Plat is found as Illustration XIII-9.

13. Permittee Compliance with Environmental Laws

The set of provisions regarding various environmental laws that is found in the standard template (and that apply to some lands in semi-detailed agreements) is found in Section B.6.b. above. These are the provisions in paragraph No. 10 to the Exhibit B in the standard reciprocal right-of-way agreement template (Form OR 2812-16, Illustration V-2).

The Regional Solicitor's Office has provided guidance for the interpretation and implementation of these provisions. Violation of these provisions, if included in the Permit, would be a noncompliance issue. However, before the BLM AO proceeds with notices of noncompliance there are several issues that need to be resolved:

These provisions deal with compliance or violations of:

- State and Federal Water Quality Standards as they may apply to any waterway, stream, lake or reservoir, on or near the permit area, together with all applicable State and Federal laws and regulations,
- all applicable State and Federal laws and regulations concerning the use of poisonous substances including insecticides, herbicides, fungicides, rodenticides, and other similar substances,
- cultural resource laws (Antiquities Act, ARPA, etc.), and
- all other applicable State and Federal environmental laws, regulations and standards (which would include the ESA).

While the above provisions could result in a notice of noncompliance and/or a suspension of operations under the permit, the AO needs to first determine the following:

- Do the provisions apply to all of the lands in the Permit? Typically these provisions were added by amendment and only apply to lands (usually appearing on Schedule 3) which were added by amendment at the time the provisions were added or future lands added by amendment?
- Has the permittee been cited by a regulatory agency?

Note the wording at the end of this suite of provisions:

The Permittee shall immediately discontinue all construction or other operations under this permit upon receipt of written notice from the Authorized Officer **that such operations or any part thereof are in violation of this provision.**

BLM is not the regulatory agency for any of the environmental laws. Therefore, the BLM is not the appropriate agency to determine **“that such operations or any part thereof are in violation of this provision.”**

Therefore, a notice of suspension or noncompliance can only be made by the BLM AO if the permittee has been cited by the federal or state agency having regulatory or enforcement responsibility.

For example, the Corps of Engineers is responsible for issuance and administration of Section 404 fill/removal permits.

In the case of ESA compliance, the responsibility for enforcement falls with the U.S. Fish and Wildlife Service or the National Oceanic and Atmospheric Administration. BLM cannot suspend permittee activities on BLM lands without first receiving notification from the appropriate regulatory or enforcement agency that the permittee is in violation of the applicable law. However, the BLM has the responsibility as a federal land management agency to notify the appropriate regulatory agency if it appears that a permittee may be in violation of laws; however, the permittee should first be notified.

The flowchart at Illustration IX-1 provides a path for determining whether BLM can suspend operations. Illustration IX-2 provides a sample template to document a possible noncompliance situation apart from the review for objection.

14. Control vs. Ownership of Roads After Construction

See definitions for “road control” and “road ownership” in the glossary. The 43 CFR 2812 regulations and the provisions of a reciprocal right-of-way agreement provide guidance regarding control of roads constructed by one party over the lands of the other party. A right-of-way is construed as a grant over bare lands, i.e. where road construction is involved.

a. U.S. Construction on Permittee Land

The regulations at 43 CFR §2812.3-1(a) grant a right-of-way to the U.S. across lands of the permittee for use by “the U.S., its licensees and permittees.”

Paragraph 1.a. of the standard Form OR 2812-16 (Illustration V-2) reiterates this regulatory language.

Paragraph 3 of the standard template for the Agreement (Form OR 2812-16, Illustration V-2, page 25) states:

3. If the United States, or its licensees, constructs a road across the lands described in Section 1(a), [permittee lands] the United States shall be entitled to establish road rules for such road. It shall also be entitled to issue licenses and permits for the use of such road and to charge a road use fee in accordance with 43 CFR 2812.5–2(b). The Permittee may not issue licenses or permits for the use of such road and may not use the road for the transportation of forest products except upon payment of the road use fee established pursuant to 43 CFR 2812.5–2(b). [Bracketed text added.]

It should be noted that older arbitration-type reciprocal right-of-way agreements may not include this provision.

It is BLM policy that roads will not be constructed by the BLM across permittee lands without the inclusion of the above provision in the Agreement. BLM should refrain from road construction across permittee lands if the rights do not allow BLM to: 1) authorize third party use, and 2) amortize its investment in the road. It is therefore important for the BLM to review the pertinent Agreement when contemplating the construction of a road on permittee land.

Where this language is lacking, an amendment to the terms and conditions of the Agreement should be executed in advance of constructing the road which provides the necessary rights to the U.S. It is preferable instead of amending arbitration agreements that they be consolidated into a more modern semi-detailed agreement.

However, this type of amendment would be a discretionary amendment on the part of the permittee, as they have no obligation to enter into such amendment of the older arbitration type agreements. BLM's options are to: 1) negotiate a non-exclusive easement over the permittee's lands, 2) negotiate an amendment to get the additional rights of control over the road, 3) don't build the road, 4) build the road in another location with adequate rights. If the permittee is willing to grant a non-exclusive easement they would be entitled to just compensation for the right-of-way.

If an amendment is not possible, the BLM should pursue the acquisition of an exclusive easement for the proposed construction or supersede the pertinent Agreement with a semi-detailed agreement. An exclusive easement will provide rights to the U.S. comparable to the above provision. BLM offices should refrain from road construction across permittee lands where the U.S. rights are obtained

through an arbitration-type agreement and to seek opportunities to acquire access through other means.

When BLM constructs a road across permittee land under an Agreement which contains the above provision, the BLM will be entitled to charge road use fees and establish road rules. The U.S. also has authority to issue permits to third parties (for the specific purposes as defined in the Agreement) over the road for specific purposes as hereinafter defined. These entitlements are tantamount to “control” of the road. Such a road would be correctly identified on Exhibit C as a road owned or controlled by the U.S. However, the U.S. may not authorize use of the road by third parties for purposes other than the management and removal of timber and other forest products under the current 43 CFR 2812 regulations. As a courtesy, the BLM could notify the landowner when a permit is issued to a third party over a U.S. road on permittee land. A copy of the third party permit issued by BLM should be provided to the permittee as a courtesy.

In addition, amortization must be established for the road in advance of use by the permittee, such use being subject to the payment of a road use fee. If a third party desires to use the permittee’s rights for the transportation of timber from lands owned or controlled by the permittee as provided for in 43 CFR §2812.2-2, a tripartite agreement must be executed between the U.S., the permittee and the third party independent contractor. See Chapter VIII. for a discussion on tripartite agreements.

b. Permittee Construction on U.S. Lands

The 43 CFR §2812.2-1 regulation provides specific guidance as to the nature of the rights in an O&C permit. Permits for rights-of-way “do not constitute easements” and are “merely nonexclusive licenses to transport forest products owned by the permittee”. A permittee may not authorize other persons to use the right-of-way for the transportation of forest products which are not owned by the permittee.

See Chapter VIII, Section H.3. for detailed discussion on rights of the U.S. to authorize third parties to use permittee-constructed roads on U.S. lands. When a permittee constructs a road on U.S. lands under a Permit, the permittee has the rights of road ownership (see glossary.) This includes rights to: 1) amortize the replacement cost of the road, and 2) establish rules for the use of the road as long as their permit is valid.

Since the permit is a nonexclusive license (43 CFR §2812.2-1) the permittee may not issue third party permits (except when they sell their timber and they enter into a tripartite agreement (see Chapter VIII. Section H.1.) Any third party permit issued by the U.S. will be issued subject to the constructing permittee setting terms and conditions of use. See 43 CFR §2812.2-2 regulations as follows:

Where the right-of-way involved has been substantially improved by the holder of an outstanding permit, any subsequent permit issued for the same right-of-way will be conditioned upon the subsequent permittee's agreement, while the prior permit is outstanding, to be bound by the road rules of and to pay fair compensation to the prior permittee, such rules and compensation to be agreed upon by the prior and subsequent permittee in accordance with the procedures and standards established by the regulations in §§ 2812.4-1, 2812.4-3, and 2812.4-4 of this subpart.

In implementing this regulation, the BLM will issue the subsequent third party permit with the following provision included:

In the use of Road No(s). _____ as identified on Exhibit _____, the Permittee shall reach agreement with the road owner, _____, to determine the road use fee and terms and conditions of use of said road(s) prior to their use in accordance with the regulations in §§ 2812.4-1, 2812.4-3, and 2812.4-4.

As a courtesy, the BLM should provide a copy of the Permit to the road owner.

This includes issuance of amendments to third party reciprocal right-of-way agreements. A copy of the amendment issued by BLM to a third party permittee should be provided to the permittee as a courtesy.

15. Non-Completion of Road Construction by Permittee

Problems may arise when a permittee fails to commence road construction or starts road construction on BLM land but does not complete the project within a reasonable period of time. Timelines for completion of road construction may be critical to BLM plans for use in providing access for timber removal or forest management needs. In those situations, the permittee should be reminded by letter of the following standard provision contained in the Permit:

Upon receipt of such approval, unless the authorized officer shall otherwise direct, the permittee shall forthwith, to the extent that conditions of weather permit, initiate construction of such roads in accordance with the approved route and construction specifications and diligently prosecute such construction to completion.

If after receiving a reminder letter, the permittee still does not construct the road as prescribed, the BLM may request that the permittee relinquish the road right-of-way plat and proceed with construction under a BLM timber sale contract or other means. Any proceedings by the BLM to revoke a Permit or proceed with

noncompliance actions for the failure to complete authorized road construction should be reviewed by the Oregon State Office and/or Regional Solicitor's Office.

If failure to construct a road is a result of litigation or actions beyond the permittee's control, the BLM should consult with the Regional Solicitor's Office to determine any necessary mitigation measures.

16. Construction Inspection

Standards are established to ensure adequate uniformity and quality of all roads constructed on lands managed by the BLM. The permittee is required to comply with reasonable standards, the OFPA (as described in Section B.3. above) and terms and conditions of the Permit. This standard applies to roads constructed under nondiscretionary plats as well as BLM's construction of roads on permittee lands.

Once the permit timeframe for objection has passed and the BLM has either objected or failed to object, it is important for the BLM AO to ensure that proper and timely inspections are conducted as the road is being constructed to ensure it is being built according to the standards specified in the plat. Areas of inspection should include the following:

- The road is being constructed to grade, in the described location indicated on the right-of-way plat, and within the right-of-way limits and road width as indicated on the plat.
- Material is being end-hauled, if required, and not side cast.
- Surfacing of the type of material indicated on the right-of-way plat is being applied in the depth and type of rock described.
- Drainage facilities are being installed as indicated on the plat.
- All other items shown on the plat or agreed to by both parties are being completed.
- Timber outside the designated right-of-way limits has not been severed, damaged or removed.

17. Disposal of Right-of-Way Timber

Forest road construction in western Oregon typically involves the removal of merchantable timber within the right-of-way. The 43 CFR 2812 regulations establish requirements for the disposal of O&C timber and are applicable to all

reciprocal right-of-way agreements under these regulations, including arbitration-type agreements.

The volume and value of the right-of-way timber to be sold under a reciprocal right-of-way agreement, regardless of ownership, shall be determined in accordance with the standard procedures for cruising and appraising O&C timber. The preferred method for appraising negotiated sales is a comparable sales appraisal. In either case (BLM or private timber), value for the right-of-way timber shall be determined as a stand-alone timber sale for the right-of-way timber, including allowances for move-in, logging, transportation, etc.

Persons responsible for determining the value of right-of-way timber should refer to BLM Manual Sections 9350-9355 for detailed discussion of forest product appraisals.

The options for disposing of right-of-way timber owned by a permittee are different from the disposal options for right-of-way timber owned by the U.S. These differences are described below.

a. O&C Timber – Must be Paid for in Advance

The regulations found at 43 CFR §2812.5-1 stipulate the requirement for disposal of O&C timber on U.S. land as follows:

An applicant will be required to pay to the BLM in advance of the issuance of the permit, the full stumpage value, as determined by the authorized officer of the estimated volume of timber to be cut, removed or destroyed on O&C lands in the construction or operation of the road.

In addition, the regulations found at 43 CFR §2812.6-2(a)(2) require every permittee to agree not to cut, remove, or destroy any O&C timber not previously purchased on the right-of-way without having first obtained specific authority from the AO and making payment therefore.

The following paragraph concerning the disposal of O&C right-of-way timber is usually in Exhibit B of the Right-of-way and Road Use Agreement:

Prior to the construction of a road on the lands of the other party, the timber on the right-of-way shall be cruised and paid for; provided. . .
[Underline added.]

This means that the O&C timber located with the right-of-way must be purchased by the permittee and cannot be reserved or otherwise disposed of by the BLM. If a permittee is prohibited from purchasing unprocessed federal timber (i.e., they

are an exporter), the BLM will require the permittee to identify a qualified third party to purchase the right-of-way timber under a negotiated sale contract.

The requirement for the permittee to pay for right-of-way timber in advance applies to Public Domain (PD) lands as well as O&C and CBWR lands.

1) BLM Has First Opportunity to Cruise and Appraise Right-of-Way Timber

When O&C right-of-way timber is involved in road construction by a permittee, the BLM has first opportunity to cruise and appraise the timber under standard BLM appraisal procedures for non-advertised sales and sell the timber to the permittee following established procedures for negotiated timber sales. However, the Regional Solicitor's Office, in an opinion dated February 1, 1991, states that:

The [reciprocal right-of-way] agreement itself does not specify which party must perform these functions [cruising and appraising the right-of-way timber]. In the face of failure or refusal by the BLM to cruise and appraise the timber, there is nothing in the reciprocal agreement which would prevent the permittee from undertaking the task and tendering payment for the timber in satisfaction of the condition precedent to its construction of a road.

In addition, the U.S. Court of Appeals for the Ninth Circuit, in *Sierra Club v. Lujan*, Civ. No. 92-248-MA concluded that the permittee's right to harvest the timber vested upon execution of the right-of-way agreement, and that the "sale" of O&C timber along the right-of-way is not a BLM action.

Based on the opinion of the courts and legal counsel, the BLM should not attempt to retain title to right-of-way timber which an applicant/permittee is required to purchase by regulation or contract provision.

2) Method of Disposal is Negotiated Timber Sale

Right-of-way timber associated with right-of-way plats is sold as a negotiated (non-advertised) timber sale. BLM has discretion under the regulations 43 CFR §5402.0-6 to sell up to 250 MBF of timber through negotiated sale procedures (or larger volumes where it is justified). The guidance for timber valuation for non-advertised timber sales is found in BLM Manual Section 9354 and it applies to both U.S. and permittee right-of-way timber.

If the total amount of right-of-way timber is valued at \$2,499 or less, the sale is accomplished with BLM Form No. 5450-5 (Vegetative or Mineral Material Negotiated Cash Sale Contract). If the right-of-way timber is valued at more than \$2,499, the permittee (or other qualified purchaser if the permittee is an exporter)

enters into a negotiated timber sale contract with the BLM. In either case, payment for the timber must be made prior to the issuance of the unilateral permit.

3) Payment for O&C Timber if Permittee is an Exporter

There are situations in which a permittee is excluded from the purchase of O&C timber because they are an exporter. In order that the intent of the regulations is met (O&C timber is paid for prior to road construction), the following provides guidance when the permittee is an exporter.

While the regulations state that the “applicant will be required to pay,” the provision in the Exhibit B states: “Prior to the construction of a road on the lands of the other party, the timber on the right-of-way shall be cruised and paid for . . .”

The Regional Solicitor has determined that the provision in most semi-detailed agreements does not specify that the right-of-way timber must be purchased by the permittee. An option available is to sell the timber to a qualified third party (non-exporter) prior to road construction. Typically, the third party will be a contractor who is building the road for the permittee.

If the permittee is not an exporter, they will still be expected to directly purchase the right-of-way timber.

b. Permittee Timber

The standard provision in Exhibit B of the Agreement regarding disposal of permittee timber in connection with BLM road construction reads as follows:

. . . however, that if the right-of-way is across lands belonging to the Permittee, the Permittee may elect to retain title to the right-of-way timber and have such timber decked along the right-of-way by giving written notice of such election to the United States. Such notice shall be given within 30 days after the map described in paragraph ___ is filed with Permittee. If Permittee elects to retain title to the right-of-way timber it shall remove such timber within six months after the road to be constructed becomes usable. When right-of-way timber is to be paid for it shall be cruised and appraised in accordance with the standard procedures for cruising and appraising BLM timber.

When BLM or a BLM licensee constructs a road on permittee land, the permittee can elect to have its merchantable timber felled, bucked, and decked at appropriate loading points along the right-of-way, or it can sell the right-of-way timber to BLM's licensee; the volume and value being determined in accordance with standards for cruising and appraising O&C timber.

If applicable, the determination of disposal method involving permittee right-of-way timber should be made in conjunction with the right-of-way plat notice letter prepared by the BLM and submitted to the permittee. The permittee has 30 days to respond (see Illustration IX-5). Unless it is certain that the permittee will elect to retain their right-of-way timber, the BLM must be prepared to cruise and appraise the timber and obtain the permittee's concurrence with the volume and value.

18. Construction in Advance of Permit

The following regulation allows for the BLM AO to “grant an applicant authority to construct improvements on a proposed right-of-way prior to a determination whether the permit should issue.”

§ 2812.2-3 Construction in advance of permit.

The authorized officer may grant an applicant authority to construct improvements on a proposed right-of-way prior to a determination whether the permit should issue. Such advance authority shall not be construed as any representation or commitment that a permit will issue. Upon demand by the authorized officer, the applicant will fully and promptly comply with all the requirements imposed under and by this paragraph. Advance construction will not be authorized unless and until applicant has complied with §§ 2812.1-1, 2812.1-2, 2812.3-1 and 2812.5-1.

The AO should use caution in exercising this authority.

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C. Road Amortization (Road Use Fee Calculation) Supplements

1. Purpose

This section provides guidance on the preparation and processing of road amortization (road use) fee calculation supplements to establish road use fees for both U.S. and permittee use of each other's roads. Most reciprocal right-of-way agreements contain provisions which require each party to share in the replacement cost of each other's roads as well as cost of capital improvements.

2. Common Terminology

It is important to understand the use of certain terminology used throughout this section as follows:

amortization: To write off, over time, the replacement cost of, or capital expenditure on, a road through the payment of a road use fee.

amortization rate: See "road use fee"

capital expenditure: The costs associated with the betterment of a road, or the relocation or replacement of a road or road facility. Costs may include road improvement, facility upgrading, and "catastrophic maintenance."

catastrophic maintenance: Work activities necessary to return a roadway or bridge facility back to serviceability following a failure that is sudden and complete due to an external cause. Examples include road washouts, avalanches, or rockslides. Catastrophic maintenance is not due to structural deficiencies, normal physical deterioration, or lack of maintenance.

deficit party: A party with a deficit share. Once that party's deficit share is paid off (or swapped out), that party is no longer a deficit party. The deficit party is the "using" party, or the one who uses the other's roads or improvement.

deficit (percentage) share: A party's percentage share of the amortization of a road replacement cost or improvement cost.

road replacement cost: The replacement cost of the road including extraordinary costs peculiar to the construction or acquisition of the road or right-of-way but excluding any capital investment made in the road by the [permittee—if it is a U.S. road] or [U.S. or its licensees if

it is a permittee road]. The replacement cost is calculated as of the time of first use by the using party.

road use fee: A fee, expressed in dollars per thousand board feet (MBF or equivalent—Scribner Decimal C log rule), charged for the amortization of a road or road improvement. A road use fee is charged when a road or road improvement is used, until the using party's percentage share is paid off.

tributary area: For purposes of amortization, a geographic area of forest land, and existing or potential road system or logical extensions of either, where the merchantable timber from such lands has moved over the road system and where the currently merchantable timber probably will be moved over a particular road or road improvement.

tributary timber: The total volume of all merchantable timber which has been hauled over the road in question plus the volume of currently merchantable timber which probably will be hauled over that road. Tributary timber is used to calculate the percentage shares of the U.S. and the permittee in the amortization of a road or road improvement. Note: Since entering into early reciprocal right-of-way agreements, some new federal requirements have been established. These include environmental considerations, spotted owl management areas, pesticide restrictions, other set-aside areas, etc. These items generally do not appreciably alter the ratios or land and timber tributary to a road system and should not be excluded or removed from tributary area determinations.

3. Background

In this section road amortization fee calculations will be referred to as road use fee calculations (or just "fee calculations") as that is the common phrased used throughout the years. Road use fee calculations are completed in order to determine the using party's proportionate share in each other's roads or capital improvements.

Fee calculations are considered supplements to a reciprocal right-of-way agreement in which the replacement cost of a road (or the cost of a road improvement) is amortized over time. Amortization is made by the payment of a road use fee/MBF to the road owner by the road user until the using party's deficit share in a road is paid off.

Many legal opinions and rulings have established the policy that the U.S. amortizes its investments in the replacement costs and capital improvement costs to logging roads. After such costs are fully amortized or paid off, further use of the

road does not require the payment of road use fees, unless a future capital expenditure is made.

A fee calculation supplement is “approved” by owner of the road or improvement and “accepted” by the using party. The calculated fee/MBF is commonly referred to as the road use fee.

A road use fee calculation also establishes a percentage (deficit) share for the party who desires to use the road or improvement of the other party. The using party pays the road use fee/MBF until such time as their deficit share is paid off. Once a deficit share is paid off, the road becomes “free use” to the deficit party (see glossary) regarding the payment of road use fees. If an additional road improvement (see glossary) is placed on a road, a new deficit share in the improvement will need to be calculated.

Road use fees are in addition to, and do not include, road maintenance and/or surface replacement) fees. The application of maintenance and surface replacement fees is covered in Chapter XV.

Generally the calculation of road use fees applies only to reciprocal right-of-way agreements. For unilateral permits, the road use fee included in the Oregon/Washington State-Wide Road Maintenance Fee schedule is usually applied instead of a calculated fee.

4. Requirements and References

The regulations in 43 CFR 2812 provide the authority and criteria for amortization of U.S. and permittee roads and improvements when first use by the other party occurs.

a. Road use Fee Payments to U.S. for Permittee Use of BLM Roads or Improvements

The requirements to calculate road use fees for permittee’s use of U.S. roads or improvements are found at 43 CFR §2812.5-2(b):

Where the permittee receives a right to use a road constructed or acquired by the United States, which road is under the administrative jurisdiction of the Bureau of Land Management, the permittee will be required to pay to the United States a fee to be determined by the authorized officer who may also fix the rate at which payments shall be made by the permittee during his use of the road. The authorized officer shall base his determination upon the amortization of the replacement costs for a road of the type involved, together with a reasonable interest allowance on such costs plus costs of maintenance if furnished by the United States and any extraordinary

costs peculiar to the construction or acquisition of the particular road. In the case of federally acquired or constructed access roads, an allowance representing a reasonable allocation for recreational or other authorized uses shall be deducted from the replacement costs of the road before the amortization item is computed. A similar allowance and deduction shall be made in cases involving roads constructed as a part of a timber sale contract when, and if, subsequent to completion of such contract any such road becomes subject to recreational or other authorized uses. In arriving at the amortization item, the authorized officer shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved, and the volume of timber currently merchantable which probably will be moved from all sources over such road: Provided, however, that this subdivision shall not apply where the permittee transports forest products purchased from the United States through the Bureau of Land Management, or where payment for such road use to another permittee is required under this subpart 2812: Provided further, that where the United States is entitled to charge a fee for the use of a road, the authorized officer may waive such fee if the permittee grants to the United States and its licensees the right to use, without charge, permittee's roads of approximately equal value as determined under the methods provided in this subdivision and § 2812.4-1(b), as may be applicable. [Underline added.]

b. Exception to Requirement for Permittee Payment of Road Use Fees to the U.S. – Road Built by Predecessor Under Expired Permit

There is an exception to the requirement for payment of road use fees by the permittee. Under the regulations at 43 CFR §2812.5-2(c), a permittee may not be required to pay a road use fee for use of a road segment constructed by the permittee or his predecessor under the terms of a permit that subsequently expired:

If an application is filed to use a road built on O. and C. lands by the applicant or his predecessor in interest under a permit which has expired, the authorized officer may issue a new permit, which provides that as to such road the applicant's road use payments shall be determined in accordance with paragraph (b) of this section except that he shall be required to pay a road use fee which is adequate to amortize only his proportionate share of any capital improvements which have been or may be placed on the road by the United States, or its licensees together with a reasonable interest allowance thereon plus cost of maintenance if furnished by the United States; provided, however, That if the application is for use of

a road which has been built by a predecessor in interest the permit shall provide that the applicant may use the road only for the purpose of reaching the lands of the predecessor in interest that were served by the road. As a condition for the granting of such a permit, the applicant must comply with 43 CFR §2812.3-1 to §2812.3-5 to the extent that rights-of-way and road use rights are needed to manage lands of the United States or to remove timber there from. [Underline added.]

Therefore, if a permittee or his predecessor built a road on U.S. lands under the authority of an expired unilateral or reciprocal permit, that permittee is exempt from the requirement to pay a road use fee for the replacement cost of the original road. They are, however, required to share in the cost of any improvements made by the U.S. or its licensees.

Before the AO waives the fee for the original road, they should determine the location of the “lands of the predecessor in interest that were served by the road.” As noted in the above regulations (2nd to last sentence), any such waiver of road use fees will only apply to hauling that is associated with removal of timber from the “lands of the predecessor in interest that were served by the road.” If the permittee now owns tributary timber located on lands in addition to the lands of the predecessor, a deficit share will be calculated and payment of a road use fee required for that additional tributary area.

c. Road Use Fee Payments to Permittee for Use of Permittee Road by U.S. or Its Licensees

The requirement for a road use fee calculation in connection with the U.S. (or its licensees) use of permittee roads or improvements, is found at 43 CFR §2812.3-7:

(a) Where the United States receives rights over any road, right-of-way, or lands, controlled directly or indirectly by a permittee, the authorized officer will seek to arrive at an advance agreement with the permittee respecting any or all of such matters as the time, route, and specifications for the development of the road system in the area, the total volume of timber to be moved over such road system, and the proportion of such timber which belongs to the United States or is embraced in a cooperative agreement for coordinated management with timber of the United States managed by the Bureau; the consequent proportion of the capital costs of the road system to be borne by such timber of the United States or embraced in such cooperative agreement; the period of time over, or rate at which, the United States or its licensee shall be required to amortize such capital cost . . . a formula for determining the proportionate capacity of the road system or portions thereof which shall be

available to the United States and its licensee for the transportation of forest products; the amount and type of insurance. . . .

(b) The provisions of § 2812.4 shall not be applicable to any matters embraced in an [arbitration] agreement made pursuant to this section. [Bracketed text added.]

d. No Road Use Fees for Mineral Haul

The road amortization formulas found in semi-detailed agreements is shown in Section C.6. below. The formulas define the “F” (or fee) as:

F = Road use fee per unit of merchantable timber.

As stated earlier, the “F: in the above formulas is the fee per MBF that is paid for the merchantable timber hauled over the road in order to amortize the replacement cost of the road. Thus, the “merchantable timber” amortizes the replacement cost of the road, and not the mineral material. Therefore, it is not appropriate to charge road use fees for the hauling of mineral material over each other’s roads.

5. Timber from Allotted and Tribal Indian Lands Is Federal Timber

The regulations at 43 CFR §2812.0-5 include timber on allotted and tribal Indian lands as U.S. timber:

(b) *Timber of the United States or federal timber* means timber owned by the United States or managed by any agency thereof, including timber on allotted and tribal Indian lands in the O. and C. area.

Therefore, timber from allotted and tribal Indian lands should be included in any road use fee calculation and counted as U.S. timber tributary to a particular road segment.

6. Amortization Formulas in Reciprocal Right-of-Way Agreements

There are six provisions in most reciprocal right-of-way agreements that contain common amortization formulas. These provisions appear in Exhibits A and B of the Permit and Agreement, respectively. These formulas include:

- permittee buy-in to U.S. road (replacement cost),
- permittee buy-in to U.S. capital improvement placed on U.S. road,
- permittee buy-in to U.S. capital improvement placed on permittee road,

- U.S. buy-in to permittee road (replacement cost),
- U.S. buy-in to permittee capital improvement placed on permittee road, and
- U.S. buy-in to permittee capital improvement placed on U.S. road.

There may be variations in some reciprocal right-of-way agreements pertaining to the application of the formulas, but the formulas are generally consistent throughout the program. It is very important to examine each reciprocal right-of-way agreement for its specific terms and conditions. The following sections contain the actual stipulations from Form OR 2812-16.

a. Amortization Provisions and Formulas for Road Replacement Cost

There are two formulas found in the standard template for reciprocal right-of-way agreements (Form OR 2812-16, Illustration V-2) for amortization of the replacement cost of a road. One formula is for U.S. use of permittee roads (found in Exhibit B) and one is for permittee use of U.S. roads. Both formulas are shown in the following sections. Most semi-detailed agreements contain these exact (or very similar) formulas.

The replacement cost is calculated as of the date when the road is first used for the removal of forest products by the party for whom the fees are being calculated

1) Permittee Buy-In to Replacement Cost of U.S. Road

The following is stipulation No. 1 to the Exhibit A of the Form OR 2812-16 (page 12).

1. Amortization Formula for Permittee Buy-In to Replacement Cost of U.S. Road. In the event that the Permittee should use roads owned or controlled by the United States which are constructed on lands described in Schedules 1 or 2, (and shown on Exhibit C, attached hereto and made a part hereof), the Permittee shall pay a road use fee computed as follows:

$$F = \frac{R}{T} + I \quad \text{in which}$$

$$F = \text{Road use fee per M bd. ft.}$$

R =	Replacement cost	(replacement cost of the road including extraordinary costs peculiar to the construction or acquisition of the road or right-of-way but excluding any capital investment made in the road by the Permittee.)
T =	Tributary timber	(the volume of timber which has been moved over the road and the volume of tributary timber currently merchantable which probably will be moved over the road)
I =	.03 X $\frac{R}{T}$	(interest allowance)

The Permittee shall have free use except for pro rata maintenance expense, of any such road after the Permittee's percentage share of the replacement cost of the road has been paid. Such percentage share shall be the same as the Permittee's percentage share of the total volume of tributary timber. Replacement cost of a road shall be computed as of the date when the road is first used by the Permittee for the removal of forest products from Permittee's lands. If the parties hereto cannot agree on the replacement cost within thirty (30) days after written notice from either party, computation thereof shall be made by the United States Bureau of Land Management and its decision shall be final, provided that the right of the Permittee to appeal pursuant to the provisions of 43 CFR Part 4 shall not be affected.

2) U.S. Buy-In to Replacement Cost of Permittee Road

The following is provision No. 1 to the Exhibit B of the Form OR 2812-16 (page 31).

1. Amortization Formula for U.S. Buy-In to Replacement Cost of Permittee Road. In the event the United States or its licensees should use any road owned or controlled by the Permittee which are constructed on lands described in Schedules 1 or 2, (and shown on Exhibit C, attached hereto and made a part hereof), the United States or its licensees shall pay a road use fee, to be computed as follows:

$$F = \frac{R}{T} + I \quad \text{in which}$$

F = Road use fee per M bd. ft.

R = Replacement cost (replacement cost of the road including extraordinary costs peculiar to the construction or acquisition of the road or right-of-way but excluding any capital investment made in the road by the United States or its licensees.)

T = Tributary timber (the volume of timber which has been moved over the road and the volume of tributary timber currently merchantable which probably will be moved over the road)

$$I = .03 \times \frac{R}{T} \quad \text{(interest allowance)}$$

The United States and its licensees shall have free use, except for pro rata maintenance expense, of any such road after the United States' percentage share of the replacement cost of the road has been paid by either the United States or its licensees. The United States' percentage share of the replacement cost of a road shall be the same as the United States' percentage share of the total volume of tributary timber. Replacement cost of any such road shall be computed as of the date when the road is first used by the United States or its licensees for the removal of forest products from land of the United States. If the parties hereto cannot agree on the amount of the replacement cost within thirty (30) days after written notice from either party, computation thereof shall be made by the United States Bureau of Land Management and its decision shall be final, provided that the right of Permittee to appeal pursuant to the provisions of 43 CFR Part 4 shall not be affected.

b. Amortization Provisions and Formulas for Road Improvements

There are four formulas found in the Exhibit A or B of the reciprocal right-of-way agreement regarding the amortization of road improvements place by either the U.S. or permittee. These provisions and formulas are described below:

1) Permittee Buy-In to U.S. Capital Improvement on U.S. Road

The following is provision No. 2 to the Exhibit A of the Form OR 2812-16 (page 13).

2. Amortization Formula for Permittee Buy-In to Cost of Improvement Placed by U.S. on U.S.-Controlled Roads. If the United States, or its licensees, makes any future capital expenditure on any road described in paragraph No. 1 above and the Permittee uses such road after the capital expenditure is made, the United States shall be entitled to charge an additional road use fee to be computed as follows:

$$F = \frac{E}{T} + I \quad \text{in which}$$

F = Road use fee per M bd. ft.

E = Amount of any future capital expenditure made by the United States or its licensees.

T = Total volume of merchantable timber at time of capital expenditure(s) which probably will be moved over the road after the capital expenditure is made.

$$I = .03 \times \frac{E}{T} \quad (\text{interest allowance})$$

The Permittee shall have free use, except for pro rata maintenance expenses, after the Permittee's percentage share of the capital expenditure has been paid. Such percentage share shall be the same as the Permittee's percentage share of the total volume of merchantable timber which probably will be moved over the road after the capital expenditure is made.

2) U.S. Buy-In to Permittee Capital Improvement on Permittee Road.

The following is provision No. 2 to the Exhibit B of the Form OR 2812-16 (page 32).

2. Amortization Formula for U.S. Buy-In to Cost of Improvement Placed by Permittee on Permittee-Controlled Road. If the Permittee makes any future capital expenditure on a road described in paragraph _ above, and the United States or its licensees, uses

such road after the capital expenditure is made, the Permittee shall be entitled to charge an additional road use fee to be computed as follows:

$$F = \frac{E}{T} + I \quad \text{in which}$$

F = Road use fee per M bd. ft.

E = Amount of any future capital expenditure made by the Permittee.

T = Total volume of merchantable timber at time of capital expenditure(s) which probably will be moved over the road after the capital expenditure is made.

$$I = .03 \times \frac{E}{T} \quad (\text{interest allowance})$$

The United States or its licensees shall have free use of the improvement, except for pro rata maintenance expense, after the United States' percentage share of the capital expenditure has been paid. Such percentage share shall be the same as the United States' percentage share of the total volume of merchantable timber which probably will be moved over the road after the capital expenditure is made.

3) U.S. Buy-In to Permittee Capital Improvement on U.S. Road

The following is provision No. 3 to the Exhibit A of Form OR 2812-16 (page 13).

3. Amortization Formula for U.S. Buy-in to Cost of Improvement Placed by Permittee on U.S.-Controlled Road. If the Permittee, with the approval of the United States, makes any future capital expenditure upon a road described in paragraph No. 1 above, and the United States or its licensees uses such road after the capital expenditure is made, the Permittee may charge a road use fee to be computed as follows:

$$F = \frac{E}{T} + I \quad \text{in which}$$

F = Road use fee per M bd. ft.

E = Amount of any future capital expenditure made by the Permittee.

T = Total volume of merchantable timber at time of capital expenditure(s) which probably will be moved over the road after the capital expenditure is made.

I = .03 X $\frac{E}{T}$ (interest allowance)

The United States or its licensees shall have free use, except for pro rata maintenance expenses, after the United States' percentage share of the capital expenditure has been paid. Such percentage share shall be the same as the United States' percentage share of the total volume of merchantable timber which probably will be moved over the road after the capital expenditure is made.

4) Permittee Buy-In to U.S. Capital Improvement on Permittee Road

The following is provision No. 3 to the Exhibit B of Form OR 2812-16 (pages 32 and 33).

3. Amortization Formula for Permittee Buy-In to Cost of Improvement Placed by U.S. on Permittee-Controlled Road If the United States or its licensees, with the approval of the Permittee, makes any future capital expenditures upon a road described in paragraph(s) __ above, and the Permittee uses such road after the capital expenditure is made, the United States may charge a road use fee to be computed as follows:

F = $\frac{E}{T}$ + I in which

F = Road use fee per M bd. ft.

E = Amount of any future capital expenditure made by the United States or its Licensees.

T = Total volume of merchantable timber at time of capital expenditure(s) which probably will be moved over the road after the capital expenditure is made.

I = .03 X $\frac{E}{T}$ (interest allowance)

The Permittee shall have free use, except for pro rata maintenance expense, after the Permittee's percentage share of the capital expenditure has been paid. Such percentage share shall be the same as the Permittee's percentage share of the total volume of merchantable timber which probably will move over the road after the capital expenditure is made.

7. Amortization Formulas Explained

Basically the formulas are fairly simple but this section is provided to add some clarification and to discuss nuances and differences.

a. The “F” (Road Use Fee per MBF)

The “F” in all of the formulas above represents the “road use fee per MBF” that will be charged to the using party for any timber hauled down the particular road segment for which the calculation was made (for both replacement cost and cost of improvement formulas). This fee will be paid until their deficit share has been paid off. In the case of system fee agreements, the road use fee/MBF is negotiated and the same fee is used for all of the roads in the “system” or “system agreement.”

b. The “R” (Replacement Cost) – Applies to Original Roads, Not Capital Improvements

The formulas in paragraphs C.6.a.1) and C.6.a.2) above are used to calculate road use fees and deficit shares in the replacement cost of each other's original road. The “R” in the formula represents the “replacement cost” of a road. Section C.8.f. and g. below provides detailed guidance in how to determine the replacement cost. Before one can determine the replacement value there needs to be an understanding of what replacement cost means.

The estimation of road replacement cost is one of the more confusing areas in the administration of reciprocal right-of-way agreements. At the same time, it is critical to the calculation of percentage shares and road use fees. The glossary defines road replacement cost as:

road replacement cost: ¹The replacement cost of the road ²including extraordinary costs peculiar to the construction or ³acquisition of the road or right-of-way ⁴but excluding any capital investment made in the road by the [permittee—if it is a U.S. road] or [U.S. or its licensees if it is a permittee road]. ⁵The replacement cost is calculated as of the time of first use by the using party.

¹First, it should be noted that what is being estimated is the “replacement cost” and not the exact “reproduction cost” of the road. That is, the replacement cost

represents the cost of building a road of equal utility and not necessarily the cost of duplicating the original road as it was constructed. As an example, the original surface rock may have come from New York City or an adjacent streambed, but the rock should not be valued from those original sources if they are not prudent or feasible today.

²Second, what is meant by “extraordinary costs peculiar to the construction . . . ?” Basically, this means the estimate of replacement cost should include those items such as full bench construction, slope stabilization, etc. that were peculiar to the particular location and construction of that particular road.

³Third, what is meant by “extraordinary costs peculiar to . . . acquisition of the road or right-of-way?” This applies to roads that were built on someone else’s land (other than the road owner) and the road owner acquired an easement or right-of-way. The costs “peculiar to acquisition” would be the amount of easement consideration that was paid. However, if the easement consideration includes a value for right-of-way timber, that portion of the consideration paid for the easement should not be included in the replacement cost since such timber is subsequently sold, and the acquisition costs recaptured. The acquisition costs can include, however, mitigated damages associated with the easement, e.g., right-of-way fencing. These are the items that are included in easement “letters of agreement” and may be items not directly associated with the road and thus are easily overlooked when making a replacement cost appraisal.

⁴Fourth, what does “but excluding any capital investment made in the road by the [permittee—if it is a U.S. road] or [U.S. or its licensees if it is a permittee road]” mean? This refers to a situation where, for example, the permittee placed an improvement on a U.S. road and when the fee calculation for the permittee’s share in the replacement cost of the road was made, the estimation of the replacement cost did not include the cost of that improvement. The road was valued as if the improvement was not in place.

⁵Fifth, what date is used to determine the replacement cost? The last sentence in the definition states: “The replacement cost is calculated as of the time of first use by the using party.” This is fairly straightforward. For example, if a road was built in 2002 and the using party requested a fee calculation and their time of first use was in 2008, the replacement cost would be based on the replacement value as of 2008.

c. The “E” (Amount of Capital Expenditure)

The formulas in paragraph Nos. C.6.b.1) through C.6.b.4) above all deal with fee calculations associated with the using party sharing in the cost of the improvement placed by the other party. There are nuances in the formulas based on whether the using party was sharing in a cost of an improvement placed by the other party

on its own road or on the other party's road. Different reciprocal right-of-way agreements may have differently worded stipulations. READ THE AGREEMENT.

The "E" in these formulas is used in place of the "R" in the formulas for calculating replacement costs. The "E" stands for "expenditure." When completing fee calculations for capital improvements, the amount "expended" (or the capital expenditure) is not updated to the time of first use. The formula states it to be:

Amount of any future capital expenditure made by [U.S. or permittee depending on the formula.]

So, the "E" always represents the actual amount "expended" by the party placing the improvement.

d. The "T" (Tributary Timber)

The "T" in the formula represents the tributary timber. The formulas above provide a different definition for tributary timber for replacement cost and for the capital improvement.

The definition for tributary timber when calculating road use fees for replacement cost of an original road is:

(the volume of timber which has been moved over the road and the volume of tributary timber currently merchantable which probably will be moved over the road)

The definition for tributary timber when calculating road use fees for the cost of improvement placed by the other party is:

Total volume of merchantable timber at time of capital expenditure(s) which probably will be moved over the road after the capital expenditure is made.

The differences are underlined and should be self-explanatory.

As the formulas show, either the replacement cost or the amount of capital expenditure is divided by the tributary timber to come up with the road use fee per MBF (to which a simple interest is added as shown in Section C.7.e. below.

e. The "I" (Interest)

The "I" in all of the amortization formulas represents a simple interest. The requirement for charging interest is based on the regulations at 43 CFR 2812.4-1(b) and 2812-5.2(b). As the semi-detailed agreements were developed over the years, the parties agreed upon a standard simple interest to be added to

the road use fee and deficit share in the amount of 3%. This has historically been used and is still in use today.

8. Amortization Process

There are several steps involved in completing fee calculations. The process is initiated when a party receives a request from the other party for first time use of a specific road or improvement. The fee calculation itself involves several steps and this is repeated for each road segment involved:

- review of request and records check for completeness,
- determination of road control and segmentation,
- determination of total tributary area (including other private ownership),
- determination of the ownership acreage of each individual party within the tributary area (including the U.S., the permittee requesting use and other private landowners),
- determination of the merchantable timber volume for each tributary landowner,
- determination of the replacement cost of the original road or the cost of any capital expenditures,
- calculation of the road use (amortization) fee for each road segment using the appropriate formula for replacement cost (original road) or improvement cost,
- approval of fees by the road or improvement owner,
- acceptance of fees by the deficit (using) party, and
- posting of fees and deficit shares to road amortization records.

The following provides guidance on completing this process.

a. Request for Use of Roads

When either party to a reciprocal right-of-way agreement desires to use the other's roads, they must request terms and conditions of use which may require the calculation of a road use fee. The request should be submitted in accordance with the particular reciprocal right-of-way agreement, but generally should include the following:

- map showing the requested road(s),
- the tributary area of the requesting party, and
- The estimated volume of the requesting party's tributary timber that will go over the road(s) or the improvement(s).

There is no standard format for this request, but the above items must be provided in order to proceed. Chapter VIII. provides sample of letters requesting terms and conditions of use, which may include a request for fee calculations.

If BLM is requesting use of a permittee road in connection with a BLM timber sale, it should allow sufficient time so that road use fees can be agreed to prior to advertisement of the sale. The use of "interim" fees is not appropriate and creates a bookkeeping nightmare. Both parties need to provide ample lead-time to avoid the use of interim fees. If the parties cannot agree to tributary volumes and road replacement cost within the time specified in the reciprocal right-of-way agreement, BLM may be required to establish the fees, subject to the right of appeal by the permittee.

Road use fee calculations (to establish the road use fee and deficit share for the permittee) are processed at the time of the first request for terms and conditions use of the road by a permittee. The road use fee for that permittee will continue to be applied for all subsequent uses of that road until that permittee's deficit share is paid off.

A calculated road use fee is specific to an individual permittee. A subsequent request for use of the road by another permittee may result in a separate fee calculation as the subsequent permittee will own a different volume of tributary timber and the tributary area for the road or other data related to its replacement cost may have changed over time. As a result, there could be several different calculated road use fees for the same road segment.

b. Verification of Request

Road use fee request information should be reviewed and validated for accuracy, as this information will serve as the basis for proceeding. Before proceeding the following items should be verified.

1) Are the Lands in Permit or Agreement?

The requested road segment (or the lands under the road) must be located on lands or interests in lands included in the reciprocal right-of-way agreement land schedules. For requests by permittee to use BLM roads, the roads (or lands underlying the roads) must be included in Schedule 1 of the subject Permit. For BLM requests to use permittee-controlled roads, the lands must be included in Schedule 2 of the subject Agreement. If the lands or roads are not included, then

an amendment must be executed to add the underlying lands (or just the roads) to the reciprocal right-of-way agreement prior to completing the fee calculation.

2) Verification of Road Ownership

Before proceeding with the calculation, road ownership or owner of road improvement must be verified. Even though a road is on BLM land, it may be owned by a third party. The reciprocal agreement and road record files should always be checked. Conversely, the request may not have included portions of roads on private land over which BLM controls through an easement or reciprocal right-of-way agreement and it may be discovered that additional fee calculations are required. See the definitions for road ownership and road control in the glossary.

3) Road and Segment Numbers are Correct

The road user should only be charged for the portion of the road that is being used, and not arbitrarily charged for some longer length just because that fits with prior calculations for another user. Additionally, the road or segment should "fit" the timber flow, that is, the road should be segmented at major junctions, proposed junctions, "tie segments" (discussed in the following allocation sections), and road control breaks. The ultimate objective is the calculation of percentage shares, which are dependent upon logical flow, quantities, and ownership of tributary timber.

Therefore, the initial review of the fee calculation request package and tributary area map submitted by the permittee should include the identification of the correct road segment and length to be valued.

The tributary area map must identify the correct road and segment numbers. For BLM-controlled roads, the road record file is usually the primary source to be checked, but the agency's automated road records and mapping sources, such as BLM's geospatial information system's ground transportation data layer (GTRN) or the Facility Asset Management System database (FAMS) should be checked as well.

Sometimes it is necessary to "sub-segment" a road. For example, if Segment A of a road is .5 miles and the permittee is only using .25 miles, the .25 miles being used would be shown as Segment A1 for purposes of valuation and determining the appropriate road use fee.

See Chapter XV. on road numbering and segmentation.

c. Determination of Tributary Areas, Tributary Volume and Merchantability

The next step in processing fee calculations is to determine the tributary area and volumes of each identified road segment. A separate tributary area map is prepared for each segment. The process of determining tributary areas and merchantable timber is broken down into two specific components: 1) Total Tributary Area, and 2) Tributary Areas and Merchantable Volume for each party. Each reciprocal right-of-way agreement must be checked to see what provisions are contained regarding determination of tributary areas and volumes and determination of merchantability. The standard provision in a semi-detailed reciprocal right-of-way agreement states:

It is agreed that the term "M bd. ft." as used in this agreement shall be interpreted to mean thousand board feet Scribner Decimal C log scale with taper allowance for logs longer than sixteen (16) feet, or a reasonable conversion thereof.

1) Determination of "Total" Tributary Area

The total tributary area includes the total volume of timber, which has been hauled over the road in question, plus the volume of currently merchantable timber, which probably will be hauled over that road (for all ownerships). The 43 CFR 2812 regulations do not mention the terms "tributary area" or "tributary timber" specifically. However, the BLM's 1957 O&C Logging Road Right-of-Way handbook, (Vol. 8 Forestry, Release No. 20) referred to both "tributary timber" and "tributary area" (2.4.3 M-N and 2.4.3 S-3) as follows:

The determination of which timber is in the area tributary to the road in question usually depends on several factors including topography, geography, and economics. One way to establish the boundaries of a tributary area is through the use of a topographic map on which the subject road segment and the road system are shown. Applying logic and knowledge of logging techniques, a line may be drawn around the area from which harvested timber is likely to be yarded to the road, and then to the nearest marketing center. Slope angles, logging distances, existing roads, land and timber ownerships, and past logging in the area must be considered. The availability of all pertinent information and good judgment are essential to proper delineation of tributary areas and determination of tributary merchantable timber volumes.

This methodology is still appropriate today. The "total" tributary area to a road includes the tributary areas of all landowners who have or had merchantable timber served by the road in question. BLM administrative set-aside areas (e.g., ACEC's, RNA's, riparian areas, etc.) and other special management areas where

federal merchantable timber will not be harvested are included in the total tributary area of the U.S.

The amortization formula states that “the volume of timber which has been moved over the road and the volume of tributary timber currently merchantable which probably will be moved over the road”. If only second growth timber will go over the road at the time of first-use amortization, then only that timber would be included in the tributary area. However, if first growth and second growth timber has or will go over the road at time of first use, it would be appropriate to include both rotations in the tributary timber calculations based on the formula definition above. There is no language in the formula that limits the amount of merchantable timber that has or will go over the road to one rotation. In summary, any timber that is “merchantable” at the time of first use gets counted.

In outlining a tributary area, it is necessary to determine the probable road system over which the timber has or will be removed from each subdivision of land. In making this determination, consideration should be given to all the alternate routes that are available or probably will become available, regardless of topographic features. The owners of intermingled private land may have good and sufficient reasons for designating different tributary area boundaries for portions of their timber. For example, a private owner may plan to haul timber over a different road and manufacture it at a different location than those considered by the BLM as most logical route for timber of the U.S. The resolution of such conflicts may result in the exclusion of individual subdivisions of land which lie within the proposed tributary area boundary. It may also result in the inclusion in the tributary area of individual subdivisions of land which lie outside the proposed boundary.

Once the total tributary area boundary has been determined, it must be further subdivided by land ownership to determine the percentage (by acreage) of total tributary area of each party. Within each party’s individual tributary area, the merchantable timber volume must then be determined.

See Illustration IX-10 for sample tributary area map which has been subdivided by each landowner.

2) Determination of Total Tributary Volume and Merchantability

Most reciprocal right-of-way agreements contain a provision requiring that tributary timber be determined using BLM timber inventory information as follows (See paragraph No. 4 of Illustration V-6 – Form OR 2812-16 – page 33):

In computing the formula set forth in paragraphs ___ and ___ above, the tributary timber shall be determined from Bureau of Land Management forestry type maps by applying an average stand per acre to the acreage of merchantable timber tributary to any particular

road or road segment. The average stand per acre to be used in this calculation shall be the average stand per acre as determined by the current Bureau of Land Management forest inventory of the area. The tributary timber shall be determined after consultation between the parties hereto and after consideration of all available data furnished by either party. The data which either party desires to have considered shall be furnished the other party within thirty (30) days after written request therefore. If the parties cannot agree upon the tributary timber within thirty (30) days after the data is furnished, the determination thereof shall be made by the United States, provided that the right of Permittee to appeal pursuant to the provision of 43 CFR Part 4 shall not be affected.

If the above or similar provision exists in the reciprocal right-of-way agreement, the basis for determining tributary timber (for both BLM and the permittee) is the BLM timber stand inventory and volume per acre, which is based on short (16-foot) log volumes. Care needs to be exercised in determining volume and merchantability consistent with the terms of the reciprocal right-of-way agreement. Private properties may not be included in BLM's timber inventory although forest type lines often cross property lines. If BLM timber type maps do not reveal the timber types on intermingled private lands, owners of those lands may be able to provide accurate data. As stated in the above provision, the BLM will make the final determination of tributary timber where the timber volume is in dispute, subject to appeal by the permittee. Whatever methodology is used, it should be applied consistently to the determination of tributary volumes of both parties.

Merchantable timber is generally described as that which is “economically suitable for manufacture or conversion into lumber.” This standard can change over time as milling technology and markets change. For example, in some agreements merchantability was often based on the assumption that a tree stem from the stump up to the point where its diameter is 12 inches is merchantable. A landowner and BLM could agree, however, due to current market conditions, that tree stems to a 4-inch top (or some other diameter) are merchantable.

One method to determine merchantable timber volume is to transfer the tributary areas from a topographic map to a timber type map. Usually there is a currently accepted standard of merchantability for the timber species involved. With this information, the volume of merchantable timber for each landowner within the total tributary area can be derived.

There may be areas from which the merchantable timber was previously removed. Since fee calculations are based on merchantable timber that HAS or PROBABLY WILL BE moved over roads, it must be decided where this timber was transported and over which roads it was hauled. The fact that it has been removed indicates that it was considered to be merchantable at that time and should be included in the tributary area. In some cases, a landowner may supply information to show

that their merchantable timber was actually hauled over another route and was not tributary to the road in question.

d. Identification of Road and Segment to Be Valued

The first step in the determining replacement cost is to identify the correct road and segment Nos. and length as described in Section C.8.d.) above. If the entire road record official segment length is not used, the replacement cost should only include the length used. In addition, a “sub-segment” may need to be assigned. For example, if the length of segment A is .50 mile and the using party is only using .40 mile, the segment would be called Segment A1 and a replacement cost derived for only the .40 mile.

e. Replacement Cost Defined

The objective is to determine a replacement cost and not duplication cost; that is, the replacement cost is the cost of building a road of equal utility, and not necessarily the cost of duplicating the original road as it was constructed. As an example, the original surface rock may have come from a source a hundred miles away or an adjacent streambed, but the cost of the rock should not be determined from those sources if they are not prudent or feasible today.

There are several methodologies available for determining replacement cost as follows:

f. Replacement Cost When Easements are Involved

Special care needs to be exercised when determining replacement costs for roads when easements are involved. There are three different scenarios for consideration when the road involved an easement acquisition: 1) When the easement acquisition was for an existing road, 2) when the easement acquisition was for an existing road and a capital improvement was later placed on the road, and 3) when the easement acquired was over bare land and the road owner subsequently constructed a road.

1) Road Existed at Time of Easement Acquisition

If a fee calculation is being completed for a road that existed at the time of easement acquisition but the **requesting party’s first use is** prior to the time the road owner places **any capital improvement**, the replacement cost is the consideration paid for the easement, minus the portion of the **easement** consideration which is attributable to the purchase of right-of-way timber.

For example:

Easement consideration paid = \$4,000

Portion of Easement consideration paid which is attributable right-of-way timber	(-)	<u>1,000</u>
Replacement cost of road for fee calculation purposes		\$3,000

a) Road Existed at Time of Easement Acquisition but First Use Occurs After an Improvement is Placed.

If a fee calculation is being completed for a road that existed at the time of easement acquisition and the first use of the road occurs after the time the road owner places a capital improvement, the replacement cost of the road is the consideration paid for the easement, minus any portion of the consideration paid which is attributable to right-of-way timber, PLUS the cost of capital expenditures incurred by the controlling party.

For example:

Easement consideration paid =		\$ 4,000
Portion of consideration which is attributable right-of-way timber	(-)	<u>1,000</u>
		\$ 3,000
<u>Cost of Capital expenditure (improvement) at time it was placed</u>	(+)	<u>15,000</u>
Replacement cost of road for fee calculation purposes		\$18,000

In some cases it may be necessary to complete a worksheet to pro-rate the portion of the road that was covered by an existing road in an easement acquisition from the portion of the road that was built outside of the easement area. A sample of such a worksheet is included as Illustration IX-17.

b) Reserved

2) Easement Acquisition Was Bare Land (No Existing Road).

If the request for road use fee calculation is made for a road that was built after the easement acquisition, the replacement cost of the road is the compensation paid for the easement, minus any portion of the compensation paid which is attributable to right-of-way timber, PLUS today's replacement cost of the road constructed.

For example:

Easement consideration paid =		\$ 4,000
Portion of consideration which is attributable right-of-way timber	(-)	<u>1,000</u>
		\$ 3,000
Today's cost of road construction	(+)	<u>75,000</u>
Replacement cost of road for fee calculation purposes		\$78,000

g. Replacement Cost Determination for All Other Roads (Not Involving Easements)

The determination of road replacement cost can be derived by various methods. Before a method is chosen, the individual agreement should be checked to determine if prior agreements have been reached regarding preferred methodology or road specifications.

Some reciprocal right-of-way agreements set maximum road specifications the parties have agreed to include in the road replacement cost calculation. Such is typically provided for with the following language:

. . . unless (otherwise) agreed, the replacement cost as used herein on any road shall be limited so as not to include any costs which represent a cost in excess of the road specifications described in Exhibit D, attached hereto and made a part hereof . . .

In some reciprocal right-of-way agreements, the parties have agreed to utilize one of the three methods described below as the road cost calculation process for the reciprocal agreement. Regardless of the method used to determine road replacement cost, it is important to utilize the method of cost calculation which will provide the most accurate means of determining road replacement cost and to utilize that method as consistently as possible.

The most common methods for establishing replacement costs are:

1) Indexing for Inflation Using Consumer Price Index (CPI)

In this method, the preparer updates the appraised cost shown in the subject road record file with appropriate cost updates or inflation indexing. This method cannot be utilized unless an appraised road cost is contained in the road record file. The current road replacement cost is calculated using cost allowances or by multiplying the appraised road cost by an appropriate inflation factor. The standard index to be utilized is the Consumer Price Index. The current version of this index can be found at:

<http://oregonstate.edu/cla/polisci/faculty-research/sahr/sahr.htm>

See Illustration IX-11 for the CPI table current at the time of publication of this handbook which contains the inflation factors and formulation for updating. See Illustration IX-12 for a sample road replacement cost calculation using an inflation factor.

If the road record file contains old appraisals for both an original road and an improvement value, for which the permittee is requesting first use of the road, this

methodology should not be used. This method should only be used if there is just an existing original road appraisal to update.

2) On-the-Ground Survey and Appraisal

A second method of establishing replacement costs involves conducting an on-the-ground visual survey of the subject road and preparing a road construction cost estimate. This method is often utilized if a road cost estimate does not exist in the road record file. In this method, the first step is to conduct an on-the-ground visual survey to establish road construction items and quantities. The purpose of the field survey is to gather data needed to complete a road cost calculation: The minimum data needed to complete a cost estimate includes:

- total length of segment,
- excavation quantities (this can be determined by examining cross sections).
- clearing acreages (determined by taking length x width /43,560),
- total length in feet of culverts by diameter (size),
- surfacing type and quantity,
- slope staking costs (based on stations of road), and
- extraordinary cost items such as blasting, full bench, overhaul, etc.

If this method is chosen, the next step requires a calculation of the road replacement cost by using the Road Cost Calculation Program (or other standardized program available in the District). Illustration IX-13 is a sample road replacement cost estimate completed with this program.

3) Using Recent Appraisals for Similar Roads

Using road construction cost information for a recently constructed road of similar standards with adjustment for any major differences in construction costs between that road and the one for which the fee calculation is being made. In this method, construction cost information is obtained from road record files for roads of similar character to the subject road. Average construction costs per station may be developed if an appropriate sample is utilized. This is the least desirable method.

h. Determination of Road Improvement Costs

When completing fee calculations for road improvements, there is no appraisal or valuation of the cost of the improvement. The “E” in the formula for improvements represents the actual amount of capital expenditure (see glossary). This capital expenditure IS NOT updated to today’s value. The tributary timber that is used in

the calculation is based on the remaining tributary timber (that which will be hauled after the capital improvement is/was placed).

It is important to distinguish between road maintenance and road improvement in calculating road use fees. What might be considered maintenance for one road may be an improvement for another road. For example, if the replacement cost calculation used to determine a permittee's road use fee for a road was based on four inches of aggregate surfacing, an eight-inch lift placed later, on top of the four inches, would be considered an improvement for this permittee. Conversely, if a road at the time of the original road use fee calculation had 12 inches of crushed rock surfacing and eight inches had subsequently worn away, placing eight inches of replacement rock would be a maintenance item and not an improvement. To ensure that road improvements are accurately identified, complete road record files are essential.

i. Engineering Costs as a Component of the Replacement Cost

The costs of "engineering" (or designing) the road is considered to be a function of the road appraisal. Engineering should be an element in the road appraisal based on the appraiser's judgment and complexity of road construction.

j. Adjustments to Road Replacement and/or Improvement Costs

After the initial replacement or improvement cost is established, an adjustment may be warranted for one of the circumstances described below. After these adjustments are made, the final road replacement or improvement cost will be determined. That final cost will be used in the fee calculation formula.

1) Deductions for Separable Costs

A deduction to the replacement or improvement cost is made for separable costs so as not to burden the permittee with road or improvement design elements which are directly attributable to or designed solely for uses other than logging. This deduction is made to the replacement cost after the road replacement cost has been determined. The Lead Engineer makes the recommendation as to what items should be deducted. This deduction could apply to both BLM and permittee roads, but generally it applies most frequently to BLM roads as the BLM may include road design items for non-logging purposes which serve public recreation or wildlife needs.

Examples of separable costs could include: 1) hand rails on a bridge, 2) the difference between the costs of a culvert required for hydrological function and a pipe arch or bridge that was installed instead for recreation or fish passage purposes, 3) sidewalk on a bridge, 4) cattleguards, etc. If a specific agreement

contains agreed-upon design standards, any construction above and beyond these agreed-upon standards could also be considered separable costs.

2) Addition for Overhead and Contract Administration

It is BLM policy that additions for Overhead and Contract Administration are to be applied to the road replacement cost. The current percentages to be applied are:

Overhead	10% (includes all costs involved in administration, record keeping and clerical personnel not directly involved in actual field or project work).
Contract Administration	10% (includes planning, contract preparation and contract administration) related to the construction of the road.

These amounts are to be applied to the replacement cost of a road prior to the deductions for separable costs and allocation of costs as identified in the following sections.

There should be no additions for “profit and risk,” as the profit is realized in value of the timber transported over the road and there is no risk associated with “after-the-fact” road replacement cost when the quantities of materials and construction are all known.

If the fee calculation is ONLY for a capital improvement (the original road has already been amortized), no addition for overhead and contract administration should ever be applied. This is because the “E” in the formula for capital expenditures is identified as the:

Amount of any future capital expenditure made (by the permittee) (by the United States or its licensees).

3) Deductions for and Allocation of Costs (Where Public Access Exists)

A deduction is made to the improvement cost or the replacement cost of a U.S. road to account for non-logging uses (such as recreation use by the public, etc.). The authority for applying an allocation is contained in 43 CFR §2812.5-2(b), which reads in part:

. . . In the case of federally acquired or constructed access roads, an allowance representing a reasonable allocation for recreational or other authorized uses shall be deducted from the replacement costs of the road before the amortization item is computed. A similar allowance and deduction shall be made in cases involving roads constructed as a part of a timber sale contract when, and if,

subsequent to completion of such contract any such road becomes subject to recreational or other authorized uses. . .

Allocation for non-logging uses was adopted by the BLM in an attempt to limit the road replacement costs shared by a permittee in the use of U.S. roads to those costs directly associated with removal of timber and forest products. It is based upon the premise that most roads built in western Oregon are built primarily for the purpose of transporting logs, but recognizes that roads may be subject to additional uses, such as recreation traffic and agricultural hauling. Allocation, then, is the process of estimating that portion of a road's replacement cost attributable to uses other than transporting timber.

To qualify for allocation of costs:

- the road must be controlled by the U.S.,
- the road must be eligible for road use fee charges by the U.S., and
- the rights acquired by the U.S. must be adequate to permit uses other than the transportation of forest products and the road is used for these purposes.

The determination of whether a road qualifies for allocation of costs reduction is based on whether there are “legal” rights for the public, not whether there is physical access for the public.

Once the road is determined eligible based on the above criteria, the form identifies four categories of road that will be considered for allocation:

- Roads constructed with appropriated funds;
- Roads constructed by BLM timber purchasers under authority of a timber sale contract;
- Roads acquired by BLM through expiration of a right-of-way permit, trespass, etc.
- Roads purchased by BLM.

To determine if deductions for allocation are appropriate for a U.S. road or improvement, the evaluation should begin at a road with known legal public access (not just physical access). Generally roads that qualify for a deduction for allocation of costs will be identified in the Facilities and Assets Management System (FAMS) with a designation of “BLM Public” in the “Access” field. Roads with “BLM Administrative” or “BLM Private” would not qualify. However, the

person completing the road use fee calculation should verify that the FAMS data is correct before making a decision solely on the data base information.

Once you identify the first segment of road with legal public access, from there "go up the road" until the first road segment is found that does not provide legal public access. From that point on, the road is not subject to allocation. Any road constructed by the U.S. under an Agreement would not qualify for allocation because the rights acquired by the U.S. do not allow for uses other than the transportation of timber and other forest products. Once completed, the result is an adjusted replacement cost. This is the adjusted replacement cost or improvement cost that will be used in the road use fee calculation.

a) Assigning "Points" for Allocation of Costs and Determining the Percentage to Deduct for Allocation

The Allocation of Costs Worksheet (Form OR 2812-14 (Illustration IX-14)) is used to determine the percentage of the overall deduction from the replacement or improvement cost for any road that qualifies as described above. The instructions for determining these deductions are contained on the reverse of the form but the following is provided as additional guidance.

There are four columns on this form:

- Column 1 – Specific Uses
- Column 2 - Suggested Point Value
- Column 3 - Check
- Column 4 - Total

Column 1 (Specific Uses) identifies the types of public (non-logging) uses that could occur on a given road segment. Column 2 (Suggested Point Value) has historically been interpreted as the maximum point value that could be assigned for any particular use.

The first step is to determine whether the road is a single lane or double lane (the FAMS inventory and/or road record should contain this information). Most BLM roads are single lane but there ARE double lane mainline roads. Whether a road is a single or double lane will affect the percentage uses to make the final deduction.

The second step is to put an "x" in the "Check" column for any particular type of use that typically occurs on the given road segment.

The third step is to assign the actual number of points for each "specific use" that has been checked. Assigning points is a value judgment that rests with the evaluator (usually the Lead Engineer or another individual familiar with the use that occurs on a given road). For example, if the road serves a popular hunting

area, the entire 8 points would probably be assigned. If a road has occasional public driving and sightseeing, a value of 2 points rather than the suggested 14 points may be assigned.

The fourth step is to add up the total points assigned for all uses.

The fifth step is to determine the actual “percentage” deduction that will be taken off of the replacement or improvement cost of the road segment. The final deduction to be made is calculated as shown below:

For a Single Lane Road Segment:

Single Lane Percentage		25.00%
Times 60.5% of the Single lane percentage	X	<u>60.50%</u>
Equals Basic Apportionment for Single Lane		15.13%

Then:

Basic Apportionment X No. of Total Points (say 15) expressed in percentage	x	<u>15.00%</u>
Equals Total percentage by which the replacement or Improvement cost will be reduced		2.27%

For a Double Lane Road Segment:

Double Lane Percentage:		42.00%
Times 60.5% of the Double Lane Percentage	X	<u>60.50%</u>
Equals Basic Apportionment for Double Lane		25.41%

Then:

Basic Apportionment x No. of Total Points(say 15) expressed as a percentage.	X	<u>15.00%</u>
Equals total percentage by which the replacement or improvement cost will be reduced.		3.81%

The final percentages above (for single or double lane) will be applied to the road replacement or improvement costs AFTER the deduction for separable costs is made.

b) Reserved

k. Calculation of Road Use Fee and Deficit Share

After the road or improvement cost is determined, the remaining step is to complete the fee calculation itself to determine the road use fee and deficit share. This calculation is done using the Road Use Fee Calculation Form OR 2812-18 (see Illustration IX-15). Whether the calculation is done manually or electronically, the contents of this form must be included. This form has detailed instructions for

completing the fee calculation. In addition, the form is available in an Excel spreadsheet which has the formulas and calculations built in.

If the road involves an easement over bare land, use Form OR 2812-18E (Illustration IX-16).

Using the prescribed formulas, a road use fee calculation and determination of a party's deficit share can now be made because: 1) the replacement cost or road improvement cost is known, and 2) the tributary area and tributary timber volume is known. The final calculation is to divide the road replacement or improvement cost by the total volume of tributary timber and add the appropriate interest allowance. The proportionate share of a party is called their "deficit share" and they are the "deficit party" and will pay the calculated road use fee per MBF as the road or improvement is used until such time as their "deficit share" is paid off (or swapped out). In most cases, a given fee calculation will apply to only that deficit party, as the road use fee calculation is made at the time of each party's first use of the road or improvement.

Note that the "E" in the formulas shown below refers to the "amount" of any capital expenditure made. This is the actual dollar amount of the expenditure. It is NOT updated to today's cost.

9. Approval and Acceptance

Both parties to a reciprocal right-of-way agreement have rights and responsibilities in the approval and acceptance of road use fee calculations. It is strongly recommended that both parties work closely with each other in the preparation of fee calculations. It will prove valuable to send documents back and forth informally by fax or e-mail (or to meet face-to-face) to provide opportunities to correct errors or negotiate and reach agreement on methodology, etc. This should be done before the fee calculation is sent to the requesting party in a final, approved form with the right of appeal.

Calculation of fees can be made by either party. However, if the parties cannot agree on the amount of the replacement cost or tributary timber within the specified period of time, the Exhibit B in most reciprocal right-of-way agreements stipulates that the computation will be made by the BLM and its decision will be final, subject to the right of the permittee to appeal.

When a fee calculation is completed for BLM use of permittee roads, an authorized representative of the permittee must "approve" the calculation before it is "accepted" by the BLM AO.

When the fee calculation is for permittee use of BLM roads, it is "approved" by the BLM AO and sent via a "Decision-Determination of Fees" (see Illustration XIII-15) for acceptance by the permittee. The Decision Letter contains language

explaining the right of appeal for the permittee if they disagree. However, the parties usually work out any disagreement informally first.

10. BLM Post-Approval Actions

a. Posting to Road Amortization Records

After the fee calculation is approved and accepted by the permittee or BLM, the “deficit balance” (for the “deficit party only) is posted to the road amortization record. See Chapter VI. – Post Authorization Administration – Road Amortization Record Keeping section. If a permittee has paid fees under a unilateral permit and that road is later added by amendment to a reciprocal right-of-way agreement, at their request they should be given credit for the fees paid under the unilateral on the amortization sheet where the calculated fee is posted.

b. Filing

The original copy of the fee calculation should be filed in the Supplements section of the reciprocal right-of-way agreement case file (and a copy or duplicate original mailed to the permittee). Some Districts do not assign supplement numbers—in this case the original fee calculation(s) should be filed where all “post-agreement approvals” are filed.

A copy of the approved fee calculation(s) should also be filed in the appropriate road record file(s). The appraisal or other cost estimate should be attached, along with the tributary area maps, etc.

c. Reporting Units of Accomplishment and LR2000 Update

The LR2000 and Reporting of Units of Accomplish are different for fee calculations for permittee use of a BLM road or improvement and for BLM use of a permittee road or improvement:

1) Permittee Use of BLM Road or Improvement

In the “FD” serial register page, enter Code 393 (Decision Issued) in LR2000. Use the date of “acceptance” by the permittee and in the “comment column” enter (for example) “FC 32-1E-31A” (“FC” meaning Fee calculation and then the road No followed by the Segment). In addition report a unit of accomplishment under the FP program element in subactivity 6310.

2) BLM Use of a Permittee Road or Improvement

In the “PT” serial register page, enter Code 950 (Compliance Approved) in LR2000. Use the date of “acceptance” by the BLM and in the “comment column: enter (for example) “FC 32-1E-31B” (“FC” meaning Fee Calculation and then the

road No. followed by the Segment). In addition report a unit of accomplishment under the NH program element in subactivity 6310.

See Chapter VI. for a complete list of Time Coding and Unit of Accomplishments associated with O&C rights-of-way.

11. Tie Roads

In 1977, the BLM established the "tie road" or "road interconnection" concept. It provides that tie road connections are not amortized (see glossary definition). A tie road is defined as a road available for log hauling use and normally connecting two tributary areas. Tie roads have been constructed for BLM purposes, primarily to make BLM timber available to more than one marketing area. The road investment is considered to have been returned by increased stumpage prices resulting from additional competition. Once a tie road is identified, use of the tie road is free, except that charges are made for maintenance of the portion used.

Tie road designation is a discretionary management tool used by BLM. Tie road concept was developed as a method to eliminate unreasonable road use fees in areas where there were high construction costs and little tributary volume.

Tie roads generally lie at the head of drainages, which results in high construction costs. There is little timber tributary to tie roads and if the roads are amortized, the result is usually an exorbitant road use fee and deficit share. The road may have been built for reasons other than moving the tributary timber and therefore amortization of the road is not reasonable. A permittee may request the designation of a BLM-owned or controlled road as a tie road or the BLM may make this decision independently as part of the transportation management planning effort. A determination by the BLM regarding a request for tie road designation is subject to appeal under the regulations at 43 CFR Part 4.”

The identification of tie road segments requires the development of District criteria and guidelines. Cooperation between Districts is necessary to assure that permittees are treated uniformly. It is important that tie roads be specifically designated as tie roads and that all such roads and their road record files be properly noted as such.

12. Crossings of 1/8 Mile or Less

Most semi-detailed agreements contain a provision regarding crossings of 1/8-mile or less similar to this provision found as Provision No. 17 in the Exhibit B to Form OR 2812-16 (Illustration V-2), page 37.

17. Road Crossings (Applies to U.S. and Permittee). Neither party shall charge the other for crossing any roads located on the lands described in Schedules 1 or 2, except for maintenance expense

resulting from such crossing. Such crossing shall not unduly interfere with the use of the road crossed and shall not, in any event, require the use of more than one-eighth (1/8) mile of road.

The use of these rights-of-ways are also exempt from the payment of road use fees and calculation of amortization shares.

13. Recalculation of Fees

Once established, road use fees should not be recalculated or recomputed.

However, some reciprocal right-of-way agreements contain a provision that requires recalculation if an acquisition or disposal of land changes the total tributary area by more than the percentage stated in the specific reciprocal right-of-way agreement. An example of such a provision follows:

If either party to the agreement should hereafter acquire or dispose of any of the lands (shown on the attached Exhibit ____), the percentage share of replacement costs of the roads shall be proportionately increased or decreased to reflect tributary timber to a particular road. Such adjustment shall be made effective on January 1 following such acquisition or disposal, provided, however, that no adjustment shall be made in the percentage share until one of the parties has acquired or disposed of acreage which contains merchantable timber which equals two percent (2%) or more of the total tributary timber as previously established under paragraph ____ above.

Some agreements contain the above provision but do not specify a percentage.

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Illustration IX-1
Flowchart for BLM Review of Permittee Right-of-Way Plat
Page 1 of 3

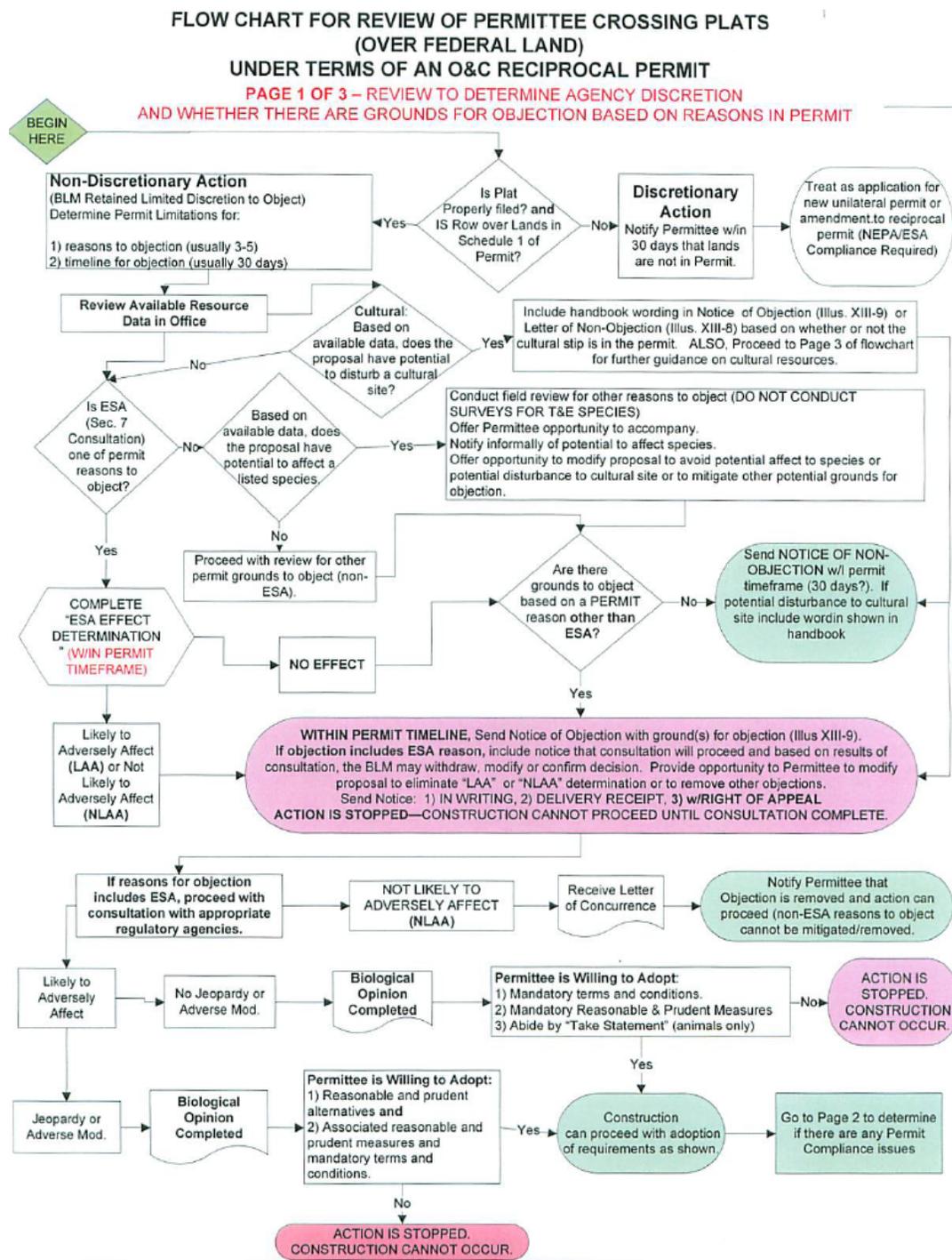


Illustration IX-1
Flowchart for BLM Review of Permittee Right-of-Way Plat
Page 2 of 3

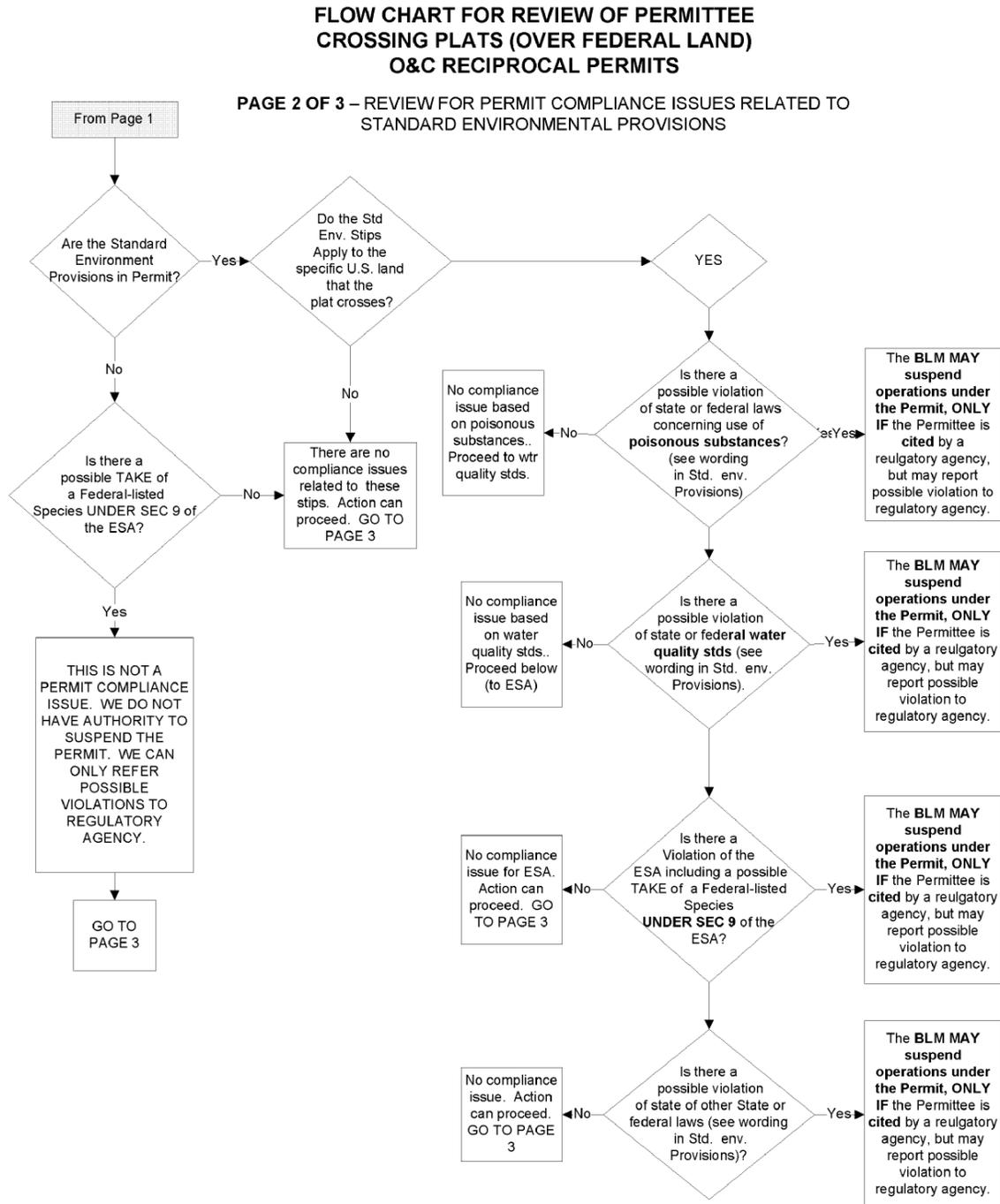


Illustration IX-1
Flowchart for BLM Review of Permittee Right-of-Way Plat
Page 3 of 3

**FLOW CHART FOR REVIEW OF PERMITTEE
CROSSING PLATS (OVER FEDERAL LAND)
O&C RECIPROCAL PERMITS**

**PAGE 3 OF 3 – REVIEW FOR PERMIT COMPLIANCE ISSUES RELATED TO
CULTURAL RESOURCES**

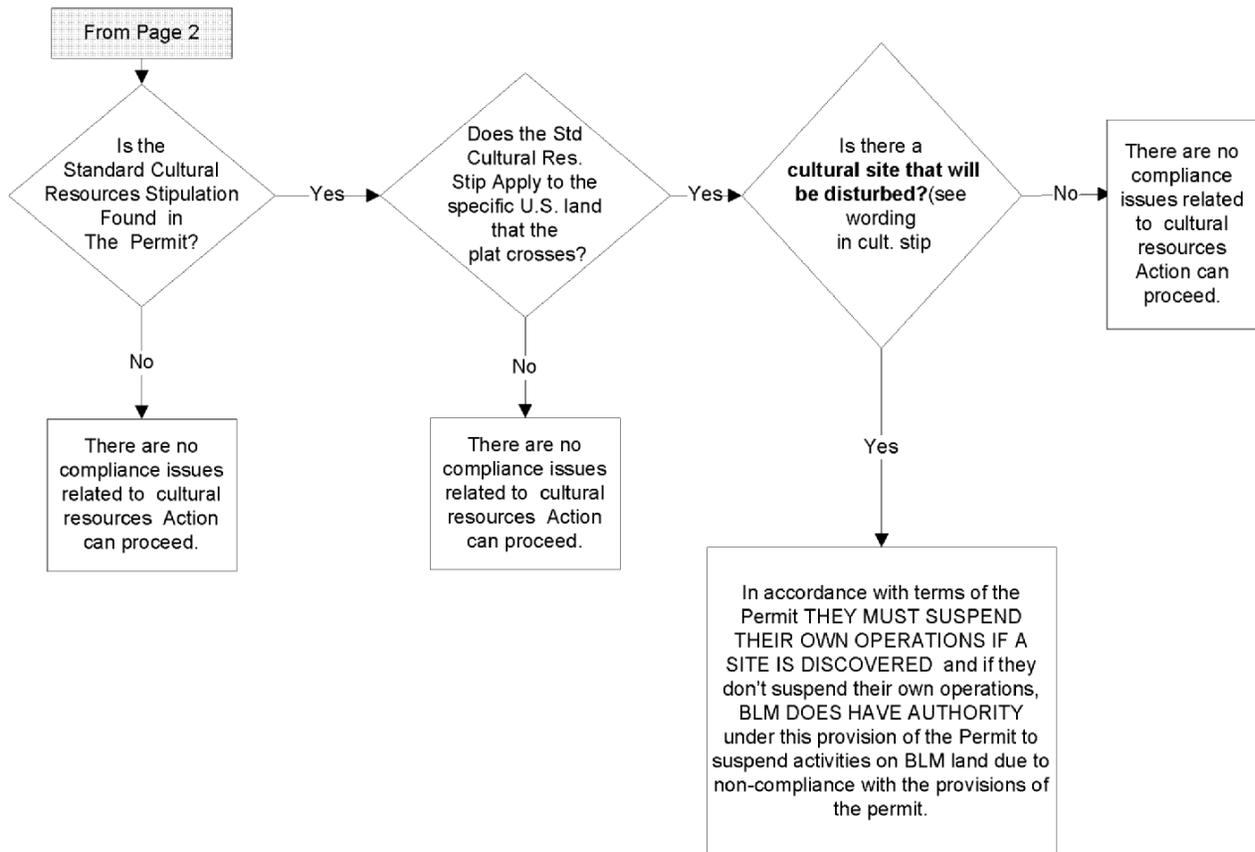


Illustration XI-2
Review of Plat for Permit Compliance Actions
Page 1 of 5

**REVIEW FOR PERMIT COMPLIANCE ACTIONS
(OTHER THAN OBJECTIONS TO PLAT)**

**ASSOCIATED WITH NON-DISCRETIONARY RIGHT-OF-WAY PLATS
FILED UNDER O&C RECIPROCAL PERMITS**

A. PURPOSE OF PERMIT REVIEW

On _____, under terms of reciprocal O&C Logging Road Right-of-Way Permit No. _____ (Permit), serial No. _____ OR _____ PT, the Permittee, _____, filed a right-of-way plat with the BLM. The purpose of the plat is for construction of a _____ located as follows:

Township	Range	Section	Subdivision
T. S.,	R. .,	Sec. ,	.

The total new construction is _____ stations (or _____ miles) [or ____ acres if heliport].

The plat also includes _____ stations (or _____ miles of capital improvement of road No. _____)

The plat is included here as Attachment A.

A "REVIEW OF CROSSING PLAT (ROCP)" has been made as a separate document which determined whether BLM has reasons to "object" to the above crossing plat filed by _____ (Permittee). In addition to identifying reasons for objection, this document has been prepared to review the permit for presence of other permit stipulations (other than reasons for objections) for which the BLM may determine that there is a need for compliance actions. The permit has been reviewed to determine if the permit contains the following: 1) the "standard environmental provisions," and/or 2) the "standard cultural resources stipulation". If the provisions are present, this document validates whether additional compliance actions or other agency notifications are warranted and directed by the Authorized Officer.

B. DETERMINATION OF INCLUSION OF "STANDARD ENVIRONMENTAL PROVISIONS" IN PERMIT

The following is considered the "standard environmental provisions" found in many O&C reciprocal agreements and permits.

The Permittee agrees that during the life of this permit he shall comply with:

A. All provisions of the State and Federal Water Quality Standards as they may apply to any waterway, stream, lake or reservoir, on or near the permit area, together with all applicable State and Federal laws and regulations. The Permittee shall also undertake every reasonable measure to minimize damage to waterways, streams, lakes or reservoirs on or near the permit area in connection with any operations under this permit.

B. All applicable State and Federal laws and regulations concerning the use of poisonous substances including insecticides, herbicides, fungicides, rodenticides and other similar substances. Prior to the use of such substances on or near the right-of-way, the Permittee shall obtain from the Authorized Officer approval of a written plan for such use. The plan, shall state the type and quantity of material to be used, the pest to be controlled, the method of application and such other information as the Authorized Officer may require. All use of such substances on or near the right-of-way shall be in accordance with the approved plan. If the use of a poison is prohibited by the Secretary of the Interior, it shall not be used.

Illustration IX-2
Review of Plat for Permit Compliance Actions
Page 2 of 5

C. All other applicable State and Federal environmental laws, regulations and standards.

The Permittee shall immediately discontinue all construction or other operations under this permit upon receipt of written notice from the Authorized Officer that such operations or any part thereof are in violation on this provision.

Regarding these “standard environmental provisions, the subject permit No. _____ has been reviewed and the following was found:

[] **Standard Environmental Provisions ARE NOT INCLUDED in the Permit.** The “standard environmental provisions” as shown above (or similarly worded) **ARE NOT** found in the subject permit. No further consideration of these provisions regarding permit compliance is necessary.

OR

[] **Standard Environmental Provisions ARE INCLUDED in the permit AND THEY APPLY TO THE LANDS IN QUESTION.** The “standard environmental provisions” as shown above (or similarly worded) **ARE** found in the subject permit (see Exhibit B, Paragraph _____. See the attached crossing plat flowchart (page 2) and the attached “Determination of Additional Actions Associated with Right-of-Way Plats” (regardless of objection reasons).”

Note: The provision may be present but the lands may have been added to the permit prior to the time the provisions was added and thus does not apply to the lands over which the plat will cross. **If provisions don’t apply to these lands, the BLM cannot suspend operations under the permit for non-compliance with permit provisions so no need to complete parts D.1 – D.3 below.**

Date Provision added:
Added:

Date Lands

C. PRESENCE OF CULTURAL RESOURCES STIPULATION IN PERMIT

The following is considered the “standard cultural resources stipulation” found in many reciprocal agreements and permit.

If in connection with his operations under this permit, across the lands of the United States, the Permittee encounters or becomes aware of any objects or sites of cultural value, such as historical or pre-historical ruins, graves, grave markers, fossils or artifacts, the Permittee shall immediately suspend all operations in the vicinity of the cultural value and notify the Authorized Officer of the findings. The Permittee's operations may resume at the discovery site upon receipt of written instructions and authorization by the Authorized Officer.

The subject permit has been reviewed and the following was found:

[] **Standard Cultural Resource Stipulation is not found in the Permit.** The “standard cultural resources stipulation” as shown above (or similarly worded) **IS NOT** contained in the subject permit. No further consideration of these provisions is necessary.

OR

Illustration IX-2
Review of Plat for Permit Compliance Actions
Page 3 of 5

- [] **Standard Cultural Resource Stipulation is found in the Permit.** The “standard cultural resources stipulation” as shown above (or similarly worded) **IS** contained in the subject permit (see Exhibit B, Paragraph) **AND THEY APPLY TO THE LANDS IN QUESTION.** See the attached crossing plat flowchart (page 2) and the attached “Determination of Additional Actions Associated with Right-of-Way Plats (regardless of objection reasons).”

Note: The provision may be present but the lands may have been added to the permit prior to the time the provisions was added and thus does not apply to the lands over which the plat will cross. **If provisions don't apply to these lands, the BLM cannot suspend operations under the permit for non-compliance with permit provisions so no need to complete part D.4.**

Date Provision added:
Added:

Date Lands

D. DETERMINATION OF PERMIT COMPLIANCE ACTIONS OR RECOMMENDATIONS OF REPORTING TO REGULATORY AGENCIES

A review of the subject permit and associated crossing plat has been made to determine if there are any compliance issues that are triggered as a result of the filing of the above crossing plat.

1. State and Federal Water Quality Standards

- [] The **standard environmental provisions ARE** present in the permit. However there **is NO indication of possible violation** of any State and Federal Water Quality Standards that would warrant further action.

- [] The **standard environmental provisions ARE present** and **THERE MAY BE A POSSIBLE violation of a state or federal water quality standard as follows:**

[specify possible standard being violated.] The BLM **may not suspend operations** unless the Permittee is cited by a regulatory agency, but the BLM may report the possible violation to the appropriate agency.

2. State and Federal laws and regulations concerning the use of poisonous substances

- [] The **standard environmental provisions ARE** present in the permit. However **there is NO indication of possible violation** of any State and Federal laws and regulations concerning the use of poisonous substances that would warrant further action.

- [] The **standard environmental provisions ARE present** and **THERE MAY BE A POSSIBLE violation of a State and Federal laws and regulations concerning the use of poisonous substances as follows:**

[specify possible standard being violated.] The BLM may not suspend operations unless the Permittee is cited by a regulatory agency, but the BLM may report the possible violation to the appropriate agency.

Illustration IX-2
Review of Plat for Permit Compliance Actions
Page 4 of 5

3. Other applicable State and Federal environmental laws, regulations and standards (including the Endangered Species Act (ESA)).

- [] The **standard environmental provisions ARE present** but there is **NO indication of possible violation** of any **other applicable State and Federal environmental laws, regulations and standards** as a result of this action so no further action is necessary.
- [] The **standard environmental provisions ARE present** and **THERE IS A POSSIBLE VIOLATION of an applicable State or Federal environmental law, regulation or standards** as a result of this action as follows (such as a possible take under Sec. 9 of the ESA); [RA fill-in details here].

[specify possible state or federal environmental law, regulations and standard being violated.]
The BLM may NOT suspend operations under the terms of permit unless the Permittee is cited by a regulatory agency, but the BLM may report the possible violation to the appropriate agency. (For ESA, BLM can only suspend if the Permittee is cited under Sec. 9 of the ESA.)

- [] The **standard environmental provisions ARE NOT present, but THERE IS A POSSIBLE TAKE of a federal-listed species under Section 9 of the ESA. BLM may not suspend operations** but it is recommended that the possible violation be reported to the regulatory agency as follows:

[RA fill-in details here].

4. “Standard Cultural Resources Stipulation” Considerations or Other Actions:

- [] The **standard cultural resources stipulation IS found** in the permit but there is **NO KNOWN cultural site that will be disturbed** as a result of this action. Therefore, no further action is necessary.
- [] The **standard cultural resources stipulation IS found** in the permit and **THERE IS a possible cultural site that will be disturbed** as a result of this action as follows. [RA fill-in details here].
- [] Therefore, while BLM cannot “object” to the plat because of cultural resources, the **Permittee will be notified** that in accordance with the terms of the Permit, **THEY MUST SUSPEND THEIR OWN OPERATIONS IF A SITE IS DISCOVERED and if they don’t suspend, BLM DOES HAVE authority** under the Permit **to suspend** activities on BLM land as a non-compliance with the Permit provisions.

Illustration IX-2
Review of Plat for Permit Compliance Actions
Page 5 of 5

Prepared by:

Resource Area Planner
Date:

Authorized Officer Concurrence:

I concur with the above and request the Realty staff to include any notifications to Permittee regarding possible permit non-compliance recommended above in the Notice of Objection or Notice of Non-Objection letter sent to the Permittee.

Field Manager
Resource Area
Date:

Illustration IX-3
Permittee Request for Right-of-Way Plat Across BLM Lands
Page 1 of 1

Cave Man Logging, LLC,

555 W. Hwy 56
Cave Junction, OR 97555

Mr. Right O. Way
Bureau of Land Management
Awesome District Office
444 W. Whatever Drive
Western City, OR 97444

Dear Mr. Way:

Enclosed is a crossing plat for Cave Man's proposed construction of a road across public land in T. ___ S., R. ___ W., Sec. ___, SE $\frac{1}{4}$ SE $\frac{1}{4}$. This will allow our company to access and log our land in T. ___, R. ___ W., Sec. _____. This proposed construction will extend your road No. _____.

We are requesting your review of this plat for objections under Provision ___ of Exhibit B to the X-___ O&C Logging Road Right-of-Way Permit.

If you have any questions, please contact, _____ at _____. We would be more than glad to meet with you in the field to review this location.

Sincerely,

Caleb B. Clubber
Log Manager

Enclosure: Right-of-Way Plat

Illustration IX-4
Permittee Combined Road, Improvement and Tramway Request
Page 1 of 4

Cave Man Logging, LLC,

555 W. Hwy 56
Cave Junction, OR 97555

Mr. Right O. Way
Bureau of Land Management
Awesome District Office
444 W. Whatever Drive
Western City, OR 97444

Dear Mr. Way:

Cave Man Logging, LLC has scheduled harvest on its land in Sec. ____, T. ____ S., R. ____ W., W.M.
This harvest is subject to our O&C Logging Road Right-of-Way Permit No. ____.

In connection with our harvest, we propose to improve the existing BLM road No. _____
located in T. ____ S., R. ____ W., Sec. ____ NE1.4NW1/4.

In accordance with Paragraph No. 9 of Exhibit B of reciprocal right-of-way agreement No. _____,
and the regulations at _____, enclosed are copies of the map showing the route,
specification of the work intended to be performed.

This agreement does not obligate either party to allow the improvement to be placed. Therefore,
we are hereby requesting approval of the proposed improvement and also request the BLM allow
us to amortize our investment and to share in the cost of the improvement.

If you have any questions, please contact Mr. Forest R. Mann, Forestry Engineer at (541)____ -
_____.

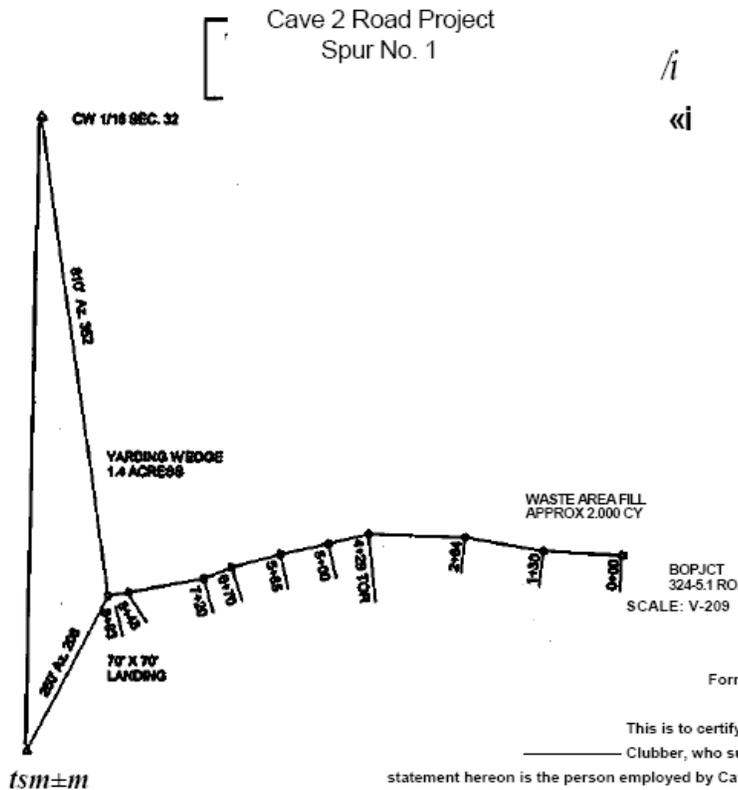
Sincerely,

Caleb B. Clubber
Log Manager

Enclosure:
Improvement Plat

Illustration IX-4
 Permittee Combined Road, Improvement and Tramway Request
 Page 2 of 4

Cave 2 Crossing Plat
 Permit No. _____
 February 2004
 Location: T. ___ S., R. ___ W., Sec. _____ WM.



Form 4-412

I, Forest R. Mann, state that I am by occupation a forester employed By Cave Man Logging, LLC to make a survey of one road, for a total length over lands of the United States of 883 feet as shown and as described on this map, that the survey of said roads was made by me under authority, commencing on February 20, 2004 And end the same day, and such survey is accurately ~~shown on this map.~~

Forest R. Mann
 Signature
 Date

This is to certify that Caleb E. _____ Clubber, who subscribed the statement hereon is the person employed by Cave Man Logging, LLC to prepare this map, which has been adopted by the applicant as the approximately final location of the road thereby shown and that this map is filed as part of the complete application for the road right-of-way filed as part of the complete application for the road right-of-way across lands of the United States and further certify that the right-of-way herein described is desired for the purpose of transporting forest products, and forest management

Caleb E. Clubber

Date

Illustration IX-4
Permittee Combined Road, Improvement and Tramway Request
Page 3 of 4

CAVE 2 CROSSING PLAT

Sccdoa 31* 31,1318, WW. WJt

Ros4Sw* nuiyas4 Specification

Yarding Corridor *Summary*

PROJECT SUMMARY: Spw 1, Spw 2, Spw 2B, Spw 3, Spar 4,
2 Yarding Corridors

StttbtuwcoailTwtfoK *ISM*

StadowrotdmpnvuMat: 31.65 Acra yarding

wedges: 3J6

ROAD SPECIFICATIONS

Sabgrade Cawtndtooi

- Subgrade width: 16' with 3' ditch (1' below subgrade), 6" oentettine crown
- Spur 4 sabgrade width: 16' enddoped
- Minimum curve radius* 50'
- Maximum adverse grade- 20%
- Maximum favorable grade "15%

Cnttiopcs*

0KtDS3%(eomnoa)	v∞
Over53%(coatmoo)	»:1
AH side slopes in rock	Yc

•Cut dope* will be rounded at top of cat

FID Slept!

AD fill slopes ue I & 1 unless otherwise specified

FID Widening

1. Fill widening is required mat! fills, unless otherwise specified Fill widening specifications are based on fill hogte at toe of fill.
2. Add l'ofextra road width for eachS'of GUheight

Illustration IX-4
Permittee Combined Road, Improvement and Tramway Request
Page 4 of 4

Curve Widening

1. Curve widening is required on switchbacks and sharp curves, unless otherwise noted.
2. Curve radius 50' thru 74' add 5' extra road width.
3. Curve radius 75' thru 100' add 3' extra road width.
4. No curve widening required on curve radius greater than 100'.

Truck turnouts

Turnouts will be 50' long with 25' taper on each end. Locations to be determined by the Seneca representative.

Culverts and drainage

Road drainage will consist of ditch-outs, and culvert installations as needed. Cross drain culvert spacing is expected to be from 300' to 600' on average depending on road grade and degree of side slope. Plastic cross-drains will be utilized.

Waste Areas

Proposed waste area sites are flagged with lime-green flagging. The waste areas on Spurs 1 and 2 are located within the r/w clearing limits.

Comments

Top of cut points in full bench segments will be marked with pink tags. The r/w clearing limits desired are flagged in lime-green flagging. Seneca proposes to purchase all r/w timber separate from the yarding corridors as soon as possible.

YARDING CORRIDORS

Proposed yarding corridors as shown on crossing maps are flagged with pink harvest boundary flagging. This flagging ties into the r/w clearing limits set for the landings. All trees within these boundaries will need to be cut to facilitate cable-yarding of Seneca timber. Seneca proposes to pay for the yarding corridor timber separate from the r/w timber in January of 2005.

Illustration IX-5
BLM Request for Construction Plat Across Permittee Land
Page 1 of 2

2812(office code)
Agmt No./Serial No. PT

Dear _____

The BLM is planning the _____ timber sale located in T. [] R. [], Sec. [], [Subdivision]. In connection with this sale the BLM is planning on constructing a road across your lands pursuant to Paragraph No. ____ of the Exhibit B to Right-of-Way and Road Use Agreement No. ____ (Agreement). The location of the proposed construction is shown on the enclosed construction plat. The plat is numbered as supplement No. _____ to the Agreement and the road has been assigned road No. _____.

Within 30 days of your receipt of this letter, as allowed under the Agreement, do the following:

- 1) Either sign the plat as "Received and Reviewed" where indicated (if you have no objections), or send us a letter back within 30 days indicating under what reason you object.
- 2) If you do not object to the construction, return a copy of this letter with a signature below indicating whether you wish to retain title to the right-of-way timber (and have it cut and decked), or whether you want our timber sale purchaser (Licensee) to purchase it from you.

If we do not hear from you within 30 days, we will assume there are no objections to the construction and that we should have the timber cruised and appraised for sale to our timber sale purchaser.

Illustration IX-5
BLM Request for Construction Plat Across Permittee Land
Page 2 of 2

Please return one signed copy to us. If you have any questions, or wish to have us accompany you on a field inspection, please contact _____ at _____.

Sincerely,

Field Manager
_____ Field Office

Enclosure:
Plat (pages 1-2)

- We have no objections to the construction.
- We object to the construction pursuant to Paragraph ____ of the Exhibit B.
- Timber is to be cut and decked (Permittee will retain title)
- Timber is to be cruised, appraised and paid for.

By: _____ Date: _____

Title: _____

Illustration IX-6
BLM Request to Improve Permittee Road
Page 1 of 1

2812
OR []
[Agreement No.]

Dear _____:

The BLM is planning to remove timber under a sale scheduled for [Date] from T. [] R. [], Sec. [], [Subdivision], as shown on the attached map. In connection with this sale, we will need to use Segments A and B of your Road No. 22-1-6 (611 Line), also shown on the attached map. Please supply us with your terms and conditions of use for these road segments under the provisions of Right-of-Way and Road Use Agreement No. ____.

To enable us to allow winter hauling, we would like to improve the above-mentioned roads. Enclosed is an Exhibit C stating the specifications of the proposed improvement. We estimate that the improvement will cost \$_____.

Under the terms of Paragraph [number] of Exhibit B of Right-of-Way and Road Use Agreement No. ____, we request your consent to the improvement and ask that [name of permittee] share in the cost of the improvement based upon your percentage share of merchantable timber tributary to these roads.

Your consent to the improvement will not affect your control of these roads other than by allowing the United States to amortize its investment through collecting road use fees for use of the improvement by third parties and, if you agree to share, by [name of permittee].

If you consent to the improvement, please sign below and return one signed copy of this letter to us.

If you agree to share in these improvements, please furnish us information regarding your tributary acreage and merchantable timber. We will then prepare an improvement supplement for your review and approval.

If you have any questions, or wish to have us accompany you on a field inspection of the roads to be improved, please contact _____ at _____.

Sincerely,

Field Manager
_____ Field Office

Enclosures:
Map
Exhibit C

[] [name of permittee] consents to the road improvement proposed above .
[] [name of permittee] agrees to share in the road improvement described above.
[] [name of permittee] does not agree to share in the road improvement described above.

By: _____ Date: _____

Title: _____

Illustration IX-7
Checklist for Technical Review of Construction Plats
Page 1 of 1

**Checklist For Technical Review of Construction Plats
For O&C Rights-of-Way
(Consistency with 43 CFR 2812.1-2(c)) (July 2007)**

BLM Plat on Permittee Land []	Or	Permittee Plat on BLM Land []
Permittee:		Permit No./Serial No.:
Road No. (if applicable)		Suppl. No. (if applicable)

T.	R.	Sec.	Subdivision:

Item		CET Init. & Date	Lead Eng. Init./ Date
1.	Contains a title Box with: a) O&C Permit and/or Agreement No. b) Supplement No. (if district maintains supplement register) c) Road No. to be Assigned to this road.		
2.	Bearings and distances of the centerline, with courses being in true bearing and distances being in feet and decimals of feet		
3.	Scale of 4" or 8" per mile. [Note: BLM practice allows BLM AO to accept plats of a different scale at their discretion. Preferably, the scale should be shown in a bar scale]		
4.	The beginning and ending points of road to be constructed are tied by bearings and distances to land survey corners, or to a prominent monument or a natural landmark, if no survey corners exist within two miles		
5.	All subdivisions of public land surveys crossed by the road are clearly identified.		
6.	Township, Range, Section and Meridian are clearly identified.		
7.	Total width of the right-of-way is clearly identified.		
8.	Grade of the road is expressed in percent.		
9.	Usable width of the road is clearly shown. (Sometimes shown as "sub-grade width").		
10.	Type of surfacing material shown (e.g., native, rocked, etc.)		
11.	Type and extent of drainage facilities identified (e.g, culverts, water dips, etc.).		
12.	Type of construction and estimated capacity of bridges is shown (if applicable).		
13.	Contains a true north arrow and a legend interpreting the map symbols and scales.		
14.	Name of surveyor and certificate of applicant is shown (If BLM plat across Permittee include: 1) signature block for "Prepared by, Title & Date and Technical Review by Lead Engineer & Date.		
	Signature Block for Landowner: Received & Reviewed: Signature line, title Line & date.		
The plat has been reviewed for consistency with the above regulations and contains all of the required elements.			
Lead Engineer _____		Date _____	

Illustration IX-8
Right-of-Way Plat Meeting Requirements
Page 1 of 1

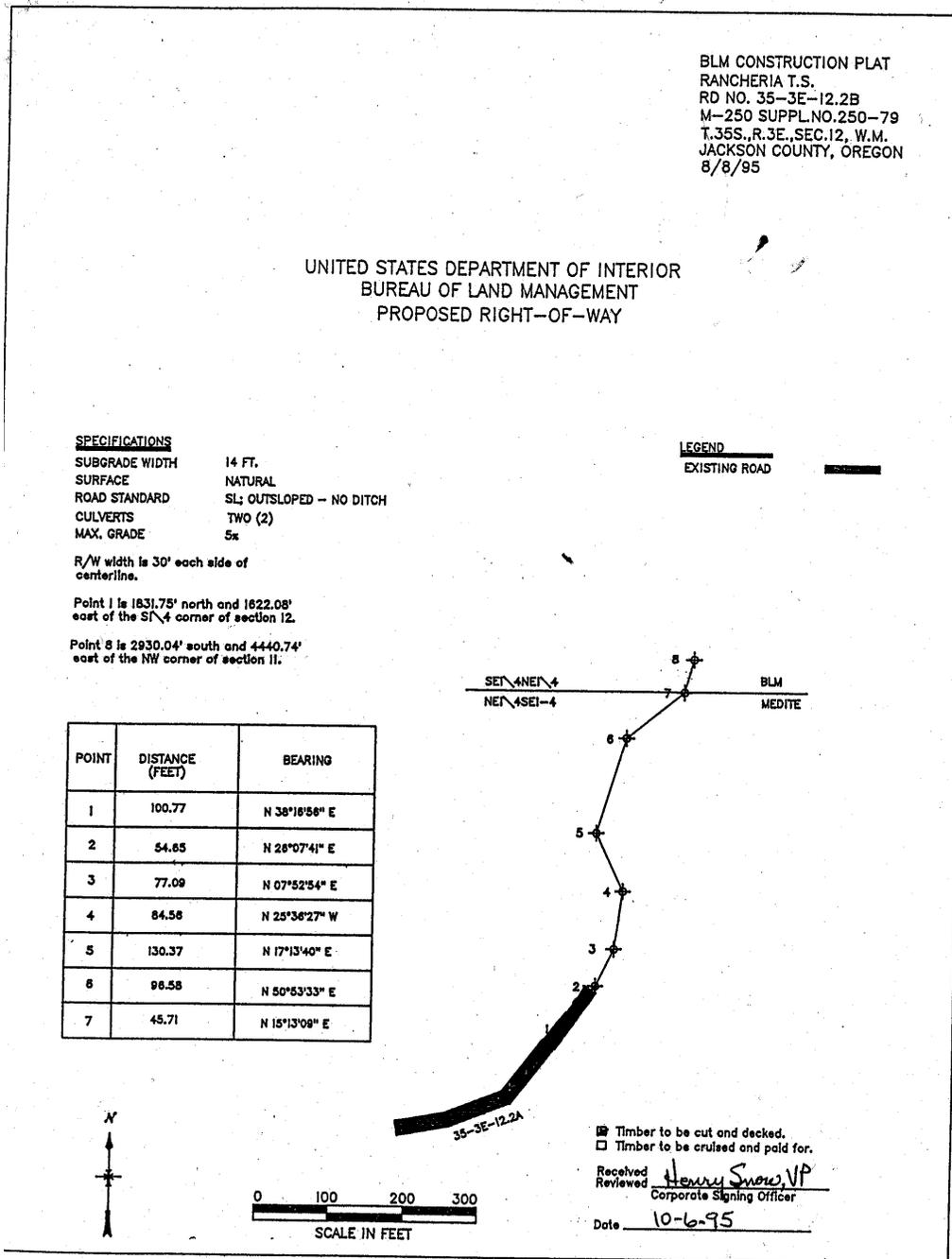


Illustration IX-9
Review of Right-of-Way Plat Template
Page 1 of 5

**REVIEW OF RIGHT-OF-WAY PLAT
FOR REASONS TO OBJECT**

UNDER TERMS OF O&C RECIPROCAL RIGHT-OF-WAY PERMIT

No. _____, Serial No. OR _____

DATE PLAT RECEIVED BY BLM: _____

DATE BLM MUST NOTIFY PERMITTEE OF OBJECTION: _____

ROAD No. ASSIGNED: _____

Supplement No. _____

I. PURPOSE OF AND LOCATION OF PLAT FILING:

On _____, under terms of reciprocal O&C Logging Road Right-of-Way Permit No. _____ (Permit), serial No. OR _____ FD, the Permittee, _____, filed a right-of-way plat with the BLM. The purpose of the plat is for construction of a [road] [tramway] [log landing] [road improvement] located as follows:

Township	Range	Section	Subdivision
T. __ S.,	R. __,	Sec. __,	_____.

The total new construction is _____ stations (or _____ miles) [or ___ acres if heliport].

The plat also includes _____ stations (or _____ miles of capital improvement of road No. _____)

The plat is included here as Attachment A.

II. DETERMINATION OF BLM DISCRETION:

A review of Permit No. _____ was made to verify whether the Permittee has sufficient rights over the underlying U.S. lands over which the construction plat is filed and the following determination was made:

[] **LIMITED DISCRETION TO DENY.** Non-discretionary Plat. The lands described above are included in [Schedule 1 of the original permit] or [Schedule 1 of Amendment No. _____], which was approved by the United States on _____. Therefore, the BLM has limited discretion and may only “object” (we don’t approve or deny) to the plat for one of the limited reasons shown below within the time specified in the permit (which in this case is ___ days).

Or

[] **DISCRETIONARY PLAT** – The lands described above have not been located in said Permit No. _____. Therefore, the lands must be added to the Permit by amendment. The BLM will treat this as a discretionary amendment to the Permit and will proceed with a full analysis under the National Environmental Policy Act (NEPA). The Permittee will be notified within 30 days.

IF DISCRETIONARY--NO FURTHER REVIEW UNDER THIS DOCUMENT IS NECESSARY—
PROCEED WITH PROCESSING OF DISCRETIONARY AMENDMENT.

Illustration IX-9
Review of Right-of-Way Plat Template
Page 2 of 5

III. REVIEW OF PERMIT/AGREEMENT WORDING (IF THIS IS A NON-DISCRETIONARY PLAT):

The reciprocal Agreement/Permit No. _____ has been reviewed to determine if there are reasons to object to the plat as described below.

[Preparer Verify exact wording below and modify if wording in the specific permit/agreement is different]— delete this after verification.:

A. REASONS CONTAINED IN PERMIT FOR WHICH BLM CAN “OBJECT” TO A NON-DISCRETIONARY PLAT

Exhibit B (provision No. _____) of subject Road Use and Right-of-Way Agreement No. _____ (Agreement), states the following regarding construction plats filed by either across the other’s lands. This provision in Exhibit B of the “Agreement” is also applicable to the Permit and is binding upon the Permittee.

Prior to the construction of a road on the lands of the other party, a map [plat] shall be filed with the landowner. Such map shall be prepared in accordance with 43 CFR 2812.1-2(c) and shall show the route and specifications of the road intended to be constructed. Construction may be commenced after the expiration of a thirty (30) day period following the filing of such map unless in the intervening period the landowner shall object to such construction. **The landowner may object to the proposed construction only if:**

(This permit only contains the reasons for objection as CHECKED below):

- [] **(1)** it does not constitute the most reasonably direct route for the removal of forest products from the lands of the road builder, taking into account the topography of the area, the cost of road construction and the safety of use of such road.
- [] **(2)** the proposed road will substantially interfere with existing facilities or improvements on the lands of the landowner;
- [] **(3)** would result in excessive erosion to lands of the landowner.
- [] **(4)** an existing road is available & suitable for removal of timber tributary to the proposed road.
- [] **(5)** may affect a species listed as "threatened or endangered" under the Endangered Species Act.

IV. DETERMINATION OF OBJECTION TO CROSSING PLAT

A review was conducted to determine if any of the reasons checked above as being present in the subject permit would warrant an objection to this proposal. The following sections document the determination of reasons to object.

Note: This **document is limited to a determination of whether or not BLM does object** to the plat according to the terms of the Permit. See the separate REVIEW FOR PERMIT COMPLIANCE ACTIONS associated with this plat to determine whether there are any additional compliance or regulatory agency reporting actions needed.

Illustration IX-9
Review of Right-of-Way Plat Template
Page 3 of 5

[Resource Area: Under each paragraph number below, check ONLY ONE response that would apply.
NOTE: The Nos. correspond to the reason for objection as checked above. If the reason above has not been checked by Realty as being in the permit, then Realty has already checked the box below which indicates "Not included as reasons to object", so no further RA action is necessary for that paragraph No.

1) Not most direct route:

- Not included as reasons to object above so no determination needed.**
- No objection** based on this reason. The proposed road is the most direct route into the Permittee lands from the existing roads. The area was examined for alternate routes and none were identified, therefore there is no cause for objection based on this reason.
- Objection** based on this reason exists as follows: (RA fill in rationale for objection):

2) Would Interfere With Facilities:

- Not included as reasons to object above so no determination needed.**
- No objection** based on this reason. The proposed road would not interfere with existing facilities or improvements on BLM land; therefore there is no cause for objection based on this reason.
- Objection** based on this reason exists as follows: (RA fill in rationale for objection):

3) Would Result in Excessive Erosion:

- Not included as reasons to object above so no determination needed.**
- No objection** based on this reason. The proposed road would not cause excessive erosion, therefore there is no cause for objection based on this reason.

OR

- Objection** based on this reason exists. (RA fill in rationale below).

Rationale for objection:

Recommended mitigation that if performed would "remove" BLM's objection:

Illustration IX-9
Review of Right-of-Way Plat Template
Page 4 of 5

4) **Other Available Road Exists:**

- Not included as reasons to object above so no determination needed.**
- No objection** based on this reason. There are no other existing roads available which are suitable for removal of timber tributary to the proposed road. Therefore, there is no cause for objection based on this reason.
- Objection** based on this reason exists (RA fill in rationale for objection):

5) – **May Affect T&E Species:**

- Not included as reasons to object above so no determination needed.**

[RA Select one of the following if the T&E reason for objection is in the permit].

- No Objection - Not Within T&E Habitat.** The proposed construction is not located within any habitat for a "threatened or endangered" species under the Endangered Species Act. Therefore, no cause for objection exists based on this reason.
- No Objection - Within T&E Habitat, but "No Affect."** The proposed construction is located within habitat for a "threatened or endangered" species under the Endangered Species Act. However, a "No Affect" determination has been made. Therefore, there is no cause for objection based on this reason.
- No Formal Objection Can be Made - Within T&E Habitat – But "May Affect" Determination CANNOT be Accomplished within Permit Timeframe.** This proposal is within habitat of a threatened or endangered species under the Endangered Species Act. However, the BLM cannot accomplish a formal "May Affect" Determination within the Permit timeframe, therefore the BLM cannot formally "object" to the proposal at this time. Permittee can be notified of habitat and asked to voluntarily delay the project until surveys can be done or voluntarily modify their proposal to avoid the habitat. If voluntary delay is not given by the permittee, the action can proceed.
- Objection - Within T&E Habitat -- "May Affect" Determination Has Been Made.** A determination has been made that this proposal "may affect" a threatened or endangered species under the Endangered Species Act. Therefore, cause for objection exists based on this reason and a Notice of Objection will be sent to the Permittee within the _____ days as required by the Permit notifying the Permittee that consultation must be initiated and completed in order to determine whether BLM's objection can be withdrawn.

(Note to RA Specialists: The "**May Affect**" determination: 1) **MUST BE MADE** and 2) **Notice of Objection MUST BE GIVEN** to the Permittee **within the 30 days** (or other specified period in permit) **or the Permittee may proceed with construction** on the 31st day.)

Voluntary Mitigation and Stipulations

While the Permit only allows the BLM to "object" to the plat based on the above, the following "voluntary" stipulations should be offered to the Permittee to minimize impacts of the construction:

[Field Manager list any recommended voluntary stips (and rationale for each) here].

Illustration IX-9
Review of Right-of-Way Plat Template
Page 5 of 5

Determination of Objection and Voluntary Stipulations Prepared by:

Resource Area Planner
Date: _____

Field Manager Concurrence:

[] I concur with the above determinations of Reasons to Object and request the Realty staff to prepare the Notice of Objection or Letter of No Objection for receipt by Permittee based on the above findings within the specified _____ days.

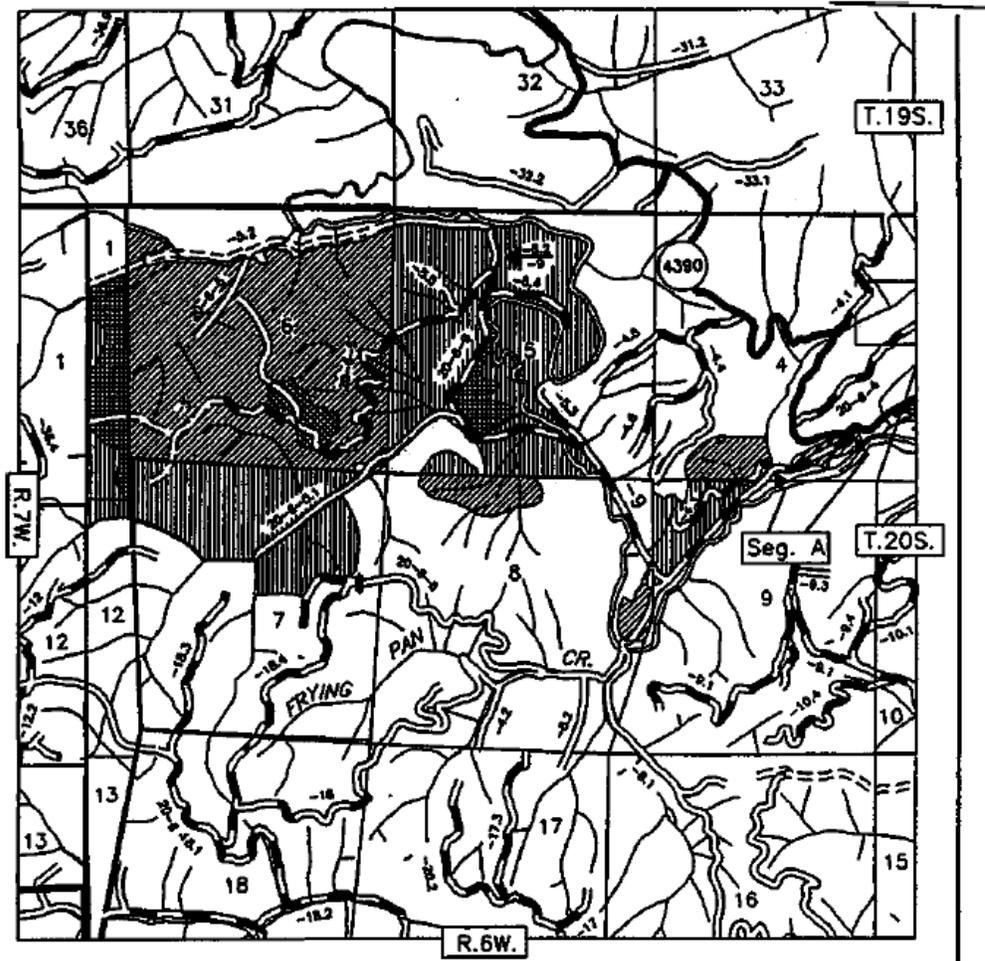
Field Manager

Resource Area
Date: _____

Illustration IX-10
 Tributary Area Map
 Page 1 of 1

TRIBUTARY AREA MAP
 Road No. 20-6-4.2 Sag. A

Exhibit A
 RUF Calc Supp. No. 219
 Permit



BLM Trib. Area (90+) » 618 ac.

 Permittee:

BLM Trib. Area (40-90) = 79 ac. % Cave Man Trib Area (40-90) - 567 ac Cave
 Man Trib Area (90+) = 18 ac.

CHAPTER IX – SUPPLEMENTS
(RIGHT-OF-WAY PLATS & FEE CALCULATIONS)

Illustration IX-11
Sample Consumer Price Index Inflation Chart
Page 1 of 1

Consumer Price Index (CPI) Conversion Factors 1800 to estimated 2016 to Convert to Dollars of 2006

To convert dollars of any year to dollars of the year 2006, DIVIDE the dollar amount from that year by the conversion factor (CF) for that year

For example, \$1000 dollars of 1925 = \$11,494 dollars of 2006 (\$1000 / 0.087)

Data series since 1912 have changed periodically, so numbers are not all precisely comparable. Therefore, it is recommended that numbers be rounded to no more than three decimal places.

For example, \$11,494 in the example above becomes \$11,500. For years prior to 1913, rounding to two decimal places is recommended, e.g. \$11,494 becomes \$11.000 (two decimals).

Note: To reverse the process, that is, to determine what a 2006-dollar amount would be in dollars of another year, simply multiply the year 2006 amount by the conversion factor for that year. For example, \$1000 dollars of 2005 would be about \$69 in 1940 (\$1000 x 0.069 = \$69), again rounded to 3 or 2 decimal places.

Year	CF										
1800	0.065	1840	0.045	1880	0.053	1920	0.089	1960	0.147	2000	0.864
1801	0.066	1841	0.046	1881	0.053	1921	0.089	1961	0.148	2001	0.878
1802	0.066	1842	0.042	1882	0.053	1922	0.083	1962	0.150	2002	0.892
1803	0.069	1843	0.038	1883	0.052	1923	0.085	1963	0.152	2003	0.913
1804	0.061	1844	0.039	1884	0.051	1924	0.085	1964	0.154	2004	0.937
1805	0.061	1845	0.039	1885	0.050	1925	0.087	1965	0.156	2005	0.969
1806	0.063	1846	0.040	1886	0.049	1926	0.088	1966	0.161	2006	1.000
1807	0.060	1847	0.043	1887	0.049	1927	0.088	1967	0.166	2007	1.021
1808	0.065	1848	0.041	1888	0.049	1928	0.085	1968	0.173	2008	1.043
1809	0.063	1849	0.040	1889	0.048	1929	0.085	1969	0.182	2009	1.066
1810	0.063	1850	0.040	1890	0.047	1930	0.083	1970	0.192	2010	1.090
1811	0.066	1851	0.040	1891	0.047	1931	0.075	1971	0.201	2011	1.114
1812	0.069	1852	0.040	1892	0.047	1932	0.068	1972	0.207	2012	1.138
1813	0.062	1853	0.040	1893	0.047	1933	0.064	1973	0.220	2013	1.163
1814	0.091	1854	0.044	1894	0.044	1934	0.066	1974	0.245	2014	1.189
1815	0.079	1855	0.045	1895	0.044	1935	0.068	1975	0.267	2015	1.215
1816	0.072	1856	0.044	1896	0.044	1936	0.069	1976	0.282	2016	1.242
1817	0.069	1857	0.045	1897	0.043	1937	0.071	1977	0.301		
1818	0.066	1858	0.043	1898	0.043	1938	0.070	1978	0.323		
1819	0.066	1859	0.043	1899	0.043	1939	0.069	1979	0.360		
1820	0.061	1860	0.043	1900	0.044	1940	0.069	1980	0.409		
1821	0.059	1861	0.046	1901	0.044	1941	0.073	1981	0.451		
1822	0.061	1862	0.052	1902	0.044	1942	0.081	1982	0.479		
1823	0.054	1863	0.065	1903	0.046	1943	0.086	1983	0.494		
1824	0.050	1864	0.081	1904	0.046	1944	0.087	1984	0.515		
1825	0.051	1865	0.084	1905	0.046	1945	0.089	1985	0.534		
1826	0.051	1866	0.082	1906	0.047	1946	0.097	1986	0.544		
1827	0.052	1867	0.078	1907	0.049	1947	0.111	1987	0.563		
1828	0.049	1868	0.073	1908	0.048	1948	0.120	1988	0.587		
1829	0.048	1869	0.070	1909	0.047	1949	0.118	1989	0.615		
1830	0.048	1870	0.067	1910	0.049	1950	0.120	1990	0.648		
1831	0.045	1871	0.063	1911	0.049	1951	0.129	1991	0.676		
1832	0.044	1872	0.063	1912	0.050	1952	0.131	1992	0.696		
1833	0.044	1873	0.062	1913	0.049	1953	0.132	1993	0.717		
1834	0.044	1874	0.059	1914	0.050	1954	0.133	1994	0.735		
1835	0.046	1875	0.057	1915	0.050	1955	0.133	1995	0.756		
1836	0.048	1876	0.056	1916	0.054	1956	0.135	1996	0.778		
1837	0.050	1877	0.054	1917	0.063	1957	0.139	1997	0.796		
1838	0.048	1878	0.052	1918	0.075	1958	0.143	1998	0.809		
1839	0.048	1879	0.052	1919	0.066	1959	0.144	1999	0.826		

Revised January 18, 2007, using final 2006 CPI (CPI = 2.016) and early 2006 average of OMB and CBO estimates for 2006-2017 inflation. Estimates for 2007 to 2017 will be revised in February 2007, using updated OMB and CBO inflation estimates for those years.

Conversion factors for years prior to 1913 are re-based from data in John J. McCusker, "How Much Is That in Real Money?," *Proceedings of the American Antiquarian Society* (2001), Table A-1, Column 6. (Note: These conversion factors are calculated from McCusker data, not supplied in his original source.) CPI is CPI-U, the broader measure for all urban consumers, year-to-year average (not December to December)

Inflation assumptions: Inflation conversion factors for 2007 and later years, assume, as of early 2006, 2.1 percent in 2007; 2.2 percent in 2008 through 2016; 2006-2011 are the average of OMB and CBO inflation estimates for each year as of early 2006; 2012-2016 are only from CBO because OMB did not project past 2011 in its 2007 Budget proposals. These will be revised in February 2007 through estimated 2017, using updated OMB and CBO inflation estimates. Note that early 2006 inflation estimates differed insignificantly from final 2006 inflation, so minimal change from early 2006 inflation conversion factor estimates.

CF in Excel format starting 1865 are available at <http://oregonstate.edu/cia/polisci/faculty/sahr/infcf18652007.xls>
CF in pdf (Adobe Acrobat) format starting 1865 are available at <http://oregonstate.edu/cia/polisci/faculty/sahr/infcf18652007.pdf>

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Rev 01/18/2007 e-mail: Robert.Sahr@oregonstate.edu; WWW: http://www.oregonstate.edu/Dept/pol_scifac/sahr/sahrhome.html

Illustration IX-12
Sample Replacement Cost Calculation Using Inflation Index
Page 1 of 1

Road No. 32-5-35.02
Road Replacement Valuation Update
Using Consumer Price Index

			2006 Replacement Value
Road Record Appraised Value in 1977	=	\$177,100.00	
	÷	_____	= \$571,290.32
CPI Factor to Update to 2006	=	0.31	

CHAPTER IX – SUPPLEMENTS
(RIGHT-OF-WAY PLATS & FEE CALCULATIONS)

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Illustration IX-13

Sample Road Replacement Cost Appraisal Using Road Appraisal Program

Page 1 of 6

ROAD CONSTRUCTION SUMMARY

T.S. Contract Name: Morris Crk Sale Date:
Road Number: 35-5-21 A Road Name: Granite Hill
Road Construction: 1.67 mi 16 ft Subgrade 3 ft ditch

200 Clearing and Grubbing: 4.5 acres	\$6,313.16
Clearing:88.2 sta Grubbing:4.5 acres	
Slash Treatment:4.5 acres	
300 Excavation: 7,950 cy	\$15,671.21
Haul: 3,180 sta-yds	
400 Drainage:	\$15,389.16
Culvert: 528 lf wt = 15,882 lbs factor = 1.0	
DownSpout: 30 lf	
PolyPipe: 0 lf	
500 Renovation:	\$0.00
Surfacing:	\$33,498.36
700 Quarry Name: BLM PR 3,814 cy	
1300 Geotextiles:	\$0.00
1400 Slope Protection:	\$0.00
1800 Soil Stabilization: 0.0 acres	\$0.00
1900 Cattleguards:	\$0.00
2100 RoadSide Brushing: 0.0 acres	\$0.00
2200 Surface Treatment: 0.0 tons	\$0.00
2300 Engineering: 88.18 sta.	\$4,413.41
2400 Minor Concrete:	\$0.00
2500 Gabions:	\$0.00
8000 Miscellaneous:	\$28,488.71
Mobilization: Const. \$0.00 Surf. \$0.00.....	\$0.00
Quarry Development:	\$0.00
	Total: \$103,774.02

Notes:

Quantities shown are estimates only and not pay items.
Surfacing Quantities shown are COMPACTED in place cubic yards.

CHAPTER IX – SUPPLEMENTS
(RIGHT-OF-WAY PLATS & FEE CALCULATIONS)

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Illustration IX-13
Sample Road Appraisal using Road Cost Calculation Program
Page 2 of 6

Road Construction Worksheet

Road Number: 35-5-21 A Road Name: Granite Hill

Section 200 Clearing and Grubbing:

Clearing - Light: \$16.83/sta x 88.18 sta = \$1,484.07
Grubbing - Light: \$382.48/acre x 4.45 acres = \$1,702.04
Scatter: \$702.71/acre x 4.45 acres = \$3,127.06

Subtotal: \$6,313.16

Section 300 Excavation:

Excavation - Common: \$1.06/cy x 7,950 cy = \$8,427.00
Layer Embankment - Common: \$0.18/cy x 4,770 cy = \$858.60
Subgrade Compaction: 6 Sta/hr \$17.55/sta. x 88.2 sta = \$1,547.56
Slope Rounding: \$0.16/lf x 8,818 lf = \$1,410.88
End Hauling - 200 to 5000 ft: \$0.09/sta-yd x 3,180 sta-yd = \$286.20
Blading: \$35.62/station x 88.18 stations = \$3,140.97

Subtotal: \$15,671.21

Section 400 Drainage:

Galvanized 18 inch 16 ga 390 lf x \$16.71/lf x 1 = \$6,516.90
Galvanized 24 inch 14 ga 98 lf x \$21.67/lf x 1 = \$2,123.66
Galvanized 96 inch 08 ga 40 lf x \$159.61/lf x 1 = \$6,384.40
Half Round 18 inch 30 lf x \$12.14/lf = \$364.20

Subtotal: \$15,389.16

Section 500 Renovation:

Subtotal: \$0.00

Section 700 Pitrun Quarry Name: BLM PR

Length	TopW	BotW	Depth	CWid	#TOs	Width	F.W.L	Taper	Other
1.67mi	14ft	16ft	8in	10%	12	10ft	50ft	25ft	

Rock Volume = 3,814cy

Production: \$1.98/cy x 3,814cy = \$7,551.72
Drill & Shoot: 10% x \$1.33/cy x 3,814cy = \$507.26
Ripping: 25% x \$1.70/cy x 3,814cy = \$1,620.95
Processing: \$0.96/cy x 3,814cy = \$3,661.44
Basic Rock Haul cost: \$0.88/cy x 3,814cy = \$3,356.32
Rock Haul -15% grades: \$1.10/cy-mi x 3,814cy x 3.25 mi= \$13,635.05
Basic Water Haul cost: \$0.69/cy x 3,814cy = \$2,631.66
Water Haul -15% grades: \$0.07/cy-mi x 3,814cy x 2.00 mi= \$533.96

Subtotal: \$33,498.36

Section 1300 Geotextiles:

Subtotal: \$0.00

Section 1400 Slope Protection:

Subtotal: \$0.00

Section 1800 Soil Stabilization:

Subtotal: \$0.00

Section 1900 Cattleguards:

Subtotal: \$0.00

Section 2100 Roadside Brushing:

Subtotal: \$0.00

Section 2200 Surface Treatment:

Subtotal: \$0.00

Illustration IX-13
Sample Road Appraisal using Road Cost Calculation Program
Page 3 of 6

Road Number: 35-5-21 A Granite Hill Continued

Section 2300 Engineering:

Design and Survey Normal: $\$50.05/\text{sta} \times 88.18 \text{ sta} = \$4,413.41$

Subtotal: \$4,413.41

Section 2400 Minor Concrete:

Subtotal: \$0.00

Section 2500 Gabions:

Subtotal: \$0.00

Section 8000 Miscellaneous:

Chipseal

Chipseal 1.67 Mile $\times \$16,000.00/\text{Mile} = \$26,720.00$

Mobilization

Mobilization 1 EA $\times \$1,768.71/\text{EA} = \$1,768.71$

Subtotal: \$28,488.71

Mobilization:

Construction - 46.78% of total Costs = \$0.00

Surfacing - 64.47% by rock volume = \$0.00

Subtotal: \$0.00

Quarry Development:

Based on 64.47% of total rock volume

Subtotal: \$0.00

Total: \$103,774.02

Illustration IX-13
Sample Road Appraisal using Road Cost Calculation Program
Page 4 of 6

ROAD CONSTRUCTION SUMMARY

T.S. Contract Name: Morris Crk Sale Date:
Road Number: 35-5-21 B Road Name: Granite Hill
Road Construction: 1.26 mi 16 ft Subgrade 3 ft ditch

200 Clearing and Grubbing: 3.4 acres	\$4,765.94
Clearing:66.5 sta Grubbing:3.4 acres	
Slash Treatment:3.4 acres	
300 Excavation: 4,200 cy	\$9,734.28
Haul: 840 sta-yds	
400 Drainage:	\$22,639.12
Culvert: 612 lf wt = 24,910 lbs factor = 1.0	
DownSpout: 0 lf	
PolyPipe: 0 lf	
500 Renovation:	\$0.00
Surfacing:	\$29,245.13
Quarry Name: BLM 2,102 cy	
1300 Geotextiles:	\$0.00
1400 Slope Protection:	\$0.00
1800 Soil Stabilization: 0.0 acres	\$0.00
1900 Cattleguards:	\$0.00
2100 RoadSide Brushing: 0.0 acres	\$0.00
2200 Surface Treatment: 0.0 tons	\$0.00
2300 Engineering: 66.53 sta.	\$3,329.83
2400 Minor Concrete:	\$0.00
2500 Gabions:	\$0.00
8000 Miscellaneous:	\$48,334.29
Mobilization: Const. \$0.00 Surf. \$0.00.....	\$0.00
Quarry Development:	\$0.00
	Total: \$118,048.58

Notes:

Quantities shown are estimates only and not pay items.
Surfacing Quantities shown are COMPACTED in place cubic yards.

CHAPTER IX – SUPPLEMENTS
(RIGHT-OF-WAY PLATS & FEE CALCULATIONS)

IX-105

Illustration IX-13
Sample Road Appraisal using Road Cost Calculation Program
Page 5 of 6

Road Construction Worksheet

Road Number: 35-5-21 B Road Name: Granite Hill

Section 200 Clearing and Grubbing:

Clearing - Light: \$16.83/sta x 66.53 sta = \$1,119.70
Grubbing - Light: \$382.48/acre x 3.36 acres = \$1,285.13
Scatter: \$702.71/acre x 3.36 acres = \$2,361.11

Subtotal: \$4,765.94

Section 300 Excavation:

Excavation - Common: \$1.06/cy x 4,200 cy = \$4,452.00
Layer Embankment - Common: \$0.18/cy x 3,360 cy = \$604.80
Subgrade Compaction: 6 Sta/hr \$17.55/sta. x 66.5 sta = \$1,167.60
Slope Rounding: \$0.16/lf x 6,653 lf = \$1,064.48
End Hauling - 200 to 5000 ft: \$0.09/sta-yd x 840 sta-yd = \$75.60
Blading: \$35.62/station x 66.53 stations = \$2,369.80

Subtotal: \$9,734.28

Section 400 Drainage:

Galvanized 18 inch 16 ga 482 lf x \$16.71/lf x 1 = \$8,054.22
Galvanized 48 inch 12 ga 40 lf x \$55.12/lf x 1 = \$2,204.80
Galvanized 60 inch 08 ga 30 lf x \$93.45/lf x 1 = \$2,803.50
Galvanized 96 inch 08 ga 60 lf x \$159.61/lf x 1 = \$9,576.60

Subtotal: \$22,639.12

Section 500 Renovation:

Subtotal: \$0.00

Section 1000 Crushed 1 1/2 to 3 in Quarry Name: BLM

Length	TopW	BotW	Depth	CWid	#TOs	Width	F.W.L	Taper	Other
1.26mi	14ft	16ft	6in	10%	5	10ft	50ft	25ft	

Rock Volume = 2,102cy

Production: \$5.80/cy x 2,102cy = \$12,191.60
Drill & Shoot: 10% x \$1.33/cy x 2,102cy = \$279.57
Ripping: 25% x \$1.70/cy x 2,102cy = \$893.35
Processing: \$0.96/cy x 2,102cy = \$2,017.92
Compaction: \$1.05/cy x 2,102cy = \$2,207.10
T11 Testing: \$0.15/cy x 2,102cy = \$315.30
T27 Testing: \$0.11/cy x 2,102cy = \$231.22
Basic Rock Haul cost: \$0.88/cy x 2,102cy = \$1,849.76
Rock Haul -15% grades: \$1.10/cy-mi x 2,102cy x 3.25 mi= \$7,514.65
Basic Water Haul cost: \$0.69/cy x 2,102cy = \$1,450.38
Water Haul -15% grades: \$0.07/cy-mi x 2,102cy x 2.00 mi= \$294.28

Subtotal: \$29,245.13

Section 1300 Geotextiles:

Subtotal: \$0.00

Section 1400 Slope Protection:

Subtotal: \$0.00

Section 1800 Soil Stabilization:

Subtotal: \$0.00

Section 1900 Cattleguards:

Subtotal: \$0.00

Section 2100 Roadside Brushing:

Subtotal: \$0.00

CHAPTER IX – SUPPLEMENTS
(RIGHT-OF-WAY PLATS & FEE CALCULATIONS)

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Illustration IX-13
Sample Road Appraisal using Road Cost Calculation Program
Page 6 of 6

Road Number: 35-5-21 B Granite Hill Continued	
Section 2200 Surface Treatment:	Subtotal: \$0.00
Section 2300 Engineering: Design and Survey Normal: $\$50.05/\text{sta} \times 66.53 \text{ sta} = \$3,329.83$	Subtotal: \$3,329.83
Section 2400 Minor Concrete:	Subtotal: \$0.00
Section 2500 Gabions:	Subtotal: \$0.00
Section 8000 Miscellaneous: Chipseal Chipseal 1 EA x \$47,000.00/EA = \$47,000.00 Mobilization Mobilization 1 EA x \$1,334.29/EA = \$1,334.29	Subtotal: \$48,334.29
Mobilization: Construction - 53.22% of total Costs = \$0.00 Surfacing - 35.53% by rock volume = \$0.00	Subtotal: \$0.00
Quarry Development: Based on 35.53% of total rock volume	Subtotal: \$0.00
	Total: \$118,048.58

CHAPTER IX – SUPPLEMENTS
(RIGHT-OF-WAY PLATS & FEE CALCULATIONS)

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Illustration IX-14
Form OR 2812-14 – Allocation of Costs Worksheet
Page 1 of 3

Form OR 2812-14
(October 2009)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT – OREGON STATE OFFICE
ALLOCATION OF COSTS WORKSHEET

Road Name:		Road No.:		Segment:	
Road Width Type (Check one):	<input type="checkbox"/> Single Lane	<input type="checkbox"/> Double Lane			
Prepared by:		Date:			

Determination of Point Values for
Recreation and Other Authorized Uses

	Suggested Point Value	Check if this use is applicable (x)	Points Assigned for this Road	Subtotal Points by Category of Use
A. Recreational Use				
1. Driving and Sightseeing	14			
2. Picnicking	11			
3. Hunting	8			
4. Fishing	7			
5. Water Sports	6			
6. Camping	5			
7. Hiking	3			
8. Rock Hounding	2			
9. Winter Sports	1			
10. Bicycling (motorized)	1			
11. Horseback Riding	1			
12. Nature Areas	1			
13. Through Traffic	10			
Maximum and Actual Points for Recreation Use	70			
Total Actual Points Assigned for Recreation Use				
B. Special Uses				
1. Mineral Hauling	18			
2. Farm Products	5			
3. Home	4			
4. Community Business	2			
5. Community Club	1			
Maximum and Actual Points for Special Uses	30			
Total Actual Points Assigned for Special Uses				
TOTAL POINTS FOR THIS ROAD [1]				

CALCULATION OF PERCENTAGE BY WHICH REPLACEMENT COST OR
COST OF IMPROVEMENT WILL BE REDUCED

C. Basic Apportionment:				
Check one:				
<input type="checkbox"/> Single Lane	60.5%	x	25%	= **15.13%
<input type="checkbox"/> Double Lane	60.5%	x	42%	= **25.41%
D. Allocation Factor and Percentage of Adjustment Determination:				
	<input type="text"/>	x	<input type="text"/>	= <input type="text"/>
	↑ [1]		↑ [2]	↑ [3]
	Enter "TOTAL POINTS FOR THIS ROAD" from above (expressed in a percentage)[1]		**Copy rate for either SL or DL here	(Percentage to be deducted from replacement or improvement cost (Part C.4. of Form OR 2812-18))

(Continued on page 2)

Illustration IX-14
Form OR 2812-14 – Allocation of Costs Worksheet
Page 2 of 3

Instructions

The purpose of this form is to determine the percentage by which the replacement cost or improvement cost of a road is reduced by to reflect allocation for recreational or special uses (other than commercial haul of timber). The final percentage will be transferred to Form OR 2812-18 (Road Use Fee Calculated) and applied as a deduction to the final replacement or road improvement cost.

STEP 1 – DETERMINE IF A ROAD QUALIFIES FOR ALLOCATION:

To qualify for allocation, a road or road facility must have the following prerequisites:

1. Be controlled by the United States;
2. Be eligible for road use fee charges by the United States;
3. Rights acquired by the United States must adequate to permit uses other than transportation of forest products and the road in use for those purposes.

Four categories of Road will be considered for allocation of costs:

1. Roads constructed with appropriated funds.
2. Roads constructed by BLM timber purchaser under authority of at timber sale contract,
3. Roads acquired by BLM through expiration of a right-of-way permit, trespass, etc.
4. Roads purchased by BLM.

STEP 2 - DETERMINE POINTS TO BE ASSIGNED FOR NON-LOGGING USES (Part A & B of Form):

Parts A. and B. of the form provide for an evaluator to assign allocation points to a road based on their judgment of what types and how much non-logging uses occur on the road.

Two major groups of road uses are recognized: "A. Recreation Attraction," and "B. Special Uses." A maximum of 70 points has been assigned to Part A (Recreation Attraction) and a maximum of 30 points has been assigned to Part B. (Special Uses). Within each of these two major groups, individual uses are assigned points by the evaluator not to exceed the maximum suggested values. These suggested point values may be exceeded within each group but total points for Recreation Attraction may not exceed 70 points nor may points for Special Uses exceed 30 points without approval of the State Director. In determining points to be assigned for each use, an inspection of the road should be made. In order for a single category of use to receive the maximum suggested point value, the road must serve an area which offers the majority of attractions for that particular use.

DEFINITION OF INDIVIDUAL USES

Group "A"- Recreation Attractions

1. Driving and Sightseeing - Roads offering access to a year-round flowing river, streams, waterfalls, viewpoints, rest and recreation areas, historic sites, log dumps, large stands of old growth timber, profusion of wild flowers, logging activity, summer home sites, farms, and river traffic. A maximum point value of 14 can be assigned.

2. Picnicking - A road should afford access to approximately eight sites to qualify for the maximum 11 points.

3. Hunting - Maximum use might be a road serving several species, i.e., deer, elk, and bird shooting.

4 through 12 do not require definition.

13. Through Traffic - Is given suggested maximum points of 10. Under this use, spur roads which eventually connect county roads should not be considered. This class of use is intended for roads such as mainline roads which start and end on county or state highways. A good example of a 10 point road would be one constructed to approximately the same standards as a state secondary highway and projected to connect a state highway with a major county road. The road should have good surfacing and alignment.

(Continued on page 3)

Form OR 2812-14 (Page 2)

Illustration IX-14
Form OR 2812-14 – Allocation of Costs Worksheet
Page 3 of 3

Group "B" - Special Uses

1. Mineral hauling means the commercial hauling of locatable minerals. This does *not* include rock hauling for road construction, maintenance for timber sale access roads, or any other use attributable to BLM's multiple use management. This latter use is to be considered applicable to the transportation of forest products for purposes of this evaluation.

STEP 3 – COMPLETE PART C. – BASIC APPORTIONMENT FOR SINGLE LANE OR DOUBLE LANE

Each road has a limit to its "other than transportation of forest products" uses and still be an effective road for the purpose for which a permit is written. Maximum for single and double land roads are 25% and 42%, respectively; however, each road must be considered on its own merit. Place an "x" in the appropriate box for single or double lane.

COMPLETE PART D. Allocation Factor and Percentage of Adjustment Determination

1. The total points for Group A and Group B are subtotaled. Then the total of both groups are added together to determine a "total point value for the road". The "total point value for the road" is expressed as a percentage and entered into the block under Part D. where indicated (see bracketed [1] on form).
2. The basic apportionment (expressed as a percentage) for a single lane (25%) or a double lane (42%) is entered in the block noted with a bracketed [2].
3. Both of these percentages are multiplied and a final percentage value is entered into the last block in part D. identified with a bracketed [3]. This percentage is carried forward to Part C.4. of Form OR 2812-18 (Road Use Fee Calculation) or Form OR 2812-18E if the road involves an easement. That percentage is deducted from the net replacement cost or improvement cost (after the deductions for separable costs and the additions for overhead and contract administration).

Note: The terms "allocation" and "percentages" used here should not be confused or used synonymously with pro rata road maintenance. This procedure is for allocating a portion of the replacement cost of a road for calculating road use fees and does not affect road maintenance fees.

CHAPTER IX – SUPPLEMENTS
(RIGHT-OF-WAY PLATS & FEE CALCULATIONS)

IX-111

Illustration IX-15
Form OR 2812-18 – Road Use Fee Calculation
Page 2 of 4

ROAD USE FEE CALCULATION (Continuation Sheet)

Road No.		Seg.		Using (Deficit) party:	
X→	Replacement Value (Original Road)			Mo/Year of 1st Use of Rd or Imp.:	January-09
X→	Road Improvement				

C. ROAD REPLACEMENT COST OR IMPROVEMENT COST (AND ADJUSTMENTS):

1	Road Replacement Value or Cost of Improvment	→	→	
	Source: <input type="checkbox"/> Road Appraisal (Attached)			
	<input type="checkbox"/> Original Value updated w/CPI Index (Worksheet attached)			
	<input type="checkbox"/> Road Record Cost of Improvement			
2	Less Separable Costs (explain each line item below)			
	Item 1:			
	Item 2:			
	Total Separable costs (if not already deducted on 2812-14 form: → → →			
	Subtotal after Deduction of Separable Costs	→	→	
3	Plus Overhead (10%) Contract Admin. (10%) 20.00%	→		
	Subtotal after adding 20%	→	→	
4	Does road qualify for allocation of costs? Yes <input type="checkbox"/> No <input type="checkbox"/>			
	If yes, complete form 2812-14 and enter % to be deducted here: → → →			
	Amount to be deducted for allocation (% x Subtotal above) → → →			
	If No, enter zero above if not qualified for allocation of costs.			
	Replacement or Improvement Value after alloc. of costs		[3]→	
	Cost Per Station =			

D. PERCENTAGE SHARES BY LANDOWNER:

X Indicates Deficit Party	Landowner	Total Tributary Timber Vol. by Landowner (from [1] above)	Total Tributary Volume All Landowners (from [2] above)	Landowner's percentage (%) share of Total Trib. volume (round to 2 places)	Road Replacement or capital imp. Cost (from [3] above)	(4) Proportionate share (\$) by Landowner
X						←[4]
	TOTALS			100.00%		

E. ROAD USE FEE CALCULATION:

1. Road Replacement or Imp. Cost (from [3] above)		X Int. Rate	
2. Divided by Total Tributary Timber Volume (from [2] above)		↓	Post these to AMORT↓
3. Road Use Fee Per MBF		1.03	
4. Deficit Party's Share (from [4] above) + Interest allowance .		1.03	
		Initials for posting done→	

Accepted Copy made for Road Record: []

ONLY INITIAL IF THIS IS "APPROVED" AND "ACCEPTED" COPY

Signatures:

Calculated by:		Date:	
Approved (Road or Imp. Owner):		Date:	
Accepted (Deficit (Using) Party):		Date:	

Illustration IX-15
Form OR 2812-18 – Road Use Fee Calculation
Page 3 of 4

Road Use Fee Calculation - Form OR 2812-18
(February 2009)
(Page 3 of 4)

Instructions

Note: If the Excel spreadsheet version of this form is used, certain fields will automatically calculate.

Step 1 – Road Identification

Page 1 - Complete the Header information: 1) Road No., 2) Segment No., 3) Permit/Agreement No., 4) Serial No., 5) Road Name, 6) Permittee name, 7) Length in miles, and 8) Length in stations..

Step 2 – Complete Part A. TYPE OF FEE CALCULATION AND DEFICIT PARTY:

1. Indicate whether the fee calculation is for: 1) a replacement cost (and the month/year the road was built), or 2) a road improvement only (and the month/year the road improvement was placed).
2. Indicate the Using (deficit Party) and their month/year of first use.
3. Indicate: 1) the Road Owner (if fee calculation is for a replacement cost), or 2) the Road Improvement Owner (if fee calculation is for a road improvement only).

Step 3 – Complete Part B – TRIBUTARY VOLUMES BY LANDOWNER

1. Identify the tributary area of the road or improvement defined as: "For purposes of amortization, a geographic area of forest land, and existing or potential road system or logical extensions of either, where the merchantable timber from such lands has moved over the road system and where the currently merchantable timber probably will be moved over a particular road or road improvement."
2. Identify all landowners who have tributary timber within the tributary area identified above, tributary timber being defined as: "The total volume of timber which has been moved over a road and the volume of tributary timber currently merchantable which probably will be moved over the road (or road improvement). Tributary timber is used to calculate the percentage shares of the U.S. and the permittee in the amortization of a road or road improvement. Note: Since entering into early reciprocal right-of-way agreements, some new federal requirements have been established. These include environmental considerations, spotted owl management areas, pesticide restrictions, other set-aside areas, etc. These items do not alter the ratios or land and timber tributary to a road system and should not be excluded or removed from tributary area determinations."
3. Determine the amount of tributary volume of each tributary landowner. Complete part B. with area subdivisions, acres and volumes, listing the using (deficit) party's tributary volume as landowner No. 1, and the road or improvement owner as landowner No. 2, and all other others as Nos. 3 and 4. Subtotal the tributary volume by landowner (item bracketed [1] on page 1).
4. Determine the total tributary volume for all landowner combined (item bracketed [2] on page 1).

Step 4 – Complete Part C – ROAD REPLACEMENT COST OR ROAD IMPROVEMENT COST (AND ADJUSTMENTS)

Road Improvement: If the fee calculation is for a road improvement only, the cost of the improvement will be the actual costs as documented from the written source at the time the improvement was (road record, etc.)

Road Replacement Cost (original Road):

There are four (4) categories of roads for which replacement costs will need to be determined:

1. Roads constructed with appropriated funds;
2. Roads constructed by BLM timber purchasers under a timber sale contract;
3. Roads owned by the U.S. due to an expired permit, trespass, etc.
4. Roads purchased by BLM (including acquisition of exclusive easements with rights for the public).

Step 4a – Determine the Road Replacement Cost.

For category 1, above, the replacement cost is the actual construction cost of a road including right-of-way acquisition, construction, engineering, surveying, administrative, and other costs attributable to road construction.

Illustration IX-15
Form OR 2812-18 – Road Use Fee Calculation
Page 4 of 4

Road Use Fee Calculation - Form OR 2812-18
(February 2009)
(Page 4 of 4)

For categories 2 and 3, above, the replacement cost is an engineering appraisal including indirect costs based on the current replacement cost of a road, taking into account its current condition rather than its condition at the time of construction.

For category 4, above, the replacement cost is the road purchase price or court award plus BLM costs of engineering, survey, appraisal, administrative costs, and subsequent improvements.

The "replacement cost" as determined above will be entered as item C.1. on page 2 of this form.

Step 4b – Deduction of Separable Costs.

After determination of the replacement cost, those facilities which were constructed primarily for uses other than log hauling must be identified. These will be items such as sidewalks, hand rails on bridges, oversized culverts for fish passage, and approach roads to recreation sites. Costs of these construction items are deducted from the replacement cost, Step 4a above.

List each item that qualifies as a separable cost and enter the value under Section C.2. on page 2 of this form. The subtotal of the items will be calculated and subtracted from the replacement cost of the road.

Step 4c – Addition for Overhead and Contract Administration.

Under Item C.3. (on page 2 of this form) add 20% to the replacement value after the deduction for separable costs.

Step 4c – Deduction for Allocation of Costs.

Using form OR 2812-14 (Allocation of Costs Worksheet), determine if the road qualifies for allocation of costs. If so, complete form OR 2812-14 to determine the percentage by which the road replacement cost or road improvement cost will be reduced for allocation. The percentage is entered in Part C.2. on page 2 of this form and the amount of deduction based on this percentage will be made to the replacement or improvement cost. This final number will be bracketed item [3] on the fee calculation form and will be used in the Part D. calculation.

COMPLETE PART D. – PERCENTAGE SHARE BY LANDOWNER.

If the Excel spreadsheet version of the form is used, this section of the form will be automatically calculated. If done manually, the table identifies the information that must be brought forward in this section manually. This section determines the percentage share for all landowners. However, only the percentage share of the using (deficit) party matters, as the fee calculation is completed for that party as of their time of first use of the road or improvement and this percentage share is posted to the amortization records as their deficit share. The percentage share for the Deficit party is identified with a bracketed [4] on page 2. This number will be carried forward to Part E. where indicated

COMPLETE PART E. – ROAD USE FEE CALCULATION:

If the Excel spreadsheet version of the form is used, this section of the form will be automatically calculated. If done manually, the table identifies the information that must be brought forward from above (bracketed items [2], [3], and [4]). In this section the final road replacement cost or cost of improvement is divided by the total tributary volume (for all landowners) to determine the road use fee (per MBF) that will be paid by the using (deficit) party as they use the road. This fee will be paid until their percentage (deficit) share identified in part D. is paid off.

COMPLETE SIGNATURE BLOCKS:

The person that completed the fee calculation will sign the form as "calculated by" (can be BLM or Permittee). The road or improvement owner signs as "Approved". The using (deficit) party signs as "Accepted."

INITIALS FOR POSTING TO AMORTIZATION RECORDS

When the fee calculation is completed, it can be "pencil posted" to the amortization records. It gets "final" posted when both the "approver" (road or improvement owner) and the "acceptor" (deficit party) have both signed.

CHAPTER IX – SUPPLEMENTS
(RIGHT-OF-WAY PLATS & FEE CALCULATIONS)

IX-115

Illustration IX-16
Form OR 2812-18E – Road Use Fee Calculation With Easement Costs
Page 2 of 3

ROAD USE FEE CALCULATION (Continuation Sheet)

Road No.		Seg.		Using (Deficit) party:	
X→	Replacement Value (Original Road)			Mo/Year of 1st Use of Rd or Imp.:	January-09
X→	Road Improvement				

C. ROAD REPLACEMENT COST OR IMPROVEMENT COST (AND ADJUSTMENTS):

1	Road Replacement Value or Cost of Improvement	→	→
	Source: <input type="checkbox"/> Road Appraisal (Attached)		
	<input type="checkbox"/> Original Value updated w/CPI Index (Worksheet attached)		
	<input type="checkbox"/> Road Record Cost of Improvement		
2	Plus Easement Cost --Easement No.:		
	Easement Consideration paid		
	Less Cost Atributable to Timber		
	Net Cost of Easement	→	→
	Subtotal after adding cost of easement	→	→
3	Less Separable Costs (explain each line item below)		
	Item 1:		
	Item 2:		
	Total Separable costs (if not already deducted on 2812-14 form: → → →		
	Subtotal after Deduction of Separable Costs	→	→
4	Plus Overhead (10%) Contract Admin. (10%)	20.00%	→
	Subtotal after adding 20%	→	→
5	Does road qualify for allocation of costs?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	If yes, complete form 2812-14 and enter % to be deducted here: → → →		
	Amount to be deducted for allocation (% x Subtotal above)	→ → →	
	If No, enter zero above if not qualified for allocation of costs.		
	Replacement or Improvement Value after alloc. of costs		[3]→
	Cost Per Station =		

D. PERCENTAGE SHARES BY LANDOWNER:

X Indicates Deficit Party	Landowner	Total Tributary Timber Vol. by Landowner (from [1] above)	Total Tributary Volume All Landowners (from [2] above)	Landowner's percentage (%) share of Total Trib.volume (round to 2 places)	Road Replacement or capital imp. Cost (from [3] above.	(4) Proportionate share (\$) by Landowner
X						←[4]
	TOTALS			100.00%		

E. ROAD USE FEE CALCULATION:

1. Road Replacement or Imp. Cost (from [3] above)		X Int. Rate	
2. Divided by Total Tributary Timber Volume (from [2] above)		↓	Post these to AMORT!
3. Road Use Fee Per MBF		1.03	
4. Deficit Party's Share (from [4] above) + Interest allowance .		1.03	
		Initials for posting done→	

Accepted Copy made for Road Record: []

ONLY INITIAL IF THIS IS "APPROVED" AND "ACCEPTED" COPY

Signatures:

Calculated by:		Date:	
Approved (Road or Imp. Owner):		Date:	
Accepted (Deficit (Using) Party):		Date:	

Illustration IX-16
Form OR 2812-18E– Road Use Fee Calculation Form
Page 3 of 3

Road Use Fee Calculation - Form OR 2812-18
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Instructions

Follow the same instructions as shown on Form OR 2812-18 up to Part C.

Part C - ROAD REPLACEMENT COST OR ROAD IMPROVEMENT COST (AND ADJUSTMENTS)

In this section, a sub-item (2.) has been added to account for roads that need to have an easement acquisition cost included as part of the replacement cost. If a road involved the construction over bare land where the U.S. acquired an easement, the following items would be entered into C.2.: 1) the easement No., 2) the Consideration (amount) paid for the easement, 3) the amount of "consideration" (if any) that was attributable to right-of-way timber.

The value of the right-of-way timber is deducted from the easement acquisition cost and the "net" value of the easement is ADDED TO the replacement cost of the road.

In all other aspects, follow the remaining instructions shown on Form OR 2812-18.

Note: If an easement involved an existing road at the time of easement acquisition, this form is not appropriate to use.

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X. LAND TRANSFERS AND ASSOCIATED RIGHT-OF-WAY ACTIONS

A. Purpose

From time to time, either the BLM or a permittee may dispose of lands which are subject to a reciprocal right-of-way agreement. This may include lands that are served either by the Permit or Agreement or are included in either Schedule 1 or Schedule 2. Either party may also acquire additional lands over which the other party desires rights.

This chapter discusses the requirements for subsequent right-of-way actions which may be triggered by the acquisition or disposal of lands by either party. This chapter also provides guidance for identifying the many issues which the BLM and the permittee must consider to ensure that neither party's rights are undermined because of a land transfer.

B. Background

Land transfers often result in the need for two types of right-of-way actions—assignments and/or amendments. The guidance for processing assignments is contained in Chapter XI. The guidance for processing amendments is contained in Chapter XII.

The specific provisions of the reciprocal right-of-way agreement must be considered in determining the need for a subsequent O&C right-of-way action following the disposal or acquisition of property by either party. When a transfer occurs, there are several questions that must be answered to determine what (if any) subsequent actions must be processed:

- How will the Agreement rights over the permittee lands be administered following the transfer and who does the U.S. deal with in exercising its rights?
- Does the new landowner desire or qualify for an assignment of rights held by the permittee over the U.S. lands?
- If an assignment is desired, what permit rights does the old landowner (original permittee—and potential assignor) and the new landowner (potential assignee) need to share in common, and what rights does the new landowner need to be fully assigned?
- What rights in either the Agreement or Permit may need to be released?

Purchases of private land under land sales contracts present a somewhat unique aspect to the transfer process. An examination of what possessory interests are held by the contract purchaser must be made before processing any subsequent right-of-way actions such as amendments, assignments, payment of fees, etc. The specific guidance for dealing with contract purchasers is covered in Section C.2.d. below.

Section C. also describes the types of right-of-way actions that must be considered when either party transfers lands.

C. Types of Transfers and Subsequent Right-of-Way Actions

The following sections provide guidance when different land transfer actions occur which may affect the rights of either the permittee of the U.S.

1. Disposal or Transfer of U.S. Lands in Schedule 1

The BLM may at times dispose of Schedule 1 lands (by sale or exchange, etc.). Early in the disposal process (and well before the Patent or Deed is prepared and executed), the BLM must conduct research to determine what rights, if any, third parties (including O&C permittees) hold over the lands identified for disposal. Once these rights are identified, the BLM should determine whether the permittee wishes to retain their existing rights or whether they desire to relinquish their rights prior to disposal. The following provides guidance for these situations.

a. Third Party Rights After Disposal of U.S. Lands in Schedule 1

If there are any unilateral or reciprocal permits issued by the BLM over the disposal lands, and the permittee desires to continue exercising their rights after the disposal, provisions for protecting those rights need to be included in the Patent or Deed. Third party rights are identified in the “Subject To” portion of the Patent (or Quitclaim Deed). Illustration X-1 (page 2) is an example of a Patent issued “subject to” an O&C permit. When land is transferred “subject to” outstanding third-party rights, the administration of those rights falls upon the shoulders of the new landowner who “steps into the shoes” of the United States. A copy of the unilateral permit or reciprocal right-of-way agreement should be provided to the new landowner so that they may become familiar with the rights and obligations of the permittee(s).

There are times when the purchaser of the U.S. lands and the third party permittee have worked out an arrangement to replace the unilateral or reciprocal permit rights with a new authorization to be given directly to the permittee by the new landowner. In this situation, the permittee would no longer need the rights over the disposal lands in the unilateral or reciprocal permit.

In exchange for granting these replacement rights, the new landowner will probably require that the permittee release their rights in the reciprocal right-of-way

agreement so as not to encumber their property needlessly. If this is the case, the replacement private easement (as well as an amendment to the unilateral permit or reciprocal right-of-way agreement deleting the disposed Schedule 1 lands) should be drafted for recording simultaneously with the Patent or Deed. Care must be exercised to ensure that the permittees rights are not lost. If the private easement is not granted until later in time, the U.S. disposal could still be accomplished with the Patent or Deed containing the “subject to” clause. Then the granting of the replacement easement could be with a condition of release of the rights in the reciprocal right-of-way agreement and when it is recorded it would effectively clear the reciprocal right-of-way agreement from the title.

b. U.S. Rights and Interests After Disposal of U.S. Lands in Schedule 1

When U.S. lands are transferred out of government ownership, the BLM needs to ensure that all rights that the U.S. needs to retain are “reserved” in the Patent. A common form of reservation deals with road issues.

If roads are owned or controlled by the U.S. before the disposal, and there is a continuing need by the U.S. to use the roads after disposal, the land would be conveyed with a patent or deed reservation to the U.S., retaining ownership and control of the road. If a Patent or Deed reservation is made, any deficit balances owed by the permittee would continue to be paid to the U.S. after disposal since the road was reserved. In addition, the U.S. can continue to issue unilateral or reciprocal permits and licenses for the use of roads that were reserved. In this case, a copy of the Patent or Deed should be placed in the road record file to document that the BLM still controls the road.

If there are permittee roads on the U.S. disposal lands, and there is a continuing need by the U.S. to use the roads after disposal, the Agreement rights in the roads should also be reserved in the Patent or Deed. The U.S. and its licensees can continue to use the road, subject to terms of the Agreement.

As with the situation in Section C.1.a., above, the new landowner and permittee may negotiate replacement rights.

If reservation of U.S. rights is needed, refer to 43 CFR §2710 and the H-2711 handbook for guidance or seek advice from the Oregon State Office.

2. Disposal or Transfer of Permittee Lands in Schedule 2

This section discusses the various types of right-of-way actions that may be triggered as a result of a permittee disposing of lands included in a reciprocal right-of-way agreement. It is important to remember that a permittee has both rights and obligations in the Agreement (see Chapter V.), and any actions subsequent to

disposal of their lands must be accomplished so as to ensure that neither the U.S. nor permittee rights are inadvertently diminished.

a. New Landowner Rights in Permit After Disposal of Permittee Lands in Schedule 2

The **rights of a permittee** over U.S. lands **are personal to the holder** and not a real property interest. Therefore, the rights **do not pass by operation of law** (see 43 CFR §2812.2-1). In addition, the rights granted in an O&C permit are for “management and removal of timber and other forest products,” and if the new landowner desires to exercise those rights, an assignment of the permit is required. The processing of requests for assignments is covered in Chapter XI.

There are times when permittee lands are sold for non-timber related development. The new owners of these types of land generally do not need assignments of rights in the permit. The U.S. should not approve an assignment of permit rights in these circumstances (see 43 CFR §2812.7 and 43 CFR §2812.3-1 to 3-5). The BLM may, however, provide rights to the new landowner for ingress and egress over U.S. lands through an application for a right-of-way under Title V of FLPMA. Generally, the rights in the FLPMA right-of-way will be sufficient for the new landowner.

If neither the permittee nor the new landowner need rights over the U.S. lands contained in a Schedule 1 for “management and removal of timber and other forest products,” an amendment should be negotiated with the permittee to delete the U.S. lands from Schedule 1. See Chapter XII. for amendments.

b. U.S. Rights in Agreement After Disposal of Permittee Lands in Schedule 2

The U.S. has rights on Schedule 2 of the reciprocal right-of-way agreement over permittee lands. After disposal of any of these lands by a permittee, the U.S. rights continue because they are a recorded interest in real property and, as such, encumber the title to the transferred land regardless of ownership. The BLM must, however, know with whom to communicate when exercising the rights of the U.S. under the Agreement (for such things as fee payments, road use fee calculation approvals, license agreements, and annual meetings). The new owner “steps into the shoes” of the permittee for purposes of the exercise and administration of the U.S. rights over the transferred lands.

The new landowner should be made aware of the rights of the U.S. (and its licensees and/or permittees) in the Agreement over Schedule 2 lands now owned by the new landowner, that will continue regardless of ownership of the land. These rights include:

- The right of the U.S. and its licensees to use existing roads (owned by the new landowner) over Schedule 2 lands, for the management and removal of timber of the United States.
- The right to construct roads over Schedule 2 lands, subject to the provisions in the reciprocal Agreement
- The right to authorize third parties to use roads which the U.S. constructed over Schedule 2 lands prior to the time the lands were transferred and to set terms and conditions of use for those roads.
- The right to collect road use fees to amortize the replacement cost of roads owned by the U.S.
- The first right to perform maintenance on roads owned by the U.S. and to collect pro rata maintenance fees.

c. New Landowner Rights and Obligations in Agreement After Disposal of Permittee Lands in Schedule 2

This section discusses the new landowner's rights and obligations under reciprocal right-of-way agreements, regardless of whether the permit rights are assigned to that new landowner.

The new landowner may not be familiar with the O&C right-of-way regulations and what effect the reciprocal right-of-way agreement has on their title. When the U.S. exercises its' rights in the Agreement it must ensure that the party being contacted is the actual fee title owner of the property. Remember that the new landowner does not become a permittee until an assignment is completed.

As discussed above, since the rights of the U.S. in the Agreement are an encumbrance on land titles, after disposal of lands contained in Schedule 2 by a permittee, the BLM should ensure that the new landowner understands both their rights and obligations under the Agreement.

1) Rights of the New Landowner in the Agreement

The rights of the new landowner of Schedule 2 lands generally include (but are not limited to) the following:

- the right to be compensated by the U.S. (through amortization of the replacement cost of a road) for the use of roads or rights-of-way owned by that party;
- the first right to perform maintenance on roads owned by that part and to collect pro rata maintenance fees for such maintenance;

- the right to receive right-of-way plat notifications of proposed construction of new roads by the U.S. over Schedule 2 lands for their review and right to object according to the terms of the reciprocal Agreement;
- the right to establish reasonable traffic regulations for use of roads owned by them; and

2) Obligations of the New Landowner in the Agreement

The new landowner also has certain obligations under the Agreement, which include the following:

- to provide terms and conditions of use of their lands, roads or rights-of-way which are included in a Schedule 2 within 30 days of when requested by the AO. Such terms and conditions must be consistent with the provisions of the Agreement.
- to execute license agreements with BLM timber sale purchasers per the Agreement;
- to allow third party users authorized by the U.S. to use roads controlled by the U.S. over their land.

When a BLM AO becomes aware of a new landowner (usually when a request for Report of Road Use is returned as undeliverable), a letter should be sent to the new landowner notifying them of both their rights and obligations identified above. A sample letter is found at Illustration X-2.

d. Dealing with Contract Purchasers When Exercising Rights of the U.S.

Sometimes permittees sell land under a land sale contract, wherein the seller retains legal title as security for the payment of the purchase price. As with fee title transfers, the U.S. rights under the Agreement remain an encumbrance on title. However, when a land sale contract exists, the U.S. must ensure that it is dealing with the proper party when exercising the U.S. rights. The BLM needs to examine the land sale contract closely to determine the property entity to contact.

Illustration X-3 (Solicitor's Opinion (dated February 19, 1981) and Illustration X-4 (Solicitor's Opinion dated March 2, 1981) provide guidance for dealing with contract purchasers in the administration of reciprocal agreements. The following information should be particularly noted:

Where the purchaser of land under a land sale contract takes possession of the land and the seller retains the legal title as security

for the payment of the purchase price, the purchaser acquires many of the attributes of an owner . . .

As noted in 92 CJS. Vendor and Purchaser 285 (1955): 'Where the purchaser is entitled to the possession . . . he is entitled to the beneficial use, occupation, and enjoyment of the property.

For example, the courts agree that, unless the contract of sale provides otherwise, the purchaser is entitled to the rents and profits derived from the premises. . . In view of this it is our opinion that it would be appropriate to pay road rentals to the purchaser unless the contract of sale specifically provides that such rents and profits are to be paid to someone else. Also, where the purchaser is to be the recipient of the road fees he appears to have the right to approve the amount of such fees.

Therefore, an examination of the land sale contract is necessary to ensure proper administration of agreement rights.

The opinion goes on to state:

Where the private land has been subdivided and sold to a number of persons by land sale contracts, the easement rights of the United States pass with each parcel of land and the government will be required to deal with each purchaser (and seller) individually in accordance with the above standards. . . Because the terms of the contract may change these general rules, it will be necessary to review the terms of each contract of sale.

. . . BLM will always be forced to examine the land sale contract when exercising its easement rights across lands in the possession of a land sale purchaser.

Therefore, unless the contract states differently, payment of road use and maintenance fees made by the U.S. will be paid to the contract purchaser.

1) Dealing with Right-of-Way Timber in Connection with Land Sale Contracts

The issue of right-of-way timber is less clear, according to the Solicitor. If there is any doubt as to who should be paid for any right-of-way timber cut by the U.S., the check should be made payable to both the seller and purchaser of a land sale contract as directed here:

If the contract of sale does not restrict the cutting of timber, the purchaser in possession has the right to dispose of timber as long as

the security interest of the seller is not impaired . . . The question of whether the cutting of timber impairs the security interest of the seller depends upon many factors, such as the portion of the value of the property attributable to the timber, and amount owed on the property when compared with its total value, and the amount and type of timber removed (whether a small quantity of low value timber or a large amount of valuable old growth). When in doubt as to these questions, it would be appropriate to make any check for right-of-way timber payable to both the seller and purchaser.

Ambiguity in the land sale contract does not affect the rights of the U.S., but it could result in payments made by the U.S. being issued to the wrong party. The U.S. does not want to be the mediator of who properly should receive payment, so issuing the check in both names (in cases of ambiguity in the land sale contract) allows the two parties to resolve this issue between themselves.

2) Reserved

D. Determination of Discretion in Dealing with Newly Acquired Lands of Either Party

Most reciprocal agreements contain two specific clauses in the Exhibit B regarding lands or rights-of-way acquired by either party:

1. Reciprocal Right-of-Way Agreement Provision for Acquisition of New Lands

The following is typically included in most semi-detailed reciprocal right-of-way agreements regarding the acquisition of new lands by either party:

If either party to this agreement acquires any additional lands (shown on Exhibit C), it agrees to grant to the other party rights-of-way and rights of road use across such land under the same terms and conditions as contained in this agreement.

2. Reciprocal Right-of-Way Agreement Provision for Acquisition of New Roads or Rights-of-way

The following is typically included in most semi-detailed reciprocal right-of-way agreements regarding the acquisition of new roads, or rights-of-way (easements) by either party:

If either party to this agreement acquires the ownership or control of any roads or rights-of-way across lands of others (shown on Exhibit C), it will grant to the other party the right to use such roads or rights-of-way under the same terms and conditions as contained in this

agreement, but subject to the terms and conditions contained in the instrument by which such ownership or control is obtained; provided, however, that in the negotiation for additional roads or rights-of-way, each party shall attempt in good faith to obtain rights that can be used by the other party.

3. Obligation of Each Party to Grant Rights over Their Newly Acquired Lands

This section provides clarification regarding: 1) What acquisition actions trigger an obligation to grant rights to the other party? and 2) Who has the obligation to grant rights?

In both provisions there is reference made to either party acquiring lands or rights-of-way over lands identified in the Exhibit C map. Typically, an Exhibit C map contains only three types of lands: 1) the U.S. lands, 2) the permittee lands, and 3) third party lands. Thus, only acquisition of the third party lands already shown on the Exhibit C would trigger an obligation to grant rights.

To answer the question of the party obligated to grant rights, the interpretive words are highlighted:

If either party . . . acquires any additional lands . . . , it agrees to grant to the other party rights-of-way and rights of road use across such land under the same terms and conditions as contained in this agreement.

And

If either party . . . acquires the ownership or control of any roads or rights-of-way . . . it will grant to the other party the right to use such roads or rights-of-way under the same terms and conditions as contained in this agreement,

The word “it” refers to the acquiring party since the beginning of the paragraph says, “If either party . . . acquires . . . it will grant . . .”. Therefore, the acquiring party gave up discretion to deny granting of rights to the other if they acquire any lands or rights-of-way over the third party lands shown on the Exhibit C. There is no obligation, either referred or otherwise for the non-acquiring party to grant rights to the acquiring party to get access to those newly acquired lands.

If the BLM acquires lands within designated management areas which are identified on an Exhibit C map for a specific reciprocal right-of-way agreement and that permittee desires rights over those lands, the BLM has no discretion to deny the rights. The lands **MUST** be shown on the Exhibit C map for them to be considered as newly acquired. However, they may or may not be designated as “third party

lands.” If the agreement contains a hard boundary, the lands must additionally be within that boundary to qualify as newly acquired. A visual depiction of the discretion each party has regarding acquired lands is included as Illustration X-5.

4. Limitation on Granting Rights Over Newly Acquired Rights-of-Way (Easements)

If the acquisition is limited to a road or right-of-way description (typically through a road easement), the acquiring party’s obligation is limited as follows:

The provision in D.2. above states:

“ . . . but subject to the terms and conditions contained in the instrument by which such ownership or control is obtained; provided. . . ”

This means that if either party acquires an easement, any rights that the acquiring party can grant to the other over that easement are limited by the rights and terms and conditions that were acquired.

5. Obligation of Permittee and U.S. to Negotiate Rights for the Other Party in Easement Acquisitions

When acquiring road easements, both parties have an obligation to negotiate with the landowner in good faith to attempt to acquire rights for the other.

The provision shown in D.2. above also states:

. . .however, in the negotiation for additional roads or rights-of-way, each party shall attempt in good faith to obtain rights that can be used by the other party.

This means, for example, that when BLM is negotiating with private parties to acquire easements, the BLM negotiator should “attempt in good faith” to also acquire rights for permittees, and vice versa. However, during easement negotiations, the BLM cannot force or compel third parties to grant rights for BLM’s permittees. Nor can the permittee force or compel other landowners to grant rights for the U.S. during their easement negotiations. Each party’s obligation in this regard is limited to “attempt in good faith” to acquire rights for the other.

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Illustration X-1
Sample Patent "Subject to" O&C Permit
Page 1 of 3

Upon Recording Send to:
Joe Schmoie
Tree Cutters, Inc.
P.O. Box 1000
Evergreen, OR 97000

Send Tax Statements To:
Tree Cutters, Inc
P.O. Box 1000
Evergreen, OR 97000

OR 55947

WHEREAS,

TREE CUTTERS, INC.,
AN OREGON CORPORATION

is entitled to a Land Patent pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1715), for the following described lands:

Willamette Meridian, Douglas County, Oregon

T. 23 S., R. 4 W.,
Sec. 20, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 24 S., R. 3 W.,
Sec. 22, NW $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 25 S., R. 3 W.,
Sec. 4, Lot 5.

Aggregating 143.39 acres.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES unto the said TREE CUTTERS, INC., an Oregon corporation, the lands above described; TO HAVE AND TO HOLD the said lands with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said TREE CUTTERS, INC., an Oregon corporation., its successors and assigns forever; and

Illustration X-1
Sample Patent "Subject to" O&C Permit
Page 2 of 3

OR 55947
Page 2

EXCEPTING AND RESERVING TO THE UNITED STATES from the lands so granted,

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and
2. The right to use, maintain or repair existing roads over, across and through NW¼SW¼, Sec. 22, T. 24 S., R. 3 W., W.M., and those rights for logging road purposes subject to the terms and conditions of O&C Logging Road Right-of-Way Agreement and Permit No. R-957 (OR-57371) and 43 CFR Subpart 2812.

SUBJECT TO:

1. As to T. 23 S., R. 4 W., Sec. 20, SW¼NE¼, NW¼SE¼, W.M., those rights for logging road purposes granted pursuant to 43 CFR Subpart 2812 to:
 - a. Abc Enterprises, Inc., by O&C Logging Road Right-of-Way Permit R-100 (OR-57921);
 - b. George R. Smith and Jane A. Smith, by O&C Logging Road Right-of-Way Permit R-101 (ORE-013602);
 - c. Pine Needle Properties, Limited Partnership, by O&C Logging Road Right-of-Way Permit R-102P (OR-56401);
 - d. Edna W. Watson and Loraine G. Jones, by O&C Logging Road Right-of-Way Permit R-103A (OR-1811); and
2. As to T. 24 S., R. 3 W., Sec. 22, NW¼SW¼, W.M., those rights for logging road purposes granted pursuant to 43 CFR Subpart 2812 to We Wanna Log Company, by O&C Logging Road Right-of-Way Permit No. R-900 (OR-57371); and
3. As to T. 25 S., R. 3 W., Sec. 4, Lot 5, W.M., those rights for logging road purposes granted pursuant to 43 CFR Subpart 2812 to:
 - a. Tree Cutters, Inc., by O&C Logging Road Right-of-Way Permit R-600A (OR-56901);
 - b. Mountain Climbers, LLC, by O&C Logging Road Right-of-Way Permit R-601B (OR-56902);
 - c. Big Rock Timber Co., by O&C Logging Road Right-of-Way Permit R-700 (OR-56394).

Illustration X-1
Sample Patent "Subject to" O&C Permit
Page 3 of 3

OR 55947
Page 3

Provided that, the grantee, as a condition of and by acceptance of this patent, does covenant and agree to the following condition, this covenant to run with the land and to be binding on all future owners of the real property. The following condition shall inure to the benefit and shall be enforceable by suit for injunction or for damages by the United States:

All existing commercial timber on the land described herein, except Port Orford cedar, is excluded from export and substitution in accordance with the provisions of the Forest Resources Conservation and Shortage Relief Act of 1990, as amended (16 U.S.C. 620, *et seq.*), either directly or indirectly by the Grantee or by any other party.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions, of the Act of June 17, 1948, (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

[SEAL]

Given, under my hand, in
the day of
in the year of our Lord two thousand two and the Independence
of the United States two hundred and

By: _____

Patent Number _____

Illustration X-2
Sample New Landowner Letter
Page 1 of 4

2812 (Org Code)
[Permit No.]
[Serial No.]

Certified Mail – Return Receipt Requested (xxxxxx)

Dear _____:

We have become aware that you are the new owner of certain land(s) that are encumbered by a Right-of-Way and Road Use Agreement (Agreement) held by the United States. Please refer to Agreement No. _____ (serial No. OR _____ PT).

This letter is to inform you that, as the owner of certain land, you have certain rights and obligations related to the Agreement. A copy of the Agreement document is attached for your information. The Schedule 2 (Land Description) attached to this Agreement identifies private lands over which the U.S. has rights. The lands that we believe are now owned by you that are encumbered by this Agreement are highlighted for your information.

Rights of the United States over Your Property

The United States (U.S.) has certain rights over your property (which are contained in the Agreement). These rights include:

- The right of the U.S. and its licensees to use existing roads (owned by you) for the management and removal of timber of the United States.
- The right to construct roads over certain of your lands, subject to the provisions in the reciprocal Agreement
- The right to authorize third parties to use roads which the U.S. constructed over your lands prior to the time the lands were transferred to you. This includes the rights of the U.S. establish set terms and conditions of use for those roads.
- The right to collect road use fees to compensate the U.S. for the replacement cost of roads owned by the U.S.

Illustration X-2
Sample New Landowner Letter
Page 2 of 4

- The first right to perform maintenance on roads owned by the U.S. and to collect pro rata maintenance fees from other users of the road.

Your Rights under the U.S. Agreement

In addition to the rights held by the United States in the Agreement, you, as the landowner, have certain rights and responsibilities as well. Your rights associated with this Agreement include:

- the right to be compensated by the U.S. (through the amortization of the replacement cost of a road) for the use of roads or rights-of-way owned by you;
- the first right to perform maintenance on roads owned by you and to collect pro rata maintenance fees for such maintenance;
- the right to receive right-of-way plat notifications from the U.S. of proposed construction of new roads by the U.S. over certain lands owned by you. You have the right to review these right-of-way plats and to object to such construction (subject to the limitations of the provisions of the Agreement);
- the right to establish reasonable traffic regulations for use of roads owned by you, include the right to collect fees, require performance bonds and insurance of BLM's licensees; and

Your obligations under the U.S. Agreement

Your obligations related to the Agreement include the following:

- to provide terms and conditions of use of your lands, roads or rights-of-way which are included in the Schedule 2 to the Agreement within 30 days of when requested by the authorized officer of the U.S. Such terms and conditions must be consistent with the provisions of the Agreement and would be included in the form of an executable license agreement on the approved form attached.
- to execute license agreements with BLM timber sale purchasers per the Agreement;
- to allow third party users authorized by the U.S. to use roads controlled by the U.S. over their land.

Illustration X-2
Sample New Landowner Letter
Page 3 of 4

Rights in the Permit Held by Former Landowner Must be Assigned

We believe that the former owner of certain lands transferred to you held rights in a perpetual O&C Logging Road Right-of-Way Permit (No. _____, OR _____ FD). This permit granted rights across U.S. lands to a previous landowner [name of permittee], (referred to as the permittee) for the purposes of management and removal of forest products from the lands of the permittee. A copy of that permit is also enclosed, along with the Schedule 1 (descriptions of U.S. lands) attached. The U.S. lands (which we believe served property now owned by you for management and removal of timber of timber) are highlighted.

The rights in the above permit do not transfer with title upon sale of the land. The rights are person to the former permittee. If you desire to exercise any rights across the U.S. lands in this Permit for “management and removal of timber and other forest products” from lands you own, you will need to apply for an assignment of the rights held by the former landowner. If you use any U.S. roads for commercial purposes without a permit, it would be considered to be in trespass.

If you are interested in having the rights in the above-mentioned permit assigned to you, or if you wish to discuss any of the above information, please contact _____ at (____)-____-_____

If you do not wish to have the Permit assigned to you, we would appreciate your signing below and returning one copy of this letter to our office.

Sincerely,

Field Manager
_____ Resource Area

cc: Current Permit holder

THE ATTACHMENTS ARE:

- 1 – Road Use & Right-of-Way Agreement _____ p)
- 2 – O&C Logging Road right-of-Way permit No. _____

Illustration X-2
Sample New Landowner Letter
Page 4 of 4

LANDOWNER SIGNATURE:

I do not have a need for nor desire to have O&C Logging Road Right-of-Way Permit No. _____ (OR _____ FD) assigned to me. I have no objection to the BLM

requesting that the current permit holder release rights over the U.S. lands which would serve as access (for purposes of management and removal of timber) to lands now owned by me.

Signature

Date

Illustration X-3
Solicitor's Opinion Dated 2/19/1981 Providing Guidance
For Dealing with Contract Purchasers
Page 1 of 2



United States Department of the Interior
OFFICE OF THE SOLICITOR
Pacific Northwest Region
500 N.E. Multnomah Street, Suite 607
Portland, Oregon 97232

FEB 19 1981

LDN 2-23-81

Memorandum

To: Oregon State Director, Bureau of Land Management (943.2)
From: Office of the Regional Solicitor, Pacific Northwest Region
Subject: Contract Purchasers of Land Covered by BLM Right-of-Way and
Road Use Agreements

By a letter dated December 1, 1980, your staff requested advice as to the handling of BLM Right-of-Way and Road Use Agreements when the private lands subject to the agreement have been sold to another under a land sale contract. Where the purchaser of land under a land sale contract takes possession of the land and the seller retains the legal title as security for the payment of the purchase price, the purchaser acquires many of the attributes of an owner. As noted in 92 CJS. Vendor and Purchaser 285 (1955):

"Where the purchaser is entitled to the possession . . . he is entitled to the beneficial use, occupation, and enjoyment of the property."

→ For example the courts agree that, unless the contract of sale provides otherwise, the purchaser is entitled to the rents and profits derived from the premises. City of Reedsport v. Hubbard, 202 Ore. 370, 274 P.2d 248 (1954). In view of this it is our opinion that it would be appropriate to pay road rentals to the purchaser unless the contract of sale specifically provides that such rents and profits are to be paid to someone else. Also where the purchaser is to be the recipient of the road fees he appears to have the right to approve the amount of such fees.

With respect to the payment for right-of-way timber, the relative rights of the seller and the purchaser are less clear cut. If the contract of sale does not restrict the cutting of timber, the purchaser in possession has the right to dispose of timber as long as the security interest of the seller is not impaired. Thienes v. Francis, 69 Ore. 171, 138 Pac. 845 (1914), Beaver Lumber Co. v. Eccles, 43 Ore. 400, 73 Pac. 201 (1903). The question of whether the cutting of timber impairs the security interest of the seller depends upon many factors such as the portion of the value of the property attributable to the timber, the amount owed on the property when compared with its total value, and amount and type of timber removed (whether a small quantity of low value timber or a large amount of valuable old growth).
→ When in doubt as to these questions, it would be appropriate to make any check for right-of-way timber payable to both the seller and purchaser.

Where the private land has been subdivided and sold to a number of persons by land sale contracts, the easement rights of the United States pass with each parcel of land and the government will be required to deal with each purchaser (and seller) individually in accordance with the above standards.)

Illustration X-3

Solicitor's Opinion Dated 2/19/1981 Providing Guidance
For Dealing with Contract Purchasers

Page 2 of 2

Because the terms of the contract may change these general rules, it will be necessary to review the terms of each contract of sale. Where such contracts have been recorded they may, of course, be obtained from the County records or from a title company. If not recorded the parties may be asked for a copy of the contract. In those situations in which it is impossible to examine the contract, the BLM should adhere to its present practice of joint payment to or joint agreement with the seller and purchaser.

Your staff has also asked whether some of the problems created by the contract purchase of land could be resolved by enforcing 43 CFR 2812.7 which requires submission of a proposed assignment of a right-of-way permit within 90 days and creates the possibility of permit termination if this requirement is not complied with. First it must be noted that the permit rights of the landowner to use BLM lands are separate from the agreement rights of the government to use private lands. No matter what the status of the permit, the BLM will still have to deal with the landowner and his contract purchaser in the manner described above. Enforcement of the permit assignment requirements would, however, give the BLM better information about many instances in which land sales have occurred. It will not, however, resolve the basic problem which is that the BLM will always be forced to examine the land sale contract when exercising its easement rights across lands in the possession of a land sale purchaser.

If after examining the terms of the land sale contract between Russell and Cameron you still have questions as to the payment for road use fees and right-of-way timber, please let us know.

For the Regional Solicitor



Donald P. Lawton
Assistant Regional Solicitor

Illustration X-4
Solicitor's Opinion Dated 3/2/1981 Providing Guidance
For Dealing with Contract Purchasers
Page 1 of 1



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

OREGON STATE OFFICE
P. O. Box 2965 1729 NE Oregon Street
Portland, Oregon 97208

IN REPLY REFER TO

2812 (943.2)

MAR 2 1981

Instruction Memorandum No. OR 81-267
Expires: 9/30/82

To: All District Managers
From: Chief, Division of Technical Services
Subject: Contract Purchaser of Land Covered by BLM Right-of-Way and
Road Use Agreements

The Regional Solicitor's Office recently reviewed a BLM Right-of-Way and Road Use Agreement for which the private lands subject to the agreement had been sold to another under a land sale contract.

The Opinion stated that a contract purchaser in possession of land under a contract of sale acquires many ownership rights. An examination of the land sale contract is necessary to determine any restrictions placed on the purchaser as to rents and profits derived, as well as the rights to dispose of any right-of-way timber. The United States' easement rights pass with each parcel of land. Copies of contracts may be obtained through County records, the title company, or if unrecorded, through the parties involved. When in doubt make any check for right-of-way timber payable to both seller and purchaser.

Enforcement of 43 CFR 2812.7 would give better information as to which land sales have occurred. The requirement to submit a proposed assignment of a right-of-way permit within 90 days creates the possibility of terminating the permit if this requirement is not complied with. BLM will always be forced to examine land sale contracts when exercising its easement rights across lands in the possession of a land sale purchaser.

Where the private land has been subdivided and sold to a number of persons by land sale contracts, the easement rights of the United States pass with each parcel of land, and the government will be required to deal with each purchaser (and seller) individually.

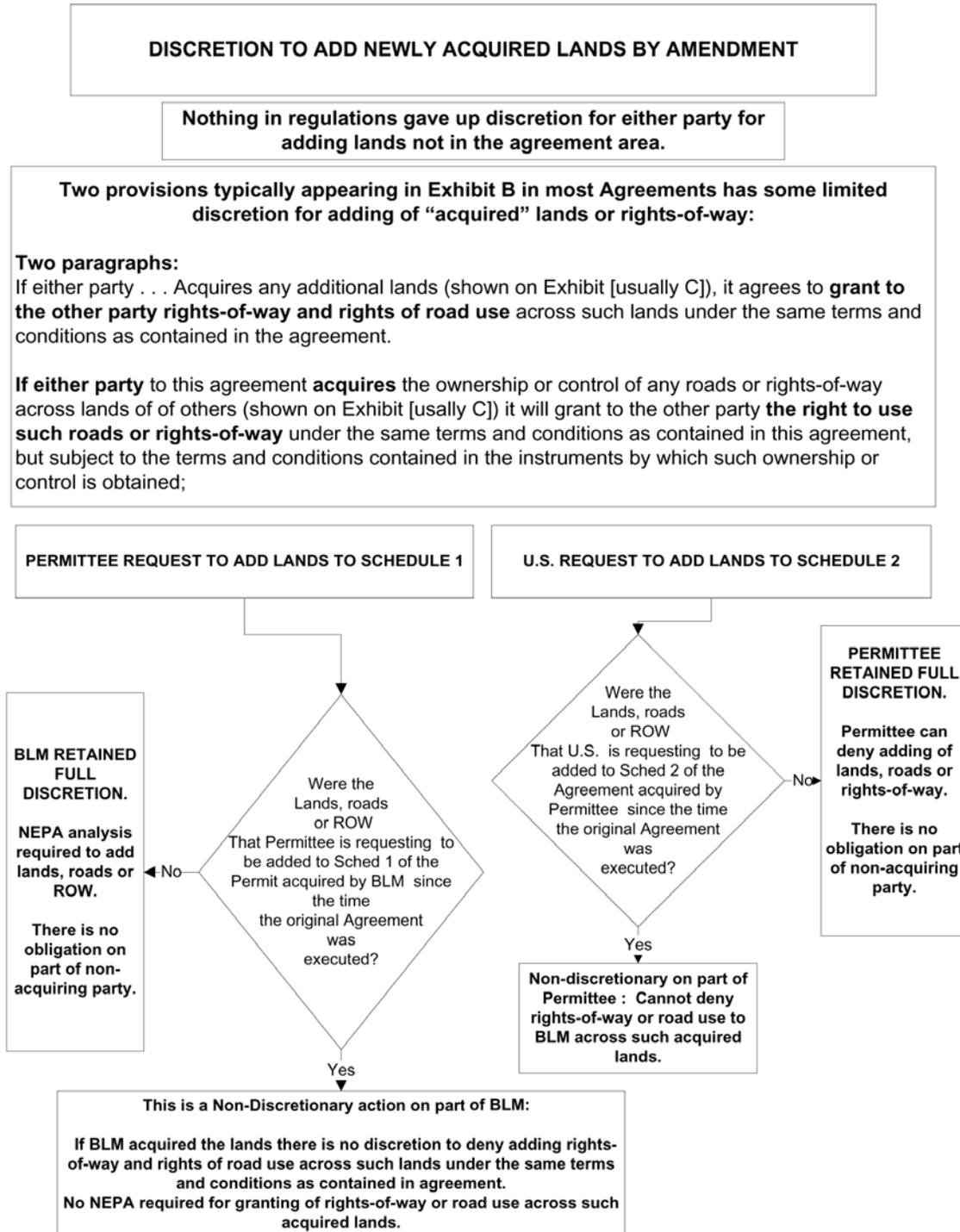
Frank O. Edwards

Distribution

Director (855) - 2
SCD (D-559A) - 3

Illustration X-5

Table of Discretion Granting Rights Where Newly Acquired Lands are Involved
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XI. ASSIGNMENTS

A. Purpose

The purpose of this chapter is to provide: 1) the requirements and need for an assignment of an O&C permit, 2) the process and guidance for completing assignments, 3) a description of the various types of assignments; and 4) a description of the components of the assignment document(s).

B. Background and Need for Assignment

The rights granted by the U.S. in an O&C Permit are specific to the person(s) or entity identified as the permittee and do not transfer with title. An assignment of the rights in an O&C permit is required by regulation (43 CFR §2812.2-2) if the landowner desires to exercise those rights. The regulations state:

A permittee may not authorize other persons to use the right-of-way for the transportation of forest products which are not owned by the permittee. Any person, other than the permittee or a licensee of the U.S. who desires to use the right-of-way for such purposes, is required to make application therefore and to comply with all the provisions of these regulations relating to applications and applicants. . .

Use of U.S. roads or lands for the transportation of timber or other forest products by someone other than the permittee without authorization is considered by the U.S. to be trespass (43 CFR §2812.1-3).

C. Permittee Actions Requiring an Assignment

The U.S. must determine whether a formal assignment of an O&C permit is necessary, or whether some other type of administrative action would suffice. The following sections describe various actions of the permittee which require an assignment of an O&C permit if a new party wishes to exercise rights in the permit and discussion of the impacts of these actions on the reciprocal right-of-way agreement.

1. Transfer of Permittee Lands

When a permittee transfers any or all of their lands that are served by a permit, an assignment is required in order for the new landowner to exercise any rights over the U.S. lands or roads included in the permit. When the U.S. becomes aware of a land transfer, the permittee and the new landowner should be made aware of the permit assignment requirements.

a. Rights and Obligations in “Agreement” When Permittee Land is Sold

When an O&C permit is part of a reciprocal right-of-way agreement, certain provisions in the Agreement (usually found in Exhibit B) also apply to the new landowner, whether or not the Permit is assigned. The rights of the U.S. in the Agreement never have to be assigned because they are a recorded encumbrance on the permittee’s land and pass with the title (see Chapter X. for information on land transfers).

See Section P.4. of this chapter for guidance on completing the data entry for partial and split assignments when new and separate SRP for the Agreement is established. This separates out from the parent Agreement the administration of the Schedule 2 lands into the new reciprocal right-of-way agreement. This will make it clear to all the correct party with whom the U.S. will deal with in exercising its rights after the assignment is made.

If there is no request for an assignment and lands are transferred by a permittee to a new landowner, the rights of the U.S. in an Agreement are not undermined for failure of a new landowner to request an assignment of the Permit rights and the new landowner should be made aware of both the rights and obligations in the Agreement.

b. Reserved

2. Permittee Sale of a Timber Deed

If the permittee sells or transfers title to all of their timber in perpetuity (but retains title to the land), the O&C permit must be assigned to the new owner who holds title to the timber deed if the timber owner wishes to exercise rights in the permit. This is because the permittee may not authorize third parties to use the permit for hauling of timber which is not owned by the permittee (43 CFR §2812.2-1). Since the permittee no longer owns the timber, the only way the timber deed owner can use the permit is to have it assigned.

3. Corporate Mergers

There are several legal opinions from the Regional Solicitor’s Office regarding the need for an assignment when there is a true corporate merger (Opinion dated January 24, 1958; Opinion dated June 30, 1960 and Opinion dated February 24, 1971). These opinions state, in part:

Although the case files supplied to us indicate that true mergers of the above corporations have occurred, this office has taken the position that O&C right-of-way permits do not pass by operation of law and in

such cases but must be treated as assignment subject to the requirements of 43 CFR §2812.7. [Underline added.]

O&C right-of-way permits are defined as being “merely non-exclusive licenses” and the reason that assignees must make the “same showing and undertaking as is required of an original applicant” is to keep the permit on a personal basis.

The O&C lands are in a checkerboard pattern and the intent of the O&C right-of-way regulations was to require the owners of intermingled land to grant reciprocal rights-of-way to the Government as a condition precedent to their receiving a right-of-way across O&C lands. In other words, the assignment provisions were deliberately drafted so as to preclude a permittee from transferring an O&C right-of-way permit to an owner of intermingled lands who is unwilling to grant the government reciprocal rights across their lands. In the case of a true merger, if the surviving corporation owned lands over which the U.S. currently did not have rights, and the U.S. desired rights, without an assignment, we could lose our opportunity to assert the rights in the original Agreement.

The above guidance confirms that in order for the surviving corporation in a true merger to be able to exercise any rights under an existing permit, it must meet the same qualifications as those for an applicant, as specified in the regulations at 43 CFR §2812.1 (see Chapter III.). In addition, the opinions also highlight the requirement for the surviving corporation (as assignee) to comply with the current regulations at 43 CFR 2812. These qualifications and requirements can only be met through the assignment process. Without a formal assignment, there would be no assurance that the surviving corporation has agreed to be bound by the regulations or that they qualify as an applicant and have agreed to be bound by the terms and conditions of the permit.

In conclusion, corporate mergers require an assignment in order for the surviving corporation to exercise rights under the permit.

D. Permittee Actions Not Requiring an Assignment

There are some situations (or actions of the permittee) as described below in which an assignment is not necessary.

1. Permittee Timber Sold “Off the Stump” (Timber Contract)

A permittee may not authorize others to use their permit except under the provisions found at 43 CFR §2812.2-2:

A permittee may not authorize other persons to use the right-of-way for the transportation of forest products which are not owned by the permittee. Any person, other than the permittee or a licensee of the United States who desires to use the right-of-way for such purposes, is required to make application therefor and to comply with all the provisions of these regulations relating to applications and applicants: **Provided, however,** that upon the request of a permittee the authorized officer may, with respect to an independent contractor who desires to use such right-of-way for the transportation of forest products owned by such independent contractor and derived from timber or logs acquired by him from such permittee, waive the requirements of this sentence. [Underline added.]

Since a timber contract is a temporary situation, an assignment is not appropriate. The wording in the above regulation that follows the words “Provided, however” allows for the timber purchaser to haul under the permit without a formal assignment. If the permittee wishes for their contractor to utilize the O&C permit to remove such timber and to be responsible for the reporting of hauling and payments of fees to the U.S. associated with their timber sale, a tripartite agreement has been developed for this purpose. See Illustration VIII-26. A tripartite agreement has three signors: 1) permittee, 2) timber purchaser and 3) BLM. See Chapter VIII. for guidance on the preparation and processing of tripartite agreements.

2. Corporate, Partnership or Individual Name Change

A simple change in a permittee’s individual, corporate, partnership, or other business name does not require the assignment of their O&C permit unless the name change is the result of a corporate merger (see Section C.3. above). For name changes other than corporate mergers, the following actions should be completed to document the name change:

a. Verification of Official Name Change

If a corporation is involved, obtain a copy of the official name change documentation which has been filed with the Oregon Secretary of State. The filing is usually accomplished with an “Article of Amendment” (State of Oregon Form OR 113) filed with the State of Oregon. If the corporation is not an Oregon corporation, the file should be documented with the evidence of the proper filing of name change in the state of incorporation, along with the documentation of subsequent notification to the State of Oregon (and verification that they are registered to do business in Oregon).

If the applicant (assignee) is a partnership or other business entity that is required to file with the State of Oregon, the BLM should require similar legal documentation from the applicant (assignee) to document the name change. If the name change involves an individual, it should also be documented with the court record or other

evidence (e.g., marriage license, court order with name change, divorce decree with portion showing name change, etc.).

b. Case File Documentation

A copy of the name change documentation shall be placed in all of the affected permittee's case files. Each official file folder label shall be updated with the new name. If the BLM District maintains a master corporate information binder, a copy of the permittee's name change information should also be placed there. Since the corporate information may contain proprietary data, both the portion of the permittee file and the master corporate binder should be maintained in a secured location (locked cabinet) when not in use. In addition, any proprietary corporate information should not be subject to release under the Freedom of Information Act (FOIA) requests.

After verification of the legality of the name change, the AO shall write the permittee a letter acknowledging the name change, indicating which permits have been updated to reflect the new name. The letter should also include a reminder that their bonds and insurance certificates also need to be updated, if not already done. Place a copy of the letter in each file (in the corporate documentation section). A sample is provided as Illustration XI-1.

c. Insurance and Bonds Updated for New Name

The permittee's insurance certificates and bonds filed with the BLM will also require modification with the new name. Verify that these items are provided in a timely manner. See Chapter VII. for guidance on proper filing of bonds and insurance certificates.

d. LR2000 Update for Name Change

For each affected permit, the following edits to the Serial Register Page (SRP) shall be made and a copy of the new SRP placed in each official case file:

- Determine if the new permittee name and address will be used for both the holder (permittee) and "billee." If there is a separate entity from the permittee that will receive and pay bills, they are called the "billee" in LR2000 and a name and address will also be needed in order to enter the this name.
- Determine if there is already a Name ID in LR2000 for both the new permittee name and address and the "billee" if one exists. If there is a separate billee, make sure there is a name ID in the system for them as well. If either or both names are not found, request a Name ID for either/both.
- If the permittee is both the holder and the billee, use Relationship Code 65 (holder/billee) to enter the Name ID for the new permittee name.

- If the permittee is only the holder and there is a separate billee, use Relationship Code 29 (holder) for the new permittee name and Relationship Code 61 for the separate billee name.
- Change the relationship code for the prior permittee (assignor) to Code 99 (Previous Int. Party)—don't use Relationship Code 25 (assignor). All other previous permittees should also be shown with Code 99.

E. U.S. Has Limited Discretion to Deny an Assignment Request

Assignments are considered to be “limited discretion” actions. That is, the BLM has limited reasons under the 43 CFR 2812 regulations for which an assignment can be denied. In addition, the BLM does not have authority to arbitrarily “narrow” the rights in the being assigned.

Most of these limited reasons are regulatory and are found in 43 CFR §2812.7 as shown below:

§ 2812.7 Assignment of permit.

Any proposed assignment of a permit must be submitted in duplicate, within 90 days after the date of its execution, to the authorized officer for approval, accompanied by the same showing and undertaking by the assignee as is required of an applicant by §§ 2812.1-2 and 2812.3-1 to 2812.3-5, and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the permit and the applicable regulations of the Department of the Interior in force as of the date of such approval of the assignment. [35 FR 9638, June 13, 1970, as amended at 41 FR 21642, May 27, 1976] [Underline added.]

Before rejecting an assignment request, the AO should attempt to resolve any issues informally. If that fails, a formal decision (with rights of appeal) should be given to the applicant. A formal decision should stipulate the specific reasons for rejection according to the 43 CFR 2812 regulations. See Chapter XIII. – Decisions and Appeals.

The following sections provide further guidance in what authority the AO has to deny or limit rights in an assignment request.

1. Reasons for Denial of an Assignment

The limited reasons that the BLM can deny an assignment include the following:

a. Application Not Properly Filed

The application for assignment was not properly filed (not on Form OR 2812-4 and/or OR 2812-4a). These forms have been developed and contain the necessary

information for the AO to determine if the applicant is qualified. In addition, the forms provide information to assure the AO that there is an accord reached between the assignor and assignee on all permit issues (such as unpaid fees, uncalculated shares, who will be responsible for deficit balances owed by permittee, to whom will the U.S. make payments for any U.S. deficit shares, etc.). If the information in the forms is not provided, the application would be considered incomplete.

b. Assignee Does Not Meet the Qualifications of an Applicant

The above cited regulations require the application for assignment must be “accompanied by the same showing and undertaking by the assignee as is required of an applicant. . .” Once an application for assignment has been received, the applicant’s (assignee’s) qualifications should be evaluated the same as for a new applicant (see Chapter III. for guidance). If they do not qualify as an applicant, the application should be rejected.

c. Applicant Refuses to Comply with Terms and Conditions of the Permit and the Current Regulations

The above-cited regulations (43 CFR §2812.7) requires the assignee to “comply with and be bound by the terms and conditions of the permit and the applicable regulations of the Department of the Interior in force as of the date of such approval of the assignment.”

If an assignment is of the old arbitration-type, it is not in compliance with the current regulations. Guidance in this chapter indicates the permit shall not be assigned without revisions to bring the permit current. This usually means creating a new permit or deleting and adding terms and conditions to be in compliance with the regulations. If the assignee refuses to accept these new terms and conditions, the assignment shall be denied.

In addition the regulations require the permittee to comply with and be bound by the terms and conditions of the permit. This would include accepting responsibility for deficit shares, etc. associated with the permit. If the assignee refuses to accept new sign the obligatory statement agreeing to “comply with and be bound” by the terms of the permit, the assignment shall be denied.

The standard reciprocal right agreement template contains the stipulations necessary to bring a permit current with regulation. Seek advice from the State Office or Solicitor regarding whether all provisions in this template are to be amended in this type of assignment.

d. Reciprocal Rights “Appear Necessary” and Assignee Refuses to Grant Such Rights When Requested

The regulations at 43 CFR §2812.7 state that the application (for assignment) must “be accompanied by the same showing and undertaking by the assignee as is required of an applicant by §§ 2812.1-2 and 2812.3-1 to 2812.3-5.

Refer to Chapter III., Section B.3., for a detailed discussion on the requirements for granting reciprocal rights to the U.S., its licensees and permittees, if the AO determines it appears necessary. The guidance in Chapter III. regarding applicant qualifications applies to applicants for assignments as well.

In summary, 43 CFR §2812.7 – Assignments, refers to the qualifications of an applicant and the requirement for granting reciprocal rights. Then 43 CFR §2812.3-1 refers to 43 CFR §2812.0-6(d).

In 43 CFR §2812.3-1, the AO “may require the applicant [to grant reciprocal rights], as a condition precedent to the issuance of the permit . . . for use by it [U.S.] and its [BLM’s] licensees **and permittees** . . .”

In 43 CFR §2812.0-6(d) “. . . the private operator will be required to grant [reciprocal rights] to the United States for use by it and its **licensees** . . .”

In either case, both sections of the cited regulations (§2812.3-1(a) and 43 CFR §2812.0-6(d)) give discretion to the AO to deny a permit assignment if reciprocal rights (for the U.S., its licensees (and permittees) “appears necessary” and the applicant refuses to grant such rights if requested by the AO.

e. Applicant Has an Unresolved Trespass Case

If an applicant for an assignment has an unresolved trespass case with the BLM, the assignment can be denied until such time as the trespass case is resolved.

2. AO Cannot Arbitrarily Limit or Narrow Rights Being Assigned

Just as the BLM cannot reject an assignment except for limited reasons, neither can the AO arbitrarily exclude certain rights contained in the existing permit from being assigned if requested in the assignment application. If the BLM refused to assign all of the rights to which the applicant is legally allowed (and which BLM has no discretion to deny), this would be considered an adverse action for which the applicant would be entitled to receive a formal decision with rights of appeal.

An example of this type of inappropriate decision would be to refuse to assign rights over entire aliquot part legal descriptions as they are described on Schedule 1 of the Permit being assigned and instead narrowing those aliquot part descriptions to road

right-of-way descriptions only. This would be considered to be an adverse decision for which the permittee would be entitled to rights of appeal.

F. Types of Assignments

There are four types of assignments: a) full, b) mass, c) partial, and d) split. In addition, often, the assignor and assignee will want rights to be assigned “in common;” that is, the assignor desires to continue using some of the permit rights “in common” with the assignee. The following describes the differences in the types of assignments:

1. Full Assignments

A full assignment is one in which the permittee (assignor) transfers all of their right, title and interest in an O&C permit to a single entity (assignee). The assignee then becomes the new permittee. No rights, liabilities, or benefits associated with the O&C permit are left with the assignor. Neither does the assignor retain any right, title, interests or responsibilities in the associated Agreement if the Permit is reciprocal. In a full assignment, the assignee is the sole successor to the assignor.

2. Mass (or Multiple) Assignments to One Entity

A mass assignment occurs when a single permittee transfers all of their right, title and interest in two or more permits to a single entity in one assignment document. This often occurs with large corporate land acquisitions. A mass assignment is typically done using Form OR 2812-4 (Illustration XI-2) by listing all of the permits being assigned. There is no need to process a separate assignment for each permit. A mass assignment can be processed quickly when a single assignee is involved and there are no common use issues that must be resolved. However, the AO should also assure that all of the insurance certificates and bonds are replaced with the new permittee (assignee). As with full assignments, the Form OR 2812-4 should also be accompanied by the Form OR 2812-4a with the transferred lands portions filled out as a minimum. Also, a records check should be made to determine if there are any outstanding fee calculations to be completed for haul that has occurred or to ensure there is no unreported road use or delinquent payments, etc.

3. Partial Assignments

A partial assignment is one in which only a portion of a permittee’s rights, title and interest in a specific permit is transferred to a new entity. In this instance, some permit rights are retained by the permittee (assignor) and do not transfer to the new landowner. A partial assignment can be made to more than one party if the permittee has conveyed land to more than one party. Each partial assignment creates a new permit separate and distinct from the original permit. Each assignee becomes a new permittee in the exercise of any rights assigned and each new permittee (assignee) assumes the rights and obligations in the associated

agreement. A new district permit number and LR2000 serial number are assigned. (See Section N.1. of this chapter for guidance on assigning new permit numbers and see Illustration XI-3 for a numbering schematic).

In situations where a permittee has transferred their permit rights through a series of partial assignments, the final assignment should always be a full assignment of the remaining interests. The procedures for a full assignment described above should apply. The full assignment will not require new numbering or the creation of a new permit. However, the BLM should verify with the final assignee (surviving permittee) that all of the residual lands remaining in Schedule 1 should correctly be assigned to them and that no legal descriptions were inadvertently left in Schedule 1 which should have been assigned to one of the other assignees. If there are any lands not needed by any of the assignees, they should be deleted (released by the assignor) prior to the final full assignment.

4. Split Assignments

A split assignment occurs when the permittee transfers all right, title and interest in a permit simultaneously to two or more parties. Split assignments are similar to partial assignments, in that there are two or more partial assignments, with the original permit number continuing for one of them.

Care needs to be exercised to ensure that each partial assignment or split assignment clearly addresses items such as: 1) payment of deficit shares owed by the U.S., 2) payment of deficit shares owed to the U.S., 3) road ownership and 4) responsibility for uncalculated shares, etc. The use of Form OR 2812-4a should provide this information.

G. Special Circumstances (Unique Assignments)

There are circumstances when both parties (assignor and assignee) cannot execute an assignment (such as the assignor is missing). In addition, there are times when title to property has transferred more than one time since it was owned by the assignor. Then, a party who is more than one title holder down in the chain of from the current permittee of record files an application for assignment. The current permittee (who is typically the assignor) is not available to assign their rights or to reach an accord with the assignee. The following sections provide guidance for handling these unique situations.

1. Missing Assignor

An assignment request may be made which involves a missing assignor. A missing assignor is a permittee who is no longer available to assign their permit. This situation could occur as a result of the dissolution of a corporation or partnership or the death of a permittee who is an individual. It is in the interest of the U.S. to

approve the assignment of a permit despite the lack of an assignor, providing that the assignee can meet all the requirements for the assignment of a permit. In order to approve an assignment when there is a missing assignor, the assignee must provide sufficient evidence to confirm that the permittee (assignor or their surviving interest) is not available. This can be established by such evidence as death certificates or corporate records from the Oregon Secretary of State indicating dissolution. The assignee should also send a certified letter to the permittee's last address of record (or evidence of attempts to contact last known registered agent of a corporation) which gives written notice that an assignment has been requested. A non-response to this notification within 30 days would constitute additional evidence which would support a decision by the BLM AO to approve the assignment of a permit without the assignor.

A sample assignment for a missing assignor is provided at Illustration XI-4.

2. Assignment by Mesne Conveyance

There are times (becoming more common) that a type of assignment referred herein as an "assignment by mesne conveyance" is necessary. An assignment by mesne conveyance is one in which an assignment is made from a permittee/assignor (either unilateral or reciprocal) to an existing landowner (assignee), but there are one or more landowners in the chain of title between the assignor and assignee who have neither applied for nor received an assignment of rights in the permit.

For example, permittee A holds a valid permit. Permittee A conveys title to land that is served by the permit to Party B. Party B does not need nor do they apply for an assignment of the permit. Party B subsequently conveys title to the lands served by the permit to Party C. Party C applies for an assignment of the permit rights which are still in the name of permittee A. In this case permittee A would be the assignor and Party C would be the assignee. Making the assignment from A to C and skipping B would be considered to be an assignment by mesne conveyance.

In this case, the file should be documented to verify that the applicant is the correct owner of record and that there was no assignment of rights of Party B.

An example of the recitals page for an assignment by mesne conveyance is included as Illustration XI-5.

H. Standards and Guidance

The standards and guidance outlined in this section should be followed when processing and approving assignments of O&C permits (either unilateral or reciprocal). All assignments shall be processed in a timely manner in order to: 1) prevent unauthorized use of public lands, 2) ensure that proper bonding and insurance is in place to protect the U.S. interest, and 3) ensure that all road use and maintenance fees are collected in a timely manner.

An assignment of an O&C permit will provide access only to those lands transferred from a permittee which are served by that specific permit. An assignment document is not the vehicle to add new lands.

An assignment of an O&C permit shall not be made for purposes other than those authorized in the specific permit (i.e., management and removal of timber and other forest products). If a new landowner applies for access rights for other uses such as residential or agricultural, a right-of-way under Title V of FLPMA is the appropriate authority.

An amendment to a reciprocal right-of-way agreement may be required **as a condition of approval of an assignment** of an O&C permit in order to:

- 1) ensure that the O&C permit being assigned is in compliance with the current 43 CFR 2812 regulations existing at the time of the assignment,
- 2) add additional rights for the U.S. over assignee lands when it “appears necessary,” and
- 3) correct any errors or omissions in the permit being assigned prior to assignment. See Section L. below for detailed discussion of prerequisite, coincidental and subsequent amendments.

The authority for item 1) above (requiring an amendment to bring a permit current with regulations prior to approval) is found in 43 CFR §2812.7:

. . . and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the permit and the applicable regulations of the Department of the Interior in force as of the date of such approval of the assignment. [Underline added.]

The authority for the AO to require reciprocal rights “as a condition of approval” of an assignment when, in the judgment of the AO, it “appears necessary” (item 2 above) is found in 43 CFR §2812.0-6(d) and 43 CFR §2812.3-1. See also Chapter V., Section C.

Regarding item 3) above, it is in the best interest of both the assignor and assignee to have errors and omissions in the permit being assigned corrected prior to assignment so as to not further perpetuate that error. These types of amendments are usually limited to correcting one or a few errors and should be fairly simple and could be processed in a short time frame, thus not delaying the assignment. In addition, as discussed in Chapter XIII., these types of amendments are not subject to any new NEPA analysis that would result in delays.

I. Filing (Application) Requirements

In processing any type of assignment request, sufficient information needs to be obtained from the parties to accurately determine:

- the type of assignment required (full, partial, split, or mass);
- whether the assignee is a qualified applicant under the regulations (43 CFR §2812.1-2(a) and (b) and 43 CFR §2812-2);
- whether the parties (assignor and assignee) have reached agreement, and
- whether the assignor and assignee have provided sufficient information to fully adjudicate their application.

Forms have been developed by BLM to ensure that necessary information to complete the application process has been provided: 1) Form OR 2812-4, and 2) Form OR 2812-4a, as discussed below.

1. Application for Full Assignments

An application for full assignment is filed with Form OR 2812-4 (Assignment of O&C Logging Road Right-of-Way Permit) (see Illustration XI-2). If there are any “in common” rights (including mineral reservations retained by the assignor where the assignor will continue to haul only mineral material), it is not considered to be a full assignment.

Any deviation from Form OR 2812-4 requires approval of the Oregon State Office. Triplicate copies are required (in order that all signors (assignee, assignor, and U.S.) each will have a copy with original signatures). Parts 1 (Assignment) and 2 (Acceptance) must be completed and signed by the assignor and assignee, respectively. The guidance for completing the form and documentation requirements is found on page 1 of the form.

In the past, the BLM has required only the submittal of Form OR 2812-4 for full assignments. However, there are many issues which may be overlooked without additional information being provided. The BLM has developed Form OR 2812-4a (Assignment Accord Worksheet) (Illustration XI-6) to ensure that ancillary issues related to the proposed assignment are identified and the application Form OR 2812-4 should be accompanied by Form OR 2812-4a. Parties to a full assignment should also be asked to complete Form OR 2812-4a because it will also help to determine whether reciprocal rights for the U.S., its licenses and permittees appear necessary. If it is truly a full assignment, most sections in the Form OR 2812-4a will be completed with an “NA.”

At a minimum, the application for full assignment must always be accompanied by the “transferred lands” portion of the Form OR 2812-4a (Page 3) in order to

document the land transfer and to help to determine if it appears necessary for the U.S. to request reciprocal rights from the assignee.

Note: Full and mass assignments should not be approved unless it is demonstrated that the assignor and assignee have reached agreement and resolved any outstanding issues related to items in Section J.9. of this chapter and in Section 2. following here.

2. Application for Partial and Split Assignments

Partial assignments are more complex than full assignments. More often than not, inadequate information is filed with the request, resulting in delays and multiple requests for information to identify and resolve issues between the assignor and assignee.

All requests for partial or split assignments must be accompanied by a completed Form OR 2812-4a (Assignment Accord Worksheet). The complete and accurate filing of this form will demonstrate that the assignor and assignee have reached an agreement (accord) on all the pertinent issues. This form, when completed, should also expedite preparation of the final assignment documents. The BLM should work closely with the parties to help gather all the information required in the form (especially if the BLM is the only source of the records) to help ensure accuracy and expedite the processing of the assignment.

Issues which must be resolved during preparation of the partial assignment document include:

- Were there any rights “reserved” by the assignor in the transfer deed which may affect the assignment (e.g., reservation of road ownership, reservation of mineral estate, etc.)?
- Are there any rights that will be assigned “in common” between the assignor and assignee?
- What rights are being fully assigned?
- What rights are being partially assigned?
- What rights are being retained by the assignor (if any)?
- What is the extent of road ownership or control to be assigned (did the assignor retain ownership or control of certain roads, etc.)?
- Who will be responsible for payment of road use (amortization) payments to the U.S. for any deficit shares owed by the assignor to the U.S.?

- Which party will receive road use (amortization) payments from the U.S. for any deficit share owed by the U.S. to the assignor?
- Who will now own permittee roads constructed on U.S. lands?
- Is the ownership status clearly defined and sufficient title documentation provided?

The Regional Solicitor indicates that the following action should be taken.

. . . After the parties have executed an agreement concerning these matters, the BLM can then meet with the parties to develop a permit for the new landowner setting forth in detail his rights and obligations. . .

Therefore, an accurate and complete Form OR 2812-4a will provide the information needed to prepare an assignment document (partial assignment creates new permit) to which all parties can agree.

3. Additional Documentation to Be Provided

Certain documentation must be submitted by the assignor and assignee in addition to the application form(s) in order for the BLM to determine: 1) if the assignee is a qualified applicant, 2) if it appears necessary that the U.S. needs reciprocal rights over the assignee's lands, and 3) if outstanding issues (such as road ownership and/or control, deficit balances, etc.) between the assignor and assignee have been resolved.

Requirements for documenting an assignee's qualifications are the same as for an applicant for a new permit (43 CFR §2812.1-2, §2812.3-1 – §2812.3-5). See Chapter III. for further information on applicant requirements.

The applicant (assignee), if requested by the AO, must provide a list of their land or right-of-way ownership (in and West of Range 8 East) in order for the AO to determine if it appears necessary that reciprocal rights are needed by the U.S., its licensees and permittees over those lands or interests in lands.

Completion of the Form OR 2812-4a should provide this information.

J. Adjudication of the Assignment Application

All applications for assignments (full, partial, split or mass) must to be reviewed for their sufficiency before processing and approval. The following steps outline the review process.

1. Timeliness of Filing of Application

The first step is to determine if the application has been filed timely. The regulations at 43 CFR §2812.7 contain a timeline requirement for the submittal of a proposed assignment to the BLM for approval:

Any proposed assignment of a permit must be submitted in duplicate, within 90 days after the date of its execution . . .

The Regional Solicitor, in an Opinion dated May 12, 1986, has provided some interpretation regarding the 90-day time frame:

. . . until a proposed action is undertaken by the former owner of land to assign the BLM right-of-way permit which benefited such lands to the new owner there is no requirement for application to the BLM for approval by the Bureau. . . The reference in our prior memorandum . . . was a reference to the time period following the execution of the proposed assignment and not to the sale of the lands which may be associated with the permit.

Based on this guidance, there is no need for the BLM to either review or approve an assignment until there is an executed document showing that the assignor has agreed to assign and the assignee agreed to accept the assignment. Completion of Form OR 2812-4 and/or OR 2812-4a which is signed by both the assignor and assignee should satisfy this requirement.

The above-referenced Solicitor's Opinion goes on to state:

While there may be no requirement that the seller of private lands initiate an assignment of the associated BLM . . . permit as soon as the land is sold, without an approved assignment the purchaser of the land will not be in a position to exercise the permit rights . . . any use of U.S. roads to haul timber without a proper right-of-way permit will be considered as a trespass. This fact should act as an incentive to complete the proper assignment of right-of-way permits within a reasonable period of time.

In the event the U.S. learns that an attempted assignment of the right-of-way permits has taken place but that no notice has been given to the BLM within the 90-day period, the possibility is created of formal permit termination . . . for failure to comply with the provisions of the regulations. However because of the seriousness of this step we would request that our office be consulted with before any action is taken to enforce this provision of the regulations.

2. Timeliness of BLM Processing the Assignment

While there is no regulatory requirement which specifies the time frame in which BLM must complete the processing of an assignment request, it should be processed as timely as possible as it could result in delays in the new landowner's ability to harvest their timber and recoup their investment or even create a trespass situation.

The timeliness of the completion of the assignment process depends in large part on the completeness of the application and information provided by the assignor and assignee. The assignment forms shown in the following sections were designed to ensure that the BLM has all of the information up front instead of going back and forth with the applicant to get more information on a piecemeal basis.

3. Identification of Parties

The assignment application should specifically identify the correct legal names (as identified in land transfer deed or title evidence) and addresses of both the assignor and the assignee. If a contract purchaser is involved in a land transfer, see Chapter X. for detailed guidance. Generally, the landowner of record and the contract purchaser must both sign actions involving lands under a purchase agreement.

4. Identification of the Type of Assignment

The type of assignment must be clearly described (full, mass, partial, or split). See Section F. above for descriptions of these types.

5. Maps (Partial and Split Assignments)

Assignment requests should include a map which provides the following information:

- identification of transferred lands,
- identification of U.S. lands in Schedule 1 over which rights need to be assigned. The map should differentiate between those lands where permit rights will be assigned "in common" and those lands where permit rights will be fully assigned,
- identification of the U.S. roads in Schedule 1 over which rights need to be assigned. The map should differentiate between those roads where permit rights will be assigned "in common" and those roads where permit rights will be fully assigned,
- identification of roads constructed on U.S. lands now owned by the assignor for which ownership will be transferred to the assignee,

- identification of any roads on the transferred lands where road ownership or control were reserved by the assignor,
- identification of other roads on the transferred lands as to whether the assignor reserved road ownership or control or whether road ownership or control was transferred to assignee in the deed or accord. This is especially important for permittee roads that the U.S. has or may share in the future.

6. Identification and Verification of Lands, Roads, and Rights-of-Way to Be Assigned

Form OR 2812-4a should provide sufficient documentation to verify: 1) what lands, roads, or rights-of-way (private easements) that have been transferred from assignor to assignee, 2) what rights will be assigned, and 3) which party will be responsible for payments to the U.S. for permittee deficit shares or payments from the U.S. for U.S. deficit shares.

- Page 1 of Form 2812-4a contains the instructions for completing the entire package. It also contains the signature blocks for both the assignor and assignee wherein they certify that the information in the package is correct and complete.
- Page 2 of Form 2812-4a contains the general information about the assignor & assignee, the permit being assigned, the type of assignment and certification statements, and a checklist to assure the completeness of the form.
- Page 3 of Form 2812-4a identifies the lands that were transferred from the assignor to the assignee. This form contains a column for BLM to complete to indicate which, if any, of the conveyed lands are already in Schedule 2 (the U.S. already has rights). This information is used to prepare a Schedule 2 as an attachment to the assignment as well as to identify any lands which the AO has determined that reciprocal rights for the U.S., its licensees, and permittees appears necessary.
- Pages 4, 5, and 6 of Form OR 2812-4a identify those U.S. lands, roads, or rights-of-way which are currently on Schedule 1 of the Permit that will be fully assigned. Page 4 is used to describe land descriptions (aliquot part, government lot or metes and bounds). Page 5 is used to describe U.S. roads on U.S. lands only. Page 6 is used to describe any U.S. easements or 3rd party reciprocal right-of-way agreement where the U.S. controls the road and permittee rights in the road that will be assigned.
- Pages 7, 8 and 9 of Form OR 2812-4a identify those U.S. lands roads or rights-of-way that will be assigned “in common” (assignor will retain rights in common with assignee). Page 7 is used to describe land descriptions (aliquot part, government lot or metes and bounds). Page 8 is used to describe U.S.

roads on U.S. lands only. Page 9 is used to describe any U.S. easements or where the U.S. owns or controls a road under a 3rd party reciprocal right-of-way agreement and the rights in the road will be assigned.

- Page 10 of Form OR 2812-4a identifies any lands that are currently in another O&C permit held by the assignee which may overlap with the rights being assigned.
- Page 11 of Form OR2812-4a includes information about permittee roads on permittee lands and identifies: 1) if ownership and/or control is being transferred to the assignee, 2) if there are any existing U.S. deficit share balances for these roads and 3) if there are any U.S. deficit balances remaining, to whom will payment be made by the U.S. after the Assignment?
- Page 12 of Form OR2812-4a includes information about permittee-owned roads on U.S. lands and identifies: 1) if ownership is being transferred to the assignee, 2) if there are any existing U.S. deficit share balances for these roads, and 3) if there is a U.S. deficit balance remaining, to whom will payment be made by the U.S. after the assignment?
- Page 13 of Form 2812-4a includes information about U.S. roads (whether on U.S. or permittee land) and identifies: 1) whether there has been a previously calculated deficit share for the assignor, 2) the current deficit balance of assignor, 3) where the calculation was for the original road or an improvement, 4) whether the road will be used in common, and 5) if the road is to be used in common, how the remaining deficit share will be split between the assignor and assignee.

It is very important that BLM independently verify from its own records the completeness and accuracy of the information supplied on Form OR 2812-4a. It is especially important to verify the following:

- The transferred lands are accurately listed on Page 3. Compare Page 3 to the title evidence supplied. If there is a discrepancy between the two descriptions, the description on the title evidence should be used in preparing the assignment document.
- The lands, rights-of-way, and roads where rights are to be assigned are actually included in the parent Permit, i.e., are on the original Schedule 1 of the Permit, or have been added by amendment, and have not been removed (released) from the Permit. When dealing with older Permits, it is not unusual for the permittee and/or BLM to come to believe that certain lands or roads are included in the Permit when they have never been legally added. BLM's verification may be documented by noting the "BLM Check" column on Pages 4 through 9 of Form OR 2812-4a. It is also important to verify that Permit

lands and/or roads that are logically needed for future assignee access have not been inadvertently omitted from the application on these pages.

- All permittee-owned roads which the assignor constructed on the U.S. lands which are involved in the assignment are included on Page 12 of Form OR 2812-4a. Verify that there are no omissions and that all roads listed are indeed owned by the assignor.
- All existing O&C permits held by the assignee, if any, have been identified and any overlaps with the rights being assigned have been completely and accurately identified on Page 10 of Form OR 2812-4a.
- All permittee and BLM roads where deficit shares have been established are listed on Pages 11 through 13 of Form OR 2812-4a. Verify that original share and current balance amounts shown are accurate. Discrepancies between the records of the assignor and BLM regarding current deficit balances are not totally uncommon. Any discrepancies must be resolved before the assignment document can be completed. It is important that ALL roads with deficit share balances are included on these pages, including those BLM-controlled roads with deficit balances that neither the assignor nor the assignee has any future need to use. Responsibility for payment of the deficit balance must be identified in the assignment document even if no future use is anticipated. There is no legal obligation to pay road use fees for such roads UNLESS and until the road is used for the transportation of timber.
- The map supplied with the assignment request is accurate and complete and agrees with the information supplied on Form OR 2812-4a.
- For system fee agreements, the amortization records needs to be checked to determine: 1) what roads have been amortized, 2) if there is a deficit balance, and 3) who is the deficit party.

The BLM should work with the assignor and assignee to correct any errors or deficiencies before starting to prepare the assignment document. This is the perfect opportunity for all parties to reconcile their records and correct any errors or gaps.

7. Identification of Lands, Rights-of-Way, or Roads Not Needed By Either Assignor or Assignee

On occasion, an assignment of either a unilateral permit or reciprocal Permit is requested in which there are some U.S. lands, roads or rights-of-way rights over which the assignor no longer needs rights and/or the assignee has not requested rights. It is in the public interest to minimize encumbrances on the public land. In this situation, the assignment should only include those rights needed by the assignee. The following is provided as guidance in dealing with this situation.

a. Full Assignments

In a full assignment, all existing Permit rights are transferred to the assignee. If any of the rights contained in an O&C permit are not needed by either the assignor or the assignee, those rights should be released by the assignor **prior to** the assignment. Guidance on releasing rights is found in Chapter XII.

Release documents signed by permittees do not require approval on the part of BLM; however, the BLM should assist in the preparation to ensure there is no inadvertent release of rights that were not intended. In addition, BLM should review the release document to determine if there are any roads which were built by the permittee on U.S. lands which neither the assignor nor the assignee need, but which the U.S. would benefit from a transfer of ownership or control of those roads. See Chapter XII. for processing a Partial Release and Sale of Road document.

b. Partial Assignments

Any unneeded rights should not be included in a partial assignment. They should be retained in the parent O&C permit of the assignor and later removed from the permit by executing an amendment with the assignor which may be processed either before, concurrently, or following completion of the assignment. If completed prior to approval of the partial assignment, this amendment should be included in the recital section of the assignment document (see Chapter XII.)

If the proposed amendment includes any existing U.S. controlled road(s) where the assignor (permittee) has a remaining deficit share, BLM should evaluate the likelihood that the assignor may need to transport timber over the road(s). As for full assignments discussed above, if it appears likely the assignor may need to transport timber over the road(s), the AO has the discretion to approve or decline the amendment. If it appears likely the assignor will NOT need to use the road(s), the amendment may be approved because the assignor (permittee) has no legal obligation to pay road use fees for such roads UNLESS it uses the road for the transportation of timber.

Any permittee-controlled roads located on the lands removed from the permit by such an amendment would become U.S.-controlled roads upon completion of the amendment.

8. Title Evidence

As with applications for new permits, owning title to the land (or title to timber) to be served by an O&C permit is a requirement of an applicant for an assignment (see Chapter III.). Title evidence should be included in the assignment documentation indicating the party who holds title to the lands (or timber) involved. Types of title evidence includes copies of the transfer deed(s) showing the assignee as the current owner or a title policy insuring that title is vested in the assignee. As a

minimum, the current vesting deed is required. The BLM should request a copy of the assignee's title policy if any ambiguity exists in the transfer deed(s).

It is BLM policy that the title evidence be reviewed by the district acquisition specialist most familiar with title clearance issues. Generally, the BLM does not request a title opinion from the Regional Solicitor's Office when processing assignments, but if any questions exist regarding sufficiency of title on the transferred lands (in order to determine if the assignee is a qualified applicant), the BLM should refer those questions to the Oregon State Office who may determine it needs to confer with the Regional Solicitor.

If the assignee is a new permittee (they don't already hold an existing O&C permit), the BLM should ask for a complete list of their land ownership within western Oregon (the O&C area as defined in the regulations). Once this list is obtained, if the list includes lands outside the authorizing district, that district should provide the list to any other Western Oregon district in which lands are listed to determine if reciprocal rights are needed in those districts.

If the assignee is an existing permittee, the BLM should ask for a list of any newly acquired lands over which the U.S. does not currently have rights. This is needed to determine if it "appears necessary" that reciprocal rights are needed by the U.S.

9. Accord Reached Between Assignor and Assignee and Common Use Issues Resolved

Before the assignment can be completed, the BLM must ensure that all of the common use or other "accord" issues have been resolved. The completion of the Assignment Accord Worksheet (Form OR 2812-4a) will assist in identifying and resolving issues. A partial assignment should not be processed until the parties have reached an agreement on all relevant matters.

There is no requirement for BLM to prepare the final assignment document. However, the BLM has traditionally prepared the assignment document because of the agency's familiarity with processing requirements and institutional expertise. Completion of the Assignment Accord Worksheet (Form OR 2812-4a) is required in order to ensure that agreement between the assignor and assignee has been reached and the BLM has sufficient information to determine whether the assignment can be approved.

K. Lands Decision Memo and NEPA Adequacy

An assignment is considered to be an action for which the BLM has very limited discretion to deny (see Section E. above). That is, BLM did not retain full and complete discretion to deny an assignment. Therefore, there is no basis for applying the requirements of NEPA, including doing a new NEPA analysis for assignment actions. Under the regulations (43 CFR §2812.7) an assignee of a right-of-way

permit is only required to make the same showings and undertakings as an applicant and to agree to comply with the terms and conditions of the permit and the regulations in force as of the approval of the assignment.

The lack of agency discretion should be documented with a lands decision memorandum (see Illustration XIII-7). (Note: This is not a NEPA Decision document but merely documents for the record why a full NEPA analysis was not required and provides the rationale and documentation for why the assignment was approved or denied (based on the limited reasons for denial).

If an amendment is needed as a result of the assignment process (see Section L. below), the requirement for a new NEPA analysis vs. merely a Lands Decision Memorandum is discussed below for each type of amendment.

L. Amendments Required as Result of Assignments

An assignment can only transfer rights, title and interests that are already contained in an O&C permit. There are times when an amendment to a reciprocal right-of-way agreement is needed to resolve particular access issues (with either the assignor or assignee) identified during the assignment process. This section discusses the various types of amendments and when they might be required. The purpose of this section is to emphasize the importance of identifying amendment needs **PRIOR TO** approving assignments. Refer to Chapter XII. for preparation and processing of amendments to reciprocal right-of-way agreements.

1. Prerequisite Amendments

Prerequisite amendments are those that are required to be completed prior to (or as a prerequisite of) processing and/or approving an assignment. The parties to this type of amendment are the assignor and the BLM. A common reason for doing this type of amendment is to correct errors or omissions in the Permit being assigned before the assignment is approved. If legal descriptions or errors in the Exhibit C map in the O&C permit being assigned are in error, and the assignment is executed without correcting them, then the rights would then be assigned in error.

When a prerequisite amendment is made prior to the final approval of an assignment, the amendment should be listed in the recitals portion of the assignment document.

The approval of the assignment (whether full, mass, partial or split) should occur after or on the date the prerequisite amendment was recorded in the County records, but in no case should the assignment be approved prior to completion of the amendment. In addition, if the amendment and assignment are recorded, the prerequisite amendment must be recorded prior to the assignment.

Amendments to correct errors and omissions do not require a new NEPA analysis, but instead the action should be documented with a Lands Decision Memorandum (see Illustration XIII-7 for a sample).

2. Coincidental Amendments

Coincidental amendments are executed simultaneously with the assignment approval and are required as a condition of BLM approving the assignment. A coincidental amendment will amend the O&C permit being assigned. The parties to a coincidental amendment are the U.S. and the assignee.

If a coincidental amendment is required, the assignment should not be approved by the BLM until the necessary amendment action is agreed to (and the amendment document signed by the assignee).

There are three main reasons why a coincidental amendment may be required: 1) to add rights in the Agreement for the U.S. over assignee's lands, 2) to add stipulations to bring a unilateral permit or reciprocal Permit into conformance with the 43 CFR 2812 regulations, or 3) to avoid creating duplicate (or overlapping) rights by eliminating any lands in Schedule 1 of the permit being assigned which are already included in Schedule 1 of another Permit held by the assignee. Coincidental amendments for different purposes are discussed below.

None of the amendments described below would require a new NEPA analysis, but instead the action should be documented with a Lands Decision Memorandum.

a. Adding Rights for the U.S. over Assignee's Lands

The U.S. may require an applicant (assignee) to grant reciprocal rights to the U.S. as a condition of approving the permit (see Chapter III.) This requirement also applies to an applicant for an assignment in accordance with 43 CFR §§2812.3-1 2812.0-6(d) Regardless of whether the reciprocal rights are acquired in association with a reciprocal right-of-way agreement or with a unilateral permit, the acquisition of rights over the assignee's lands cannot be accomplished in the assignment document itself. The following paragraphs describe the appropriate documents to use.

If the O&C permit being assigned is part of a reciprocal right-of-way agreement and the U.S. determines that it "appears necessary" that the U.S. needs reciprocal rights over lands, roads or rights-of-way of the assignee, the rights for the U.S. could be acquired in one of two ways: 1) by amending them into Schedule 2 of the Agreement (through a coincidental amendment) or 2) acquire the rights in the form of a non-exclusive easement. If a coincidental amendment is used, it must be signed by the assignee prior to the BLM approving the assignment.

If the permit being assigned is a unilateral permit, and the U.S. determines reciprocal rights “appear necessary,” the options for the U.S. to acquire the rights are: 1) to convert the unilateral permit to a reciprocal right-of-way agreement, or 2) assign the unilateral permit and acquire rights via an easement which gives sufficient rights to the U.S. to authorize use by its licensees and permittees. As with assignment of reciprocal Permits, the AO may require the rights to be granted “as a condition of approval” of the assignment. See Chapter III.

If the assignee does not agree to grant reciprocal rights, BLM AO shall deny the assignment (per the regulations) utilizing a formal Lands Decision with rights of appeal. (See Chapter XIII.)

In the case of a small landowner, the administrative responsibilities associated with a reciprocal right-of-way agreement may be burdensome and it may be preferable to acquire an easement (with rights for licensees and permittees) instead of adding rights to Schedule 2 of the Agreement. In addition, the BLM could, at the request of the small landowner, consider replacing the rights held by the U.S. in Schedule 2 of an Agreement with an exclusive easement which is narrowed to a specific right-of-way location described on a plat instead of encumbering the small landowners entire aliquot part description over which the U.S. can build a road anywhere. However, the AO should ensure that the U.S. does not give up any rights that it may need later.

b. Adding Provisions to Bring Permit in Conformance with Current Regulations

As noted above, the assignee is required to “comply with and be bound by the terms and conditions of the permit and the applicable regulations [43 CFR 2812] of the Department of the Interior in force as of the date of such approval.”

The assignment document is not the place to bring the permit current. If the permit lacks provisions required by the current regulations or if there are provisions that are inconsistent with current regulations, a coincidental amendment needs to be prepared and processed concurrently with the assignment. The assignment document should not be approved until the coincidental amendment is signed by the assignor.

If in doubt whether a permit is in conformance with the current regulations, seek advice from the Oregon State Office and/or Regional Solicitor prior to approving an assignment of the permit.

It should be noted, however, that certain regulatory requirements are also contained in Exhibit B attached to the Agreement. The coincidental amendment may add or change provisions in Exhibit B as necessary to bring it into compliance with the current regulations.

This requirement (to ensure that a permit is consistent with regulations prior to assignment), however, only applies to bringing the permit current with existing 43 CFR 2812 regulations. It does not imply or mean that the AO can require environment stipulations contained in laws that were passed after the date of the issuance of the parent permit be added as a condition of approval of the assignment.

c. Amendment to Eliminate Duplicate (or Overlapping) Rights Held by Assignee in Other Permits

The issue of overlapping rights must be examined closely by the parties when approving assignments. See Chapter XII. Amendments, for further information.

Most Permits contain a provision (first page) which reads:

All outstanding rights heretofore granted to the permittee to use such roads and rights-of-way are hereby terminated.

When processing assignments for approval, the BLM should alert the assignee to the issue of overlapping rights. If the assignee holds any existing rights over U.S. lands, roads or right-of-way (in Schedule 1 of another permit), the former rights may be at risk if the BLM approves the assignment over those same U.S. lands, roads or rights-of-way. The above provision could put road control and deficit share issues already settled under the old permit at risk.

The issue may be resolved with a coincidental amendment to consolidate both authorizations into one permit or to eliminate the duplicated rights from one of the permits. It is important to proceed with the assignment so that all road issues (deficit shares, road control, etc.) are addressed.

Road amortization shares established under two or more separate permits being consolidated should be reconciled, consolidated and documented in the surviving permit. See Chapter XII., for additional discussion on consolidation of permits.

3. Subsequent Amendments

A subsequent amendment is an action which amends the permit being assigned after the assignment is approved. The parties to this type of amendment are the BLM and the assignee (new permittee). While a subsequent amendment may be processed at the same time as an assignment, the approval of the subsequent amendment must be on or AFTER the date the assignment is approved. If the amendment and assignment are recorded, this type of amendment must be recorded after the assignment.

The need for a subsequent amendment may occur when an assignee requests rights over additional U.S. lands or rights-of-way which are not currently included in Schedule 1 of the permit being assigned. Since adding of new lands is a totally

discretionary action on the part of BLM, a new NEPA analysis and documentation should be done to support this subsequent amendment.

M. Assignment of Arbitration Agreements

As noted above, the assignee is required to “comply with and be bound by the terms and conditions of the permit and the applicable regulations [43 CFR 2812] of the Department of the Interior in force as of the date of such approval.”

If the application is for an assignment of a Permit of the vintage of the old “arbitration-type” agreements (pre 1963), these types of Permits shall not be assigned without the approval of the State Office. These types of Permits are usually not consistent with current regulations and the districts must seek advice from the State Office (who may require advice from the Regional Solicitor) regarding what changes would need to be made to make the Permit consistent with the regulations current at time of assignment.

Most likely the State Office will help the districts craft a replacement reciprocal right-of-way agreement that is closer in detail with the current semi-detailed agreements instead of doing a coincidental amendment to correct the deficiencies.

This requirement (to ensure that a permit is consistent with regulations prior to assignment), however, only applies to bringing the permit current with existing 43 CFR 2812 regulations. It does not imply or mean that the AO can require environment provisions contained in laws that were passed after the date of the issuance of the parent permit be added as a condition of approval of the assignment.

N. Assignment Document Preparation

This section provides guidance on the preparation and formatting of assignment documents and applies to the assignment of both unilateral and reciprocal permits. Triplicate original copies should be prepared so that each party to the assignment (assignor, assignee, and BLM) will end up with a complete copy (with original signatures) when the process is completed. However, only one original copy gets recorded. The BLM should record the original document and provide a recorded copy to the other parties.

1. Permit Numbering for Partial Assignments

If a full assignment is involved, the unilateral or reciprocal Permit will retain its original permit (and serial) number after assignment. The guidance in this section is written for reciprocal Permits, but also applies to unilateral permits (except there is no suffix added to the LR2000 serial number).

Most districts still retain a permit numbering system in addition to the serial No. assigned in LR2000. This has been proven to be very helpful to quickly determine

from which parent permit any newly created permit (by partial assignment) was derived. See Illustration XI-3 for a numbering schematic for partial assignments.

In a partial assignment a new permit is created and therefore is assigned a new permit number (and LR2000 serial number with an "FD" suffix). For ease of administration, the original district permit number will be carried forward with just a letter suffix added to it. For example, the first partial assignment out of S-1000 would be designated as S-1000A. The second partial assignment of another portion of S-1000 would be designated as S-1000B; the third would be designated as S-1000C, etc.

Subsequent partial assignments of partially assigned permits should be given a second-level alpha designation. For example, if a portion of the above S-1000A Permit is subsequently partially assigned, the new resulting Permit would be designated S-1000AA, etc.

For split assignments, each split is actually a partial assignment, creating a new permit, and is assigned a new permit number (and serial number also suffixed with an "FD"). However, the last partial assignment of the remaining interests retains the original permit number (and serial number), as it is treated as a full assignment of the remaining interests.

The number for a newly-created permit is identified in the "Acceptance" section of the assignment document.

2. Parties to an Assignment

There are three parties to any assignment: 1) assignor, 2) assignee and 3) the BLM AO (who approves the assignment).

a. Assignor

The assignor is the existing permittee. The assignor's name on the assignment document must be the same as it appears on the permit (unless a name change has occurred). If a name change has occurred but the case file has not been documented, see Section D.2. above for name change guidance (including proper LR2000 documentation).

b. Assignee

The assignee is the person or entity who has acquired title to land served by a permit and who desires to have some or all of the rights in the permit transferred to them. They will become a permittee following approval of the assignment. The assignee's name must be the same as on the title evidence. A name on the application which is different than the name on the title evidence must be resolved. The request for assignment should include the deed, reason for the difference in

name, and identification papers justifying the selected name. The BLM may request that the assignee provide a copy of their title report, if needed, to answer any questions regarding title encumbrances, etc.

c. BLM Authorized Officer (AO)

The BLM AO for assignments is the Field Manager (per Oregon/Washington Handbook 1203, Delegation of Authority (Appendix 1, Page 33)). Where more than one resource area within a district is involved, the AO is the District Manager (See Chapter I.). If more than one district is involved, all affected District Managers would sign (unless one District Manager is delegated authority from the State Director to sign on behalf of all districts).

3. Format for Full Assignments

For full assignments, the Assignment Application Form (OR 2812-4) is usually the assignment document itself. If this form is used, the instructions on page 1 of the form must be followed. Some permittees and BLM offices prefer a written format, even for complete assignments. If another written format is used, the typed format for complete assignments must contain all of the information on the standard form and must appear the same. It is important to remember, however, that if the assignor desires to retain any interests (including in common rights), the assignment is a partial assignment and the OR 2812-4 should not be submitted by itself but instead be accompanied by the Form OR 2812-4a. As a minimum, the Form OR 2812-4a should be completed with the transfer of lands portion completed.

4. Format for Partial Assignments

Form OR 2812-4 alone is not appropriate for partial assignments because of the many ancillary issues which are involved (schedule of lands, road control, deficit shares, common use, etc.). Therefore, a partial assignment document must be individually created on a case-by-case basis. While each partial assignment may present unique circumstances, the BLM has developed standard language and format for preparing partial assignments. Illustration XI-7 is the standard template to be followed. It provides required and optional paragraphs to address specific situations. The particular requirements and standardized items are discussed below. The guidance applies to both reciprocal and unilateral permits.

The partial assignment document is created individually and divided into three sections (which correspond with the sections on the OR 2812-4 Form):

1) Assignment, 2) Acceptance, and 3) Approval. The requirements for each section are described below:

a. Assignment Section

The Assignment section: 1) establishes the new permit, 2) identifies the assignor and assignee, 3) contains the header, and 4) describes the rights being transferred

(assigned). It also contains the assignor's agreement to assign their rights. It contains three sections (after the header): 1) the recitals, 2) the granting section (contains the "Now Therefore" statements), and 3) the signature of the assignor.

1) Recitals Section

Each "recital" starts with a "WHEREAS." This section "recites" the current status and history of the permit and provides the chain of title. It should contain enough information in the chain of title to ensure that anyone reading the document can know that the assignor had sufficient rights to assign and there has been no break in the chain of title of rights. At a minimum, this section should include: 1) a recital for the original permit and agreement, 2) a recital indicating how many times the permit has been assigned ending with an identification of the latest assignment to the current permittee, 3) a summary recital stating how many times the permit has been amended and listing the number and recording information for the last amendment to date.

2) Granting Section (Now Therefore Clauses)

The "NOW THEREFORE" section provides the words of conveyance (or assignment), and specifies the rights that the assignee receives from assignor. This section includes "accord" items agreed to by both parties. This is where agreements reached in the "accord" are stipulated.

3) Signature of Assignor

The final item in the "Assignment" section is the signature of the assignor agreeing to assign the specified rights.

4) Acceptance Section

In this section the assignee "accepts" the assignment and agrees to be bound by and comply with the terms and conditions of the permit and the applicable regulations in force as of the time of assignment.

This section should be labeled as "Acceptance of Assignment" and should start a new page.

The regulations at 43 CFR §2812.7, requires the assignee to:

. . . agree to comply with and be bound by the terms and conditions of the permit and the applicable regulations [43 CFR 2812] of the Department of the Interior in force as of the date of such approval of the assignment. [Underline added.]

If new regulations have been published since the approval of the permit being assigned, the assignee is responsible for complying with them, in addition to the

terms and conditions of the permit. Any new provision would be included in the "Acceptance" section of the written document.

The prescribed wording for this section is as follows:

[Name of Assignee] hereby accepts the above partial assignment of O. and C. Logging Road Right-of-Way Permit [insert old (existing) permit No.] and, in consideration of U.S. approval of such assignment, agrees as follows:

1. To assume and perform from and after the date hereof all duties and obligations of assignor under said permit [old permit No.] arising out of the rights assigned herein to assignee.
2. To comply with and to be bound by the terms and conditions of said permit [old permit No.] and the applicable regulations of the Department of the Interior in force as of the date of approval of this assignment.
3. That the assignee's interest in said permit [old permit No.] shall hereafter be designated and referred to as O. and C. Logging Road Right-of-Way Permit No. [new permit no. with alpha suffix], Serial No. [new serial No.].

The signature block and acknowledgement blank for the assignee would follow.

Any deviation in the standard wording above must be approved by the Oregon State Office.

5) Approval Section

This section contains the signature of the BLM AO which approves the assignment of rights from the assignor to the assignee. This section should start on a new page and be labeled as "Approval of Assignment" and must contain the following wording:

Approval of this assignment is not intended to modify or limit the rights of the U.S. Bureau of Land Management as provided for in the O. and C. Logging Road Right-of-Way Permit, [old permit No.].

If the assignment includes lands in more than one Field Office within the same district, the District Manager must approve. If the assignment involves two BLM Districts, both District Managers must sign, unless the State Director has delegated approval authority to one of the District Managers.

b. Schedules and Attachments

The prescribed schedules and attachments for partial and split assignment documents include:

Schedule 1 – Rights Fully Assigned

Schedule 1 – Rights Assigned in Common

Attachment A – Assignor Responsibility for Deficit Shares

Attachment B – Assignee Responsibility for Deficit Shares

Attachment C – Road Control and Future U.S. Payment of Deficit Shares

Exhibit C – Like Exhibit C in original permit, but shows the lands, roads and rights-of-way being assigned defined as “in common” or “in full”.

The exhibits and schedules in an assignment document are somewhat different than in the main documents of a reciprocal right-of-way agreement. The following sections provide guidance on the purpose and format for these items:

1) Schedule 1 – U.S. Lands

Schedule 1 will provide a listing of U.S. lands (as in Schedule 1 of the original reciprocal Permit) or the main body (Form OR 2812-3) of a unilateral permit).

The Schedule 1 in partial assignments is broken down into two tables:

- Schedule 1 – Rights Fully Assigned
- Schedule 1 – Rights Assigned in Common

If there are no rights assigned in common (where the assignor retains some rights in the assigned lands), then only “Schedule 1 – Rights Fully Assigned” is used.

In an assignment document the Schedule 1 contains only those U.S. lands, roads or rights-of-way over which rights are being assigned. In a full assignment, it is not necessary to include a Schedule 1 since all of the rights, title and interest in the existing permit are being transferred to the assignee.

The Schedule 1 in partial assignments must contain a letter suffix which matches the letter suffix of the new permit. For example, if the new permit is being numbered as R-1000A, then the Schedule 1 should be labeled as Schedule 1A. etc.

A separate page should be created for each county involved.

2) Schedule 2 – Permittee Lands

As described in Chapter V., the rights of the U.S. in Schedule 2 create a title encumbrance (they run with the land); thus there is no need for the rights to be assigned. However, there needs to be some method for the assignee to acknowledge the existence of the U.S. rights encumbering their conveyed property and a need to identify a process to follow establishing the assignee as the party with whom the U.S. must deal in exercising its rights after the assignment.

Therefore, it is BLM policy that a Schedule 2 shall be included in every partial or split assignment in order to create a separate but equal Agreement to the parent Agreement, but with the assignee stepping into the shoes of the assignor when the U.S. exercises rights over the conveyed lands. By doing this, an entirely new reciprocal right-of-way agreement file is established and maintained and administered for both U.S. and permittee use of each other's lands.

The Schedule 2 in the partial assignment is created from the information found on Page 3 of the Assignment Accord Worksheet (Form OR 2812-4a).

The verbiage to be included in the "Recitals" section of the assignment document regarding Schedule 2 lands (as shown in the partial assignment template (Illustration XI-7) follows:

WHEREAS, Assignor, in a Warranty Deed recorded on [DATE] in the Deed Records of _____ County as document No. _____, has conveyed to Assignee those certain lands served by said permit [old permit No.] described on Attachment D attached hereto and made a part hereof, and

The verbiage to be included in the "Now Therefore" section of the assignment document is found in the assignment template (Illustration XI-7) as shown below.

The United States heretofore acquired certain rights over Assignor's lands (or an Assignor's predecessor in title) under Right-of-Way and Road Use Agreement (Agreement) No. _____, (as described in the above recital), serial No. OR _____ and/or certain amendments thereto. The rights acquired by the United States under Agreement No. _____ are a title encumbrance when land is transferred. By agreeing to this partial assignment, a separate agreement with the Assignee (for exercise of the U.S. rights over the Assignee's lands) is hereby created. The Assignee and Assignor agree that the Schedule 2 attached hereto and made a part hereof represents those lands transferred to the Assignee over which the United States currently has rights. Assignor and Assignee understand and agree that the U.S. rights that encumber the lands, roads or rights-of-way identified in the

attached Schedule 2 are not affected by the partial assignment and they continue in full force and effect from the date of acquisition of those rights by the U.S. and that the rights and obligations of the Assignor in connection with the U.S. exercise of those rights is now the responsibility of the Assignee. If lands, roads or rights-of-way over which the U.S. currently holds rights in said Agreement No. _____ and those lands have been transferred to the Assignee and those lands are inadvertently omitted from the Schedule 2, it does not affect the U.S. rights and the parties agree to modify the Schedule 2 to correct any such error or omission.

3) Attachments A, B, and C

Attachments A, B and C are used to capture the various agreements reached between the assignor and assignee regarding specific road issues. All of this information is contained on Pages 11, 12 and 13 of the completed Form OR 2812-4a form (Assignment Accord Worksheet).

a) Attachment A – Assignor Responsibility for Deficit Shares

Attachment A identifies the deficit shares for which the assignor will remain responsible. If all of the roads are free use, all of the roads should be listed anyway and documented as free use.

b) Attachment B – Assignee Responsibility for Deficit Shares

Attachment B identifies deficit shares for which the assignee has agreed to assume. If all of the roads are free use and the deficit status of free use is being transferred to assignee, all of the roads should be listed anyway to document that fact.

c) Attachment C – Permittee Road Ownership and Payment for U.S. Deficit Shares

Attachment C does two things: 1) it specifies whether the U.S. will make payments for specific deficit shares to the assignor or the assignee; and 2) it identifies which party owns and controls specific road segments. These items are important when the U.S. exercises any rights over assignor or assignee lands in the future.

If the request for a partial assignment (Form OR 2812-4a) indicates that U.S. payment of existing deficit shares should be paid to the assignor and they no longer own any of the lands tributary to the roads with the existing deficit shares, the partial assignment should not be approved until there is an agreement between the parties regarding the pay-off of the U.S. deficit investment. It would be problematic because the U.S. would go to the permittee to request a license agreement and yet payment would be made to another party. The Assignment Accord Worksheet (OR 2812-4a)

contains a page specifically addressing this issue and the AO will use this agreement between the assignor and assignee to resolve this matter.

Typically, unless the transfer deed reserved road ownership to the grantor (which is extremely rare), road ownership would pass to the grantee (assignee). Based on how road ownership is addressed in the deed and the Assignment Accord Worksheet, future license agreements (and determination of road maintenance or surface replacement fees would be entered into with the party owning the road).

c. Exhibit C

The Exhibit C is a map which should include the following items clearly designated on a legend:

- Schedule 1[A] (remember letter suffix) - lands, roads or rights-of-way that are assigned fully.
- Schedule 1[A] (remember letter suffix) – lands, roads or rights-of-way that are assigned in common.

If there are any road-specific issues which need to be delineated, or are specifically highlighted in the assignment document, the road(s) involved should also be shown on Exhibit C using a specific line type to identify each category of road. This may be used to indicate:

- whether a specific permittee-owned road constructed on U.S. land will be owned by the assignor or the assignee (whether roads have transferred ownership);
- U.S. roads that will be used in common by the assignor and the assignee;
- U.S. roads that will be used solely by the assignor;
- U.S. roads that will be used solely by the assignee;
- permittee-owned or controlled roads on the transferred lands where control and/or ownership has been reserved by the assignor.
- permittee-owned or controlled roads where the U.S. has rights which are located outside the transferred lands and where road ownership or control has been transferred from the assignor to the assignee;
- roads involved with other specific situations that need to be identified graphically and
- the designation of free use status of roads when appropriate.

The numbering of the Exhibit C should also contain a lettered suffix which matches the suffix on the new permit number (e.g., if it is now Permit 1000A, then the map should be labeled as Exhibit C-A).

5. Other Assignment Format Requirements

The following general requirements apply to all assignment documents which are created:

a. Page Numbering

The following guidance should be followed regarding numbering of pages:

- All pages of the assignment document itself are numbered, including the notary page.
- If attachments or schedules contain more than one page they are numbered independently from the main assignment document.
- The numbering format shall be "Page ___ of ____."

b. Dates

Each page of the document and attachments is dated (in the footer) with the date of the last revision. All pages should have the same date.

c. Form Number

If a full assignment is completed using an electronic version of the standard assignment form (OR 2812-4), the final document must appear exactly like the approved form with numbering, etc. and all components in the same position as they appear on the approved form.

This form is available in a PDF fillable format on the BLM Oregon intranet site (under the "Information Mall" and the "forms register").

d. Name of Assignor and Assignee and Use of Acronyms

If the assignor or assignee are corporations, the words "an Oregon corporation" (or another state of incorporation) must appear after the first time it is used.

An acronym or alternate designation for any of the parties (Assignor, Assignee, or BLM) may be used as long as the first time the name appears matches how it appears on the permit (for assignor) or on the title evidence (for the assignee) and after the first it is used in the document it is followed by the phrase "hereinafter called" to designate the acronym used thereafter. The acronym may thereafter be used throughout the entire document except in the signature and notary sections.

If an acronym or alternate designation is not used, the full name as it first appears must be used throughout the entire document and attachments.

e. Signature and Acknowledgements

A signature and acknowledgement (notary) blank is needed for the assignor, assignee, and BLM AO if the assignee wishes to have the assignment recorded. Typically the assignee wants to have the assignment recorded so the BLM should assume this is preferred unless indicated otherwise. If the signature blocks and notary blanks do not fit on the bottom of a page with assignment text, insert a page break and keep them together on the following page. The recommended standard practice is to prepare any assignment document with notary blocks.

The typed names in the signature blocks must appear identical to how they are listed in the beginning of the document.

If the signor is other than an individual (like an officer of a corporation), the signor's status should be verified using the required legal documents submitted with the assignment, or that are on file.

The assignor signature and notary blank appear at the end of the "Assignment" portion of the partial assignment document (after the "Now Therefore" and before the "Acceptance" section).

The assignee signature block and notary blank appear at the end of the "Acceptance" section (and before the "Approval" section).

The BLM AO signature block and notary blank appear at the bottom of the "Approval" section.

O. Final Processing and Approval

1. Compliance Check

Prior to completing (and approving) an assignment, the BLM road and accounting records should be verified to ensure that the assignor is in compliance with the terms and conditions of the permit being assigned. The following items should be verified:

- The assignor has no unpaid bills for road use and maintenance fees.
- There are no delinquent required Reports of Road Use.
- There are no other unresolved noncompliance issues.
- Perform road inspections for any recent use by assignor to ensure roads were left in "at least as a good condition" than before haul.

If the Permit being assigned is reciprocal, also verify:

- Posting of the road amortization records for the Permit and associated Agreement is current.
- There are no outstanding road use fee calculation requests for any roads involved in the assignment.
- There are no outstanding right-of-way plat requests for road construction or improvement by either the assignor or BLM across the lands being assigned.

If any incomplete or unresolved issues are identified, they must be resolved prior to completing the assignment. Current and complete road amortization, construction and improvement data is needed to accurately prepare the assignment document, exhibits, and attachments. It is especially important that all road use reporting, fee payment and noncompliance issues are resolved and current prior to approving a full assignment and releasing the assignor's bond.

2. Full and Mass Assignments

When the application (Form OR 2812-4) has been determined to be acceptable (but prior to approval), notify the assignee of any bonding, insurance, or qualification documentation requirements that need to be met before the AO can approve the assignment.

After the assignee has provided the bond, evidence of insurance, and/or qualification documentation, if required, route the lands decision memo (see Section K. above) for approval by the AO. The assignment document (Form OR 2812-4) may accompany the lands decision memo or may be routed separately for signature by the AO after the decision memo has been approved. Assignments are approved by the appropriate Field Manager. If more than one resource area is involved, the assignment documents must be signed by the District Manager. If more than one district is involved, it is signed by all affected District Managers unless by special delegation from the State Director one District Manager is delegated authority to sign on behalf of all districts..

If only one copy of the application (Form OR 2812-4) has been submitted, BLM must retain the approved copy (with original signatures by all three parties) in its case file for the permit. In this case, copies of the approved form should be mailed to both the assignor and the assignee.

If three original copies of the application (Form OR 2812-4) have been submitted, all three should be routed for signature by the AO. Following approval, one original copy should be filed in the permit case file, one mailed to the assignor and the last original copy mailed to the assignee.

The copy to the assignee should be accompanied by a complete copy of the permit(s) and any associated amendments as well as a complete copy of the reciprocal right-of-way agreement (if the permit is reciprocal), unless copies have been previously provided.

If an amendment is involved with the assignment (see Section L. above), the process differs as follows:

- If a prerequisite amendment (see Section L.1. above) is needed, a draft copy should be mailed to both the assignor and the assignee prior to routing the lands decision memo for approval. Each page of the draft copy should be dated and clearly marked "DRAFT".
- If a coincidental or subsequent amendment (see Sections L.2. and L.3. above) is involved, a draft copy should be mailed to the assignee prior to routing the lands decision memo for approval. Each page of the draft copy should be dated and clearly marked "DRAFT".
- Do not route the lands decision memo for approval until the assignor and/or assignee, as appropriate, have responded that the draft amendment document is acceptable to them and any remaining amendment issues identified by either the assignor or assignee have been resolved.
- If the amendment is coincidental, the decision record for the amendment must be approved and the amendment must be executed by the assignee and be in the BLM AO's possession before the assignment document (Form OR 2812-4) can be approved by the AO. The amendment may be signed by the AO on the same date as the assignment document is approved, or at a later date.
- In no event should the amendment be signed by the AO and recorded before the assignment is approved.

3. Partial and Split Assignments

Prepare sufficient original copies of the assignment document, including all schedules, exhibits and attachments, so that each party to the assignment (assignor, assignee, and BLM) will end up with a complete copy (with original signatures) when the process is completed, unless the parties agree that the document will be recorded, then one original is sufficient.

It is the recommended practice to provide the assignor and assignee(s) with a draft copy of the document for their review and acknowledgement that the document is acceptable prior to routing the lands decision memo (see Section K. above) for approval by the AO. If a prerequisite amendment (see Section L.1 above) is needed, a draft copy should be included in the mailing to both the assignor and the assignee. If a coincidental or subsequent amendment (see Sections L.2. and L.3.

above) is involved, a draft copy should be included in the mailing to the assignee. The letter to the assignee should identify any items that need to be provided to BLM before it can approve the assignment (such as a bond or evidence of insurance).

When the assignor and assignee have responded that the draft assignment document is acceptable to them and any remaining assignment issues identified by either the assignor or assignee have been resolved, route the lands decision memo for approval by the AO, attaching copies of the final assignment document. If an amendment is involved do not route the lands decision memo for approval until the assignor and/or assignee, as appropriate, have responded that the draft amendment document is acceptable to them and any remaining amendment issues identified by either the assignor or assignee have been resolved.

After the lands decision memo has been approved (and/or NEPA document if appropriate for a subsequent amendment is involved), mail all duplicate original copies of the assignment documents to the assignor with a letter requesting that all copies be signed by an authorized official and forwarded to the assignee (or first assignee if it is a split assignment) for their signature by an authorized official and return to BLM. The letter should identify any other items that the assignee(s) needs to provide to BLM before BLM can approve the assignment (such as a bond and proof of insurance as required by the permit). A copy of the letter should be mailed to the assignee(s) to inform them of the status of the process.

If a prerequisite amendment is involved, triplicate original copies of the amendment document should be prepared (see Chapter XII.) and transmitted to the assignor either prior to or at the same time the assignment documents are transmitted if all parties have an original.

If a coincidental amendment is involved, triplicate original copies of the amendment document should be prepared (see Chapter XII.) and transmitted to the assignee at the same time the assignment documents are transmitted to the assignor.

When all triplicate original copies of the assignment document have been signed by the assignor and assignee and returned to the issuing office, take the following actions:

- Verify that all assignment document copies have been signed by the assignor and assignee(s), dated and that the persons who signed have the authority to do so.
- Verify that all signatures have been properly notarized (on all copies).
- Verify that satisfactory proof of insurance and a properly executed bond, if required by the permit, have been received from the assignee(s).

- Verify that the required applicant qualifications have been documented for the assignee(s) (see Chapter III., Section D.) has been received or is already on file with BLM.
- If any of the above items are missing or not properly executed, notify the assignor and assignee(s), as appropriate, and request corrective action. Add documentation to the case file showing the deficiencies found and how and when the proper party was notified.
- When the above items have been verified or corrective action has been completed, have all assignment document copies approved on behalf of BLM and properly notarized. Assignments are approved (signed) by the appropriate Field Manager. If more than one resource area within a district is involved, the assignment documents must be signed by the District Manager. If more than one district is involved, the assignment is approved by all the affected District Managers (unless by special delegation by the State Director one District Manager has been delegated authority to sign on behalf of all districts).
- If a prerequisite amendment is involved, the Lands Decision Memo for the amendment must be signed, the amendment must be executed by both the assignor and BLM, and the prerequisite amendment must be recorded before the assignment document can be approved by the AO.
- If a coincidental amendment is involved, the decision record for the amendment must be approved and the amendment must be executed by the assignee and be in BLM's possession before the assignment document can be approved by the AO. The amendment may be signed by the AO at the same time the assignment document is approved, or at a later date. In no event should this coincidental amendment be signed by the AO and recorded before the assignment is approved.

Following approval, one original copy of the assignment document should be filed in the parent permit case file and a photocopy in each of the new permit files created by the partial or split assignment. Another duplicate original copy of the approved assignment document should be mailed to the assignee(s) and the last original copy mailed to the assignor (unless three originals were signed and an original copy is available to send). The copy to the assignee should be accompanied by a copy of the permit and any amendments and also a copy of the Agreement if the permit is reciprocal, unless copies have been previously provided.

Some districts prepare only one original copy of the assignment document. In this case BLM must retain the original (with original signatures) and transmit copies of the approved document to the assignor and assignee.

P. Post-Assignment Phase

1. Recording

FLPMA authorizes the recording of a permit. The Agreement and amendments are always recorded. If the original Permit is recorded, then recording of the assignment document may also be preferred.

Most permittees request that the assignment document be recorded. Since an assignment benefits the assignee (new permittee) they should cover the recording costs. When the prepared assignment document copies are transmitted to the assignor and assignee for signatures, the BLM should require the assignee to include a check payable to the county to cover recording costs when returning the executed assignment document copies to BLM. The BLM should then proceed to record the document (one copy) after it is approved by the AO and return a copy of the recorded document to each party.

The Oregon requirements for recording are found in the Oregon Revised Statutes, Chapter 93 – Conveyance and Recording (Sections 93.410 – 93.808- “Execution, Acknowledgement and Proof of Instruments”). Each county has format requirements specifying minimum margins for documents to be recorded. Assignment documents prepared according to the following standards should meet all of the western Oregon counties’ requirements.

- Most counties now use a recording label in the upper right hand corner of the first page. All documents expected to be recorded should have a space in the upper right-hand corner which is approximately 2” high x 3” wide. The top margin of the first page of the document should be at least 3” to allow for the label to be affixed and to ensure that no text or any part of the recorder’s label will be eliminated if the document is subsequently two-hole punched at the top for filing or the recording is in more than one county, some counties attach their cover sheet with the recording information.
- Place a return address labeled as “After Recording Return to:” in the upper left hand corner of the first page and enter the BLM address.
- The paper used should be letter size to facilitate recording without folding.
- The font used should be no smaller than 10 point.

The assignment document is not a conveyance of possessory interest in land. Therefore, the statutory statements for such documents are not required, i.e., zoning statement, tax address, etc.

For additional guidance, the local county recorder’s office should be consulted.

2. File Organization

For full assignments, the original recorded assignment document should be filed in the permit case file. For partial assignments, the original recorded assignment document should be filed in the original permit case file and a copy of the document (showing all the recording information) should be filed in the newly-created permit file(s) (or vice versa).

For partial and split assignments, a new serialized case file must be established for each new permit that is created. The file should be organized in the same manner as the parent unilateral or reciprocal case file. A full copy of the parent permit (including all amendments up to the time of the assignment) should be placed in the new permit case file for reference. A divider may be placed on top of the copies identifying everything below that point as a copy from the parent permit file. For reciprocal Permits, copies of the parent Agreement and supporting documents (license agreement form, etc.) should also be placed in the new case file. This is critical since the provisions in the original permit (and Agreement if applicable) apply to the new permit and this will eliminate the need to pull the parent case file every time an action is processed for the new permit.

3. Reporting Accomplishments and Updating LR2000

a. Full and Mass Assignments

Report a unit of accomplishment under 6310 sub-activity and FP program element.

1) In LR2000:

- Determine if the assignee (new permittee) name/address will be used for both the permittee and billee. If there is a separate billee, get the correct name and address.
- Determine if there is already a Name ID in LR2000 for both the assignee (new permittee) name/address (and the new billee name/address if applicable). If not, enter a Name ID for either/both.
- If the assignee (new permittee) is both the holder (permittee) and the billee, enter the Name ID for the new permittee name and enter Code 65 (holder/billee) as the Relationship Code. If the permittee is only the holder (permittee) and there is a separate billee, enter Code 29 (holder) as the Relationship Code for the new permittee name, and Code 61 as the Relationship Code for the separate billee.
- Change the relationship code for the assignor name to Code 99 (Previous Int. Party)—don't use "Assignor (code 25)."

- Enter Action Code 140 (Assignment Filed) – Use the date we received the application (From OR 2812-4). In the remarks column, enter “From [assignor name]” (can abbreviate).
- Enter Action Code 139 (Assignment approved) – Use the date approved by BLM. In remarks column, enter “To [name of assignee] (can abbreviate).
- For mass assignments, report a unit of accomplishment for each permit assigned. Update LR2000 for each permit assigned.

b. Partial and Split Assignments

See Section P.5. below for guidance on creating new Serial Register Pages and updating current Serial Register Pages in LR2000 for the Agreement side since a Schedule 2 is created to identify the permittee lands now owned by the assignee which are already in Schedule 2 of the parent Agreement.

The following sections provide guidance for updating LR 2000 for both the parent permit and the new permit created by partial assignment and the separate but equal Agreement that was established as a result of the partial assignment.

1) New Permit Created by Assignment

For a unilateral permit, report a unit of accomplishment under 6310 subactivity and ER program element. In LR2000, obtain a new serial number but do not add the “FD” suffix to the number as there is no corresponding “PT” side.

For a reciprocal Permit, also report a unit of accomplishment under the 6310 subactivity and ER program element. In LR 2000, obtain a new serial number and add “FD” in the suffix field. Use Case Type 281230.

For split assignments, this procedure will need to be repeated if more than one new permit was created (remembering that the final portion of the split will be treated as a full assignment of the remaining rights and as such will retain the original numbering—see Illustration XI-3).

c. For both unilateral and reciprocal permits:

- Determine and enter the appropriate legal descriptions and acreages for the lands, and interests in land where rights were assigned to the assignee. Include all lands assigned, whether in full or in common. Schedule 1 of the assignment document may be used for this purpose.
- Determine if the assignee (new permittee) name/address will be used for both the permittee and billee. If there is a separate billee, get the correct name and address.

- Determine if there is already a Name ID in LR 2000 for both the assignee (new permittee) name/address (and the new billee name/address if applicable). If not, enter a Name ID for either/both.
- If the assignee (new permittee) is both the holder (permittee) and the billee, enter the Name ID for the new permittee name and enter Code 65 (holder/billee) as the Relationship Code. If the permittee is only the holder (permittee) and there is a separate billee, enter Code 29 (holder) as the Relationship Code for the new permittee name, and Code 61 as the Relationship Code for the separate billee.
- Enter Action Code 387 (Case established) – use date the parent permit was established.
- Enter Action 307 (Right-of-Way Granted) – use date the parent permit was approved.
- Enter Action Code 553 (Case created by Assignment) – Use the date the partial assignment was approved.
- Enter Action Code 404 (Title Recordation) – Enter the recording information in remarks if the assignment document was recorded. Use the date the document was recorded. Repeat the entry for each county involved.
- Enter Action Code 501 (Reference No.) – Enter the new District permit number in the remarks column (e.g., R-1000A).
- In the general remarks screen at the bottom enter “This file was created as a partial assignment of [R-1000] from ___ to ___.”

1) Parent Permit

In LR2000 (under original permit serial number):

- Remove the appropriate legal descriptions for the lands and interests in land where rights were assigned in full to the assignee. This is accomplished by placing a “7” in front of the section number if all lands in that section were removed from the parent permit. If only a portion of the lands included in the parent permit within a section are assigned out in full, remove those legal descriptions for lands and interests that were assigned out in full. Enter a new line for that same section, placing a “7” in front of the section number, and enter the legal descriptions for the lands where rights were assigned in full. Reduce the acreages appropriately to reflect the lands removed from the parent permit.

- Enter Action Code 140 (Assignment filed) – use the date we received the application request. In the remarks column for this entry enter “From [name of assignor]” (can abbreviate).
- Enter Action Code 139 (Assignment approved) – use the date the partial assignment was approved by BLM. In the remarks column for this entry enter “To [name of assignee]” for each partial assignment.
- Enter Action Code 570 (Case Established by Assignment) – use date the partial assignment was approved. In the remarks column for this entry enter the new serial No. and new permit No. [e.g., OR 56333; R-1000A]. In a split assignment, this line is not entered for the final portion of the split which is treated as a full assignment.
- Enter Action Code 404 (Title Recordation) – Enter the recording information in remarks if the assignment was recorded. Use the date the assignment document was recorded. Repeat the entry for each county involved.

4. U.S. Rights After Assignment

While the U.S. rights over Schedule 2 lands never have to be assigned (they run with the land—see Chapter V.), a Schedule 2 shall be created in order to make it clear that the assignee is now the party with whom the U.S. will deal in exercising its rights over the transferred land.

The Schedule 2 would be created by including the lands identified by BLM in the last column of Page 3 (of Form OR 2812-4a) as being transferred lands which are already included in Schedule 2 of the Agreement.

So that there is no misunderstanding on the part of applicants who are new to reciprocal right-of-way agreements, the letter similar to that found at Illustration XI-8 should be mailed to the applicant once the application form (OR 2812-4a) has been received and reviewed for completeness. This letter explains the rights and obligations as a new landowner over which the U.S. has rights, regardless of whether or not the assignment has been approved.

This letter should also be sent to assignees familiar with reciprocal rights-of-way because it also provides them with a complete copy of the reciprocal right-of-way agreement (Permit and Agreement) being assigned.

The file is organized as with any other reciprocal right-of-way agreement and all requests for terms and conditions of use, fee calculations, approval of right-of-way plats, and license agreements, etc. that are completed with the new permittee (assignee) are maintained in the new reciprocal right-of-way agreement file.

5. **Creating a New Serial Register Page for the Separate Agreement to be Administered with Assignee**

As described above, a new reciprocal right-of-way agreement file would be established for administering both the Permit and Agreement rights associated with the partial assignment. In order to more efficiently administer the Permit rights with the new party, a new SRP should be established to properly account for the actions that occur with the new landowner. See Illustration VI-10 for data abstracting guidance for actions related to reciprocal right-of-way agreements.

a. **Case Type**

The case type is 210003 if the parent Agreement was granted prior to FLPMA (1976).

The case type is 210013 if the parent Agreement was granted after FLPMA (1976).

Remember, the dates for the Agreement are tied to when the original rights were granted—not the date the separate but equal case file for the Agreement is established as a result of the partial assignment.

b. **Establish New Serial Register Page (SRP) for Agreement Rights**

Establish a new SRP using the Serial No. from the original (parent) Agreement, but instead of using the “PT” suffix, use the alpha-suffix which corresponds with the newly created permit No. For Example:

The serial No. for the parent Agreement is OR 55555 PT
 The local reciprocal right-of-way Agreement No. is S-200.
 The permit created by partial assignment is S-200-A.

The new serial No. for the Agreement rights would be OR 55555 A
 (Note: It DOES NOT have the same serial No. as the newly created permit).

After the serial No. is established the following should be entered in this new SRP for the Agreement:

1) **Customer Details Screen**

Enter Code 22 and BLM as Acquiring Agency, with 100% interest.

Enter Code 33 and select the name of original Grantor with 0.00% interest. If they are not in the “Lookup” table someone with permissions to enter Name ID’s will have to enter them into the system.

Enter Code 26 and select name of current landowner (assignee) with 0.00% interest.

2) Location Details Screen

Enter any legal descriptions for private lands, roads or easements that in the Schedule 2 attached to the partial assignment document (they should be lands that are already in the Schedule 2 of the parent Agreement). These are the Schedule 2 lands that are now owned by the assignee. (Make sure the legal descriptions are EXACTLY as they were written in the original. (If any were described in error they should have been corrected with an amendment.)

3) Action Details Screen

Enter the following mandatory codes:

Code	Action Type	Remarks	
387	CASE ESTABLISHED		Enter the date the new reciprocal right-of-way file was established as a result of the partial assignment.
501	REFERENCE NUMBER	S-200A;	Enter the number of the original permit No. with the alpha suffix matching the permit No. that was assigned Use date the case file established above.
887	AGREEMENT SIGNED		Enter the date the ORIGINAL Agreement was signed— NOT the date the partial assignment was approved.
503	LENGTH IN MILES	UNK;	Use same date as Agreement signed.
504	WIDTH IN FEET	VAR;	Use same date as Agreement signed.
763	EXPIRES	PERPETUAL;	Use 01/01/99 if perpetual.
404	TITLE RECORDATION	Vol__,Pg__;	Use date original Agreement was recorded and the original recording information in remarks.

After the assignment is approved, as fee calculations, right-of-way plats, license agreements, etc. executed with the new permittee occur, they will be entered in this SRP (and not the SRP for the parent Agreement).

Any subsequent amendments with the assignee would be numbered starting with No. 1 for the newly-created reciprocal right-of-way agreement (e.g., amendment 1 to S-200A);

4) Remarks Screen

In the remarks screen for the new Agreement SRP enter the following at a minimum:

“This SRP is established to document Agreement rights held by U.S. in [Parent Permit No.] which are now administered by [name of assignee].”

“See OR 55555 PT for parent Agreement.”

5) Jurisdiction Acres

Enter the following in the “Jurisdiction Acres” screen for the new Agreement Serial Register Page.

- Type = 60
- Code = Private
- Acreage = (calculate from the legal descriptions shown in Location Details Screen).

Enter the same acreage broken down by County.

6. Update Original Serial Register Page for Agreement Rights (“PT” side)

The following updates must also be made to the SRP for the parent Agreement.

a. Location Details Screen

Complete the following actions for the location details screen in the parent Agreement SRP.

Put a “7” in front of any legal descriptions that are now owned by the assignee.

b. Remarks

In the “Remarks” screen, enter the following:

See OR 55555 A for U.S. rights in Agreement S-200 which are now administered by [name of assignee], the new landowner in RROW S-200A.

OR 55555 A was created as a result of partial assignment.

7. Unit of Accomplishment – Agreement Side

There is NO unit of accomplishment to report for creating the Agreement side of the file or SRP associated with a partial assignment.

Q. Treatment of Ledger Balances in System Fee Agreements under the Different Types of Assignments

Under reciprocal right-of-way agreements with a “system fee” arrangement for road amortization, a system fee ledger is maintained for the reciprocal right-of-way agreement and only one party (the BLM or the permittee) has a deficit balance at any given time. The accounting and responsibility for this ledger balance needs to be addressed in an assignment. Guidance for disposing of this issue for each type of assignment (full, mass, partial, or split) is found Chapter V., Section J.7.

CHAPTER XI – Table of Illustrations

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XI-2	Form OR 2812-4 – Assignment of O&C Logging Road Right-of-Way Permit.....	XI-54
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Illustration XI-1
Letter Acknowledging Permittee Name Change
Page 1 of 1

2812
Permit No.
Serial No.

Timber Wolf Lumber Co., Inc.
Attn: Mr. Wright O. Way
1111 1st. Avenue
Myrtle Creek, OR 97472

ACKNOWLEDGEMENT OF NAME CHANGE

Dear Mr. Way:

You submitted a copy of the Article of Amendment (OR 113) filed with the State of Oregon which legally changed the name of your corporation from Timber Beast Logging Group, Inc. to Timber Wolf Lumber Co., Inc. This letter is to confirm our acknowledgement of your official name change.

We will place a copy of the Article of Amendment and this letter in each case file for the following permits:

R-555 (serial No. OR 022222)
R-632 (serial No. OR 032345)
R-701 (serial No. OR 076688)

In addition, we will be changing the name in the LR2000 data base. This will allow any future billings to be made in the correct name.

We have not yet received copies of amended bonds and insurance certificates in connection with the above permit which names Timber Wolf Lumber Co., Inc. as the principal insured. Please submit these as soon as possible. You should contact our accounting technician, Nancy Numbers, at 541-464-1234 to ensure that all bonds or insurance certificates on file are corrected.

Sincerely,

Field Manager

Resource Area

Illustration XI-2

Form OR 2812-4 – Assignment of O&C Logging Road Right-of-Way Permit
Page 1 of 6Form OR 2812-4
ASSIGNMENT OF O&C LOGGING ROAD RIGHT-OF-WAY PERMIT**GENERAL INSTRUCTIONS**

Submit this assignment in triplicate to the Bureau of Land Management for approval. The Assignee is required to meet the requirements of an application in accordance with the regulations in 43 CFR 2812. A copy of the regulations may be obtained from any Bureau office.

SPECIFIC INSTRUCTIONS**Item 1:**

- 1) File in triplicate

Item 2:

- a) Check the entity status of the Assignee.
- b) List in this block which (if any) of the required documents that the Assignee is attaching, as follows:

For a corporation:

- 1) If Assignee is a private corporation, one copy of its charter or articles of incorporation certified by the proper State official of the State where the corporation was organized.
- 2) If Assignee is other than a private corporation, a copy of the law under which it was formed and proof of organization under the same.
- 3) One certificate of authority to do business in the State of Oregon - if incorporated in another State.
- 4) One certified copy of its by-laws or resolution authorizing the signing officers to sign on behalf of the corporation.

For an association or partnership:

- 1) A certified copy of its articles of association or partnership, showing:
 - a) The term of the association or partnership, if limited;
 - b) The nature of business to be conducted;
 - c) Scope of authority of each partner;
 - d) Provisions for continuance in case of withdrawal or death of partner;
 - e) Evidence that one partner has the authority to sign for the other partner(s) and signed by all partners.
- 2) If no formal agreement exists, then a letter must be furnished stating no agreement exists and giving the information as outlined above.

Where the Assignee has previously complied with the requirements of 2a and 2b:

Refer to the prior case or permit numbers and the date and place where such information was furnished. State what changes, if any, have been made since the prior filings; and state in 2b of the form that the right of the company to do business in the State of Oregon has not lapsed or terminated.

Illustration XI-2

Form OR 2812-4 – Assignment of O&C Logging Road Right-of-Way Permit

Page 2 of 6

Form OR 2812-4 (November 2008)

UNITED STATES DEPARTMENT OF THE INTERIOR
 Bureau of Land Management, Oregon State Office
ASSIGNMENT OF O&C LOGGING ROAD RIGHT-OF-WAY PERMIT
43 CFR 2812
 (Assignment, Acceptance, & Approval)

1. ASSIGNMENT (ASSIGNOR SIGNATURE)

Permit No(s) being assigned:				
Serial No(s):				

Name of Assignor:	
--------------------------	--

For and in consideration of the sum of one dollar (\$1.00) and other valuable consideration, Assignor hereby assigns, transfers and sets over to:

Name of Assignee:	
--------------------------	--

Assignee Address (Street, City, State, Zip)	
--	--

All of my right, title and interest in and to the roads, buildings, structures or other improvements placed upon or across the area covered by the right-of-way permit(s) specified above and granted to me by the United States of America, together with my duties, obligations, and rights of use of such area in accordance with the terms of said permit(s) and the right to any credit for advance fees paid thereunder. The purpose for which the right-of-way was granted is for the management and removal of timber and other forest products from land owned or controlled by the Assignor.

*Signature of Assignor	Title (if corporate, etc.)	Date
------------------------	----------------------------	------

*Attest Signature (if corporate)	Attest Title	Date
----------------------------------	--------------	------

*SIGNATURES MUST BE NOTARIZED. SELECT APPROPRIATE ASSIGNOR ACKNOWLEDEMENT BLOCK ON PAGE 2.

Title 18 U.S.C. section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

Illustration XI-2

Form OR 2812-4 – Assignment of O&C Logging Road Right-of-Way Permit

Page 3 of 6

ASSIGNOR ACKNOWLEDGEMENT IF INDIVIDUAL
(Use multiple if more than one individual signor)

STATE OF OREGON)
COUNTY OF) ss:
On the ____ day of _____, 20__ personally came before me, a notary public in and for said County and State, the within-named _____, to me personally known to be the identical person(s) described in and who executed the within and foregoing instrument and acknowledged to me that (he/she) executed the same as his/her free and voluntary act and deed, and for the uses and purposes therein mentioned.

[SEAL]

Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

ASSIGNOR ACKNOWLEDGEMENT IF PARTNERSHIP
(Use multiple if more than partner must sign)

STATE OF)
COUNTY OF) ss:
On the ____ day of _____, 20__ personally came before me, the within-named _____, partner(s), to me personally known to be the identical person(s) (or whose identify was proven to me on the basis of satisfactory evidence) who executed the within and foregoing instrument on behalf of _____, a partnership, and acknowledged to me that (he) (she) (they) is/are authorized to execute said instrument, and he/she/they executed the foregoing instrument as the free and voluntary act and deed for the partnership firm.

[SEAL]

Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

ASSIGNOR ACKNOWLEDGEMENT IF CORPORATION

STATE OF OREGON)
COUNTY OF) ss: [ENTER COUNTY WHERE PERMITTEE WILL SIGN]
On the ____ day of _____, 20__ personally appeared before me _____ and _____, both personally known to me (or whose identity is proven to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he (she) is the [title] _____ and [title] _____, respectively, of _____ [corporation name] and that said document was signed by him (her) in behalf of said corporation by authority of its bylaws (or of a Resolution of its Board of Directors), and acknowledged to me that said corporation executed the same.

[SEAL]

Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

Illustration XI-2

Form OR 2812-4 – Assignment of O&C Logging Road Right-of-Way Permit
Page 4 of 6

2. ACCEPTANCE (By Assignee)

Assignee hereby accepts the above assignment and agrees to comply with and be bound by the terms and conditions of the right-of-way permit(s) listed above and the applicable regulations of the Department of the Interior (43 CFR 2812) in force as of the date of approval of this assignment by the United States.

*Signature of Assignee	Title (if corporate, etc.)	Date
------------------------	----------------------------	------

*Attest Signature (if corporate)	Attest Title	Date
----------------------------------	--------------	------

* MUST SIGN IN THE PRESENCE OF NOTARY – SELECT APPROPRIATE ASSIGNEE
NOTARY BLOCKS ON PAGE 4.

a. Status of Assignee:

- Individual

Limited Liability Company operating under the laws of the state of:
- Association

A corporation operating under laws of the State of:
- Partnership composed of the undersigned individuals or which partners deleted the undersigned to sign on behalf of all partners.
- Sole Proprietorship doing business as:
- Other (specify):

b. The following documents are attached (see Page 1 for instructions):

No assignment will be recognized unless and until approved by the Authorized Officer of the BLM.

Title 18 U.S.C. section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

Illustration XI-2

Form OR 2812-4 – Assignment of O&C Logging Road Right-of-Way Permit
Page 5 of 6

ASSIGNEE ACKNOWLEDGEMENT IF INDIVIDUAL
(Use multiple if more than one individual signor)

STATE OF OREGON)
) ss:
COUNTY OF)

On the ____ day of _____, 20____, personally came before me, a notary public in and for said County and State, the within-named _____, to me personally known to be the identical person(s) described in and who executed the within and foregoing instrument and acknowledged to me that (he/she) executed the same as his/her free and voluntary act and deed, and for the uses and purposes therein mentioned.

[SEAL]

Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

ASSIGNEE ACKNOWLEDGEMENT IF PARTNERSHIP
(Use multiple if more than partner must sign)

STATE OF)
) ss:
COUNTY OF)

On the ____ day of _____, 20____, personally came before me, the within-named _____, partner(s), to me personally known to be the identical person(s) (or whose identify was proven to me on the basis of satisfactory evidence) who executed the within and foregoing instrument on behalf of _____, a partnership, and acknowledged to me that (he) (she) (they) is/are authorized to execute said instrument, and he/she/they executed the foregoing instrument as the free and voluntary act and deed for the partnership firm.

[SEAL]

Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

ASSIGNEE ACKNOWLEDGEMENT IF CORPORATION

STATE OF OREGON)
) ss: [ENTER COUNTY WHERE PERMITTEE WILL SIGN]
COUNTY OF)

On the ____ day of _____, 20____, personally appeared before me _____ and _____, both personally known to me (or whose identity is proven to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he (she) is the [title] _____ and [title] _____, respectively, of _____ [corporation name] and that said document was signed by him (her) in behalf of said corporation by authority of its bylaws (or of a Resolution of its Board of Directors), and acknowledged to me that said corporation executed the same.

[SEAL]

Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

Illustration XI-2

Form OR 2812-4 – Assignment of O&C Logging Road Right-of-Way Permit
Page 6 of 6

3. APPROVAL BY UNITED STATES

APPROVED BY THE UNITED STATES OF AMERICA, acting by and through its agency, the Bureau of Land Management, Department of the Interior:

Approval of this assignment is not intended to modify or limit the rights of the United States Bureau of Land Management as provided for in the above identified O&C Logging Road Right-of-Way Permit(s).

*Signature of Authorized Officer	Title	Date

*SIGNATURE MUST BE NOTARIZED.

Agency (BLM) Acknowledgement

STATE OF OREGON)	
) ss:	
COUNTY OF)	[ENTER COUNTY WHERE BLM AO WILL SIGN]

On this _____ day of _____, 20____, before me personally appeared _____, being duly sworn, did say that he/she is the [Field Manager][District Manager] of the _____ [Field Office] [Resource Area] [District Office] of the Bureau of Land Management, and that he/she executed the foregoing instrument by authority of and in behalf of the United States of America; and he/she acknowledged said instrument to be the act and deed of the United States of America.

[SEAL]

Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

Illustration XI-3
 Partial Assignment Numbering Schematic
 Page 1 of 1

Numbering Schematic for Permits
 Created by partial Assignment

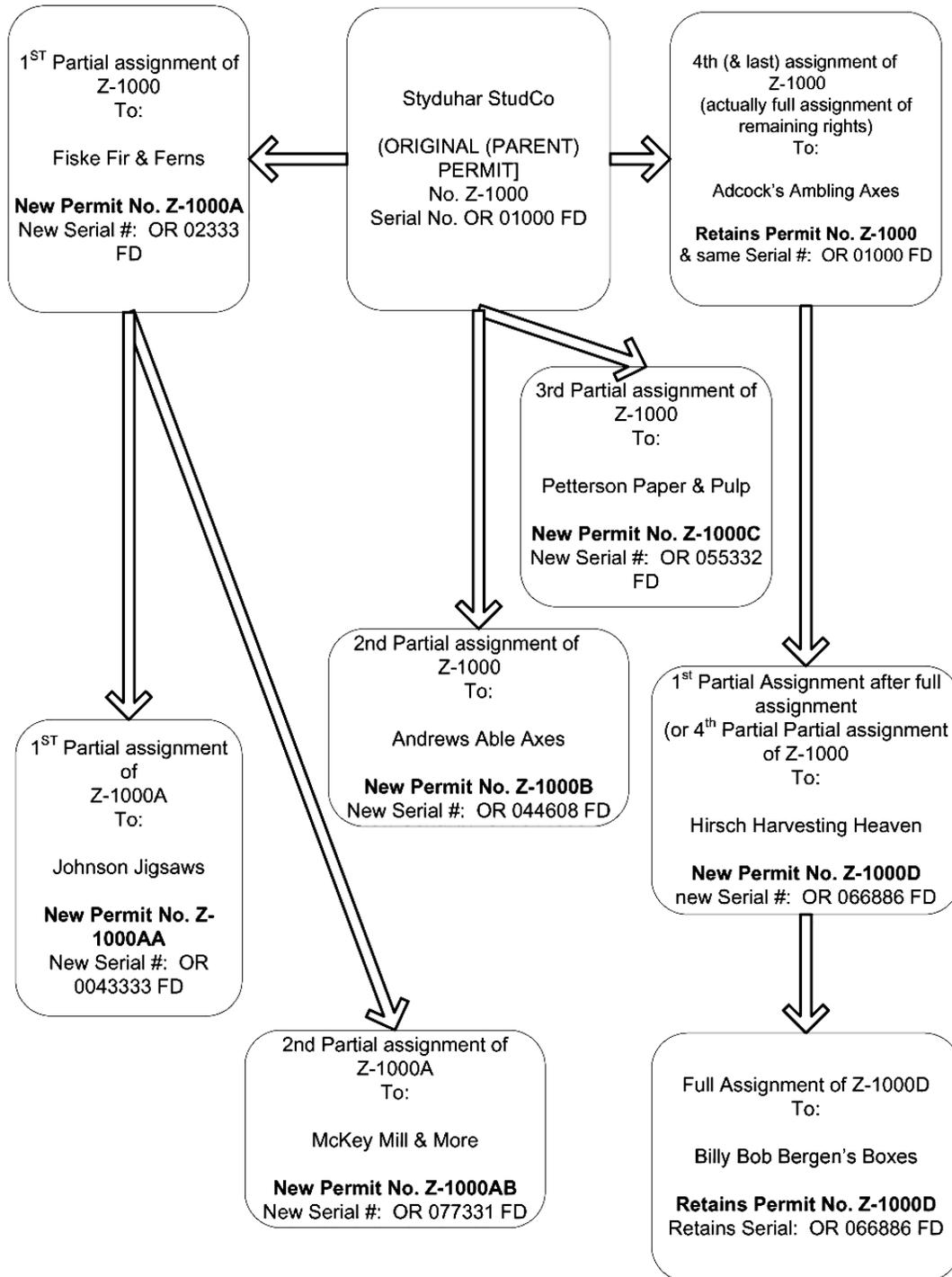


Illustration XI-4

Sample Assignment When there is a Missing Assignor

Page 1 of 3

[Use standard heading and history recitals as contained in Assignment boilerplate – Illustration XI-7]

[Use the following to complete the Assignment for a missing Assignor
[see chapter for guidance on when appropriate to use]

WHEREAS, _____. Assignee, currently holds title to those certain lands served by said permit [old permit No.] described on Attachment D attached hereto and made a part hereof, (such transfer of title being made in a Warranty Deed recorded on [DATE] in the Deed Records of _____ County as document No. _____ and the Assignee desires to have certain rights assigned to them; and

WHEREAS, the Grantor of those lands described on Attached D herein is the current holder of rights (Permittee) of said Permit No. _____ and as such would be considered to be the qualified Assignor of any right, title and interests to a qualified Assignee; and

WHEREAS, the qualified Assignor is not available to assign such rights because [they are deceased] [the corporation, partnership, etc.] **[must be a sound case why the Assignor is truly unavailable]** is no longer a valid entity], etc., and

WHEREAS, the Assignee has demonstrated to the BLM Authorized due diligence in contacting a survivor or representative of the Assignor; and

WHEREAS, the Assignor would no longer be qualified to hold rights in said Permit as it pertains to those lands described on Attached D; and

WHEREAS, certain rights granted by the UNITED STATES under said Permit No. [old permit No.] are needed by the Assignee for the management and removal of timber and other forest products **[use exact wording from Permit]** from some or all of the said conveyed lands described in Attachment D, **[use wording for the purposes of permit as described in the permit being assigned. Sometimes the wording is slightly different.];** and

WHEREAS, the Assignee has demonstrated to the BLM Authorized Officer they are qualified to have certain rights in said Permit _____ assigned to them; as described herein; and

WHEREAS, the United States is willing to grant such rights to the Assignee without benefit of the Assignor signature;

[Note: The above section DOES NOT end with an Assignor signature block as in typical Assignments.]

Illustration XI-4

Sample Assignment When there is a Missing Assignor

Page 2 of 3

ACCEPTANCE OF ASSIGNMENT

[ALWAYS START ON NEW PAGE]

[Use standard “Acceptance” language as shown in Assignment Boilerplate Template]

Illustration XI-4

Sample Assignment When there is a Missing Assignor

Page 3 of 3

APPROVAL OF ASSIGNMENT BY BLM

[ALWAYS START ON NEW PAGE]

[Use standard “Approval” Language and Format as Shown on Assignment Template]

Illustration XI-5

Sample Assignment by Mesne Conveyance

Page 1 of 4

[Use standard heading and history recitals as contained in Assignment boilerplate – Illustration XI-__]

Then use the following to complete the Assignment when there is a Mesne Assignment
(see chapter for guidance on when appropriate to use)

WHEREAS, _____. Assignee, currently holds title to those certain lands served by said permit [old permit No.] described on Attachment D attached hereto and made a part hereof, (such transfer of title being made in a Warranty Deed recorded on [DATE] in the Deed Records of _____ County as document No. _____ and the Assignee desires to have certain rights assigned to them; and

WHEREAS, the Grantor of those lands described on Attachment D herein is not the party who currently holds the rights (would be the Permittee) of said Permit No. _____, and since they do not currently hold rights in said permit would not be a qualified Assignor of any right, title and interests to a qualified Assignee; and during the time they held title to said lands, they never applied for nor expressed a desire to have any rights assigned to them; and

[Use if applicable]

WHEREAS, there are one or more additional owners of said lands in the chain of title between the current Permittee and the Assignee herein, none of whom ever applied for nor expressed a desire to have any rights assigned to them; and

WHEREAS, certain rights granted by the UNITED STATES under said Permit No. [old permit No.] are needed by the Assignee for the management and removal of timber and other forest products **[use exact wording from Permit]** from some or all of the said conveyed lands described in Attachment D, **[use wording for the purposes of permit as described in the permit being assigned. Sometimes the wording is slightly different.]**; and

WHEREAS, the current holder of rights in said Permit No. ____ (the Permittee), who is the only qualified Assignor of any right, title and interest in said permit, is willing and available to Assign such rights title and interest to Assignee;

WHEREAS, the Assignee has demonstrated to the BLM Authorized Officer they are qualified to have certain rights in said Permit ____ assigned to them; as described herein;

Illustration XI-5
Sample Assignment by Mesne Conveyance
Page 2 of 4

NOW THEREFORE SECTION

(Use any of the standard paragraphs that apply (full, partial, in common, etc.)
As shown on the standard Assignment Boilerplate template)

End this page with the “Assignor” signature.

Illustration XI-5
Sample Assignment by Mesne Conveyance
Page 3 of 4

ACCEPTANCE OF ASSIGNMENT

[ALWAYS START ON NEW PAGE]

(Use standard “Acceptance” language as shown in Assignment Boilerplate Template)

Illustration XI-5
Sample Assignment by Mesne Conveyance
Page 4 of 4

APPROVAL OF ASSIGNMENT BY BLM

[ALWAYS START ON NEW PAGE]

(Use standard Approval Language and Format as Shown on Assignment Template)

Illustration XI-6
Form OR 2812-4a – Assignment Accord Worksheet
Page 1 of 13

United States Department of the Interior
Bureau of Land Management
Oregon State Office

Assignment Accord Worksheet

Instructions:

- 1) This form is required to provide the documentation that the Assignor and Assignee of an O&C Logging Road Right-of-Way Permit (O&C Permit) have reached an "accord" regarding various issues involved in assignments.
- 2) This form (Pages 1-13) is required to be completed for any assignment of an O&C Logging Road Right-of-Way Permit.
- 3) If the assignment is a full assignment, this form is to be completed in addition to form OR 2812-4 to ensure there are no ancillary issues that need to be resolved. These can include such items as overlapping permits, "in common" use of roads or lands, deficit balances owed by U.S. or Permittee, road control, etc. Any section that doesn't apply to the full assignment can be marked "N/A".
- 4) Attach copies of all deeds, easements, or other title evidence for the transferred lands listed on Page 3.
- 5) Attach corporate, partnership, LLC or other business entity information as outlined in Chapter III. of Handbook H-2812-1 for both Assignee or Assignor (if not already on file with the BLM).
- 6) Attach a map showing: 1) U.S. lands, roads or rights-of-way to be fully assigned, 2) U.S. lands, roads or rights-of-way to be assigned in common (Assignor and Assignee will both use), and 3) Lands and rights-of-way (easements) transferred (conveyed) from Assignor to Assignee.
- 7) Some pages will serve as the basis for Attachments or Schedules in the assignment document itself. Other pages will resolve ancillary issues and will be used to determine if a pre-requisite, coincidental or subsequent amendment to the O&C Logging Road Right-of-Way Permit is needed. If a page will serve as the basis of an Attachment or Schedule in the assignment document itself, it is so indicated in a note at the bottom of the form.

Assignor Certification:

I agree with the information provided herein regarding: **1)** the general information (page 2) , **2)** the transferred lands (page 3), **3)** what rights will be assigned in full (Pages 4 thru 6), **4)** what rights will be assigned "in common" with Assignee (Pages 7 thru 9), and **5)** all information related to road issues and agreement rights (such as retention/transfer of road control, future payments and/or collection of fees related to current deficit balances in roads owed by either the United States or Assignor/Assignee anticipated before and after the assignment (Pages 11 thru 13).

I certify that to the best of my knowledge the information contained herein is accurate, represents the intent of the Assignor and will serve as the basis for the preparation of the assignment document.

Signature
Title: _____ Date: _____

Assignee Certification:

I agree with the information provided herein regarding: **1)** the general information (page 2), **2)** what rights will be assigned in full (Pages 4 thru 6), **3)** what rights will be assigned "in common" with Assignor (Pages 7 thru 9), and **4)** Information related to road issues and agreement rights (such as retention/transfer of road control, future payment and collection of fees related to current deficit balances in roads owned by either the United States or Assignor/Assignee anticipated before and after the assignment (Pages 10-13).

In addition, I certify that all information provided regarding partnership or association (if applicable--(Page 2, Item 9 & 10), land ownership (Page 2, item 4) and overlapping rights (Pages 10) is correct and complete.

I certify that to the best of my knowledge the information contained herein is accurate, represents the intent of the Assignee and will serve as the basis for the preparation of the assignment document

Signature
Title: _____ Date: _____

Illustration XI-6
 Form OR 2812-4a – Assignment Accord Worksheet
 Page 2 of 13

United States Department of the Interior
 Bureau of Land Management - Oregon State Office
 Assignment Accord Worksheet

General Information Requirements

Assignor Name/Address:	Assignee Name/Address:
Permit No. Being Assigned:	Serial No. of Permit Being Assigned (from LR2000):
New Permit No. (Partial Assignment) (<u>BLM will provide</u>):	New Serial No. (Partial Assignment) (<u>BLM will provide</u>):
1. Type (nature) of Assignment: <input type="checkbox"/> Full; <input type="checkbox"/> Partial; <input type="checkbox"/> Split (if split a separate packet for each Assignee is required); <input type="checkbox"/> Mass (several permits being assigned to one entity) List Permits here:	
2. Assignee: Does the Assignee hold any other O&C permits? No () Yes () If yes, please list permit Nos. (or attach a list):	
3. Assignee: If the Assignee holds other O&C permits, will the assignment of the Schedule 1 lands in this permit create any overlaps with Schedule 1 lands, roads or rights-of-way in other permits? No () Yes () If yes, Page 10 is completed to identify any potential overlaps []. (Note: There are provisions in most permits which indicate that new authorizations "supersede and replace" prior authorizations over same U.S. land. An assignment could still be completed, but a coincidental amendment to consolidate permits should be processed simultaneously to remove overlaps, or your rights could be in jeopardy.)	
4. Assignee: In order for the U.S. to determine if reciprocal rights are required, check one of the following:	
<input type="checkbox"/>	The Assignee has no land ownership in addition to the transferred lands.
<input type="checkbox"/>	The Assignee does not hold any other permits, but does have ownership of lands other than those being transferred from Assignor. If checked, a map or list of Assignee's lands is attached [].
<input type="checkbox"/>	The Assignee holds other O&C permits and has newly acquired ownership over which the U.S. may not currently have rights. If checked, an ownership map or list is attached.
<input type="checkbox"/>	The Assignee holds other O&C permits, but has NO additional ownership over which the U.S. does not currently have rights.
5. Assignor or Assignee: Page 3 is completed and correctly identifies those lands that have been transferred or conveyed to the Assignee. []	
6. Assignor and Assignee : Pages 4 thru 6 is completed and correctly identifies those U.S. lands, rights-of-way or roads which will be fully assigned to the Assignee. []	
7. Assignor and Assignee: Pages 7 thru 9 is completed and correctly identifies those U.S. lands, rights-of-way or roads which will be assigned " in common " with the Assignee. [] OR There are no rights being assigned "in common." []	
8. Assignor and Assignee: Pages 11 thru 13 is completed and correctly identifies road issues and agreement rights that will be transferred (such as transfer of road control, payment of deficit balances, common use, etc.) []	
9. Assignee: If individual or partnership, check here to certify that you or all members of association or partnership are a U.S. citizen. Yes [] (and signature on page 1 validates).	
10. Assignee: If partnership or association: Check one of the following: <input type="checkbox"/> Articles of Association or Partnership Agreement showing: a) terms of the partnership, if limited; b) nature of business to be conducted; c) scope of authority of each partner; and d) provisions for continuance in case of withdrawal or death of a partner. <input type="checkbox"/> If Articles do not exist, a letter is attached stating that no agreement exists and provides the above information. All partners must sign the letter. Evidence of one partner's authority to sign documents on behalf of the others must be signed by all partners.	

Illustration XI-7
Partial Assignment Template
Page 1 of 23

TEMPLATE FOR PARTIAL ASSIGNMENT DOCUMENT

A boilerplate template has been developed to provide a consistent format and methodology for preparing partial assignments of O. and C. Logging Road Right-of-Way Permits.

Most of the information that is needed to prepare a partial assignment document is found on form OR 2812-4a (Pages 1 through 9). It is important that the BLM work closely with the Assignor and Assignee in the completion of this form, as it identifies vital information needed to complete the assignment process.

Any notes that are bracketed are for informational purposes and the verbiage contained within the brackets should not be included in the document.

If a particular Schedule or Attachment included in this template doesn't apply to a particular assignment. DO NOT change the schedule number or the attachment letter of those that do apply. Name the schedules and attachments that apply as they are shown below.

Boilerplate assignment document – This document is signed by all parties: Assignor, Assignee and approved by BLM.

Schedule 1 – Identifies Rights Fully Assigned.

Schedule 1 – Identifies Rights Assigned in Common (Assignor retains some “in common” rights with the Assignee).

Attachment A – Identifies Assignor Responsibility for Deficit Share Balances owed to the U.S.

Attachment B – Identifies Assignee Responsibility for Deficit Share Balances owed to the U.S.

Attachment C – Identifies agreement between Assignee/Assignor regarding road control and to whom the U.S. will make payment of deficit shares.

Exhibit C – Map – Basically the same map as the Exhibit C in the Parent reciprocal agreement but identifies roads, lands, rights-of-way assigned.

Illustration XI-7

Partial Assignment Boilerplate Template

Page 2 of 23

R-1000 [enter the No. of parent permit being assigned]
OR 15554 [enter serial No. of parent permit being assigned]
 R-1000C [enter newly created permit No.]
 OR 55556 [enter the serial No. of the newly created permit.]

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

ASSIGNMENT OF PARTIAL INTEREST IN
 O. AND C. LOGGING ROAD RIGHT-OF-WAY
 PERMIT NO. [enter old permit No.]

ASSIGNOR: Pleasant Valley Paper, Inc.
 an Oregon corporation
 [should be exactly as name appears on permit or latest
 assignment]
 P.O. Box 11111
 Grants Pass, Oregon 95544

ASSIGNEE: Wee Wanna Log II, Inc., an Oregon corporation
 [should be name as it appears in title evidence]
 123 Main Street
 Drain, OR 95740

[RECITALS SECTION – CHAIN OF TITLE OF PERMIT, ETC.]

[recital of original “agreement”]

WHEREAS, on October 20, 1972, **Cave Man Lumber Enterprises, an Oregon corporation**, granted to the United States of America (hereinafter referred to as UNITED STATES) Right-of-Way and Road Use Agreement No. [old permit No.], which was accepted by the UNITED STATES on November 17, 1972, and subsequently recorded in the Deed Records of Douglas County on November 21, 1972 at Book 100, Page 102, said agreement granted for the purpose of management and removal of timber and other forest products from lands of the UNITED STATES [**use exact wording from specific Agreement**]; and

Illustration XI-7

Partial Assignment Boilerplate Template

Page 3 of 23

[recital of original permit]

WHEREAS, on October 26, 1972, the UNITED STATES granted to **The Cave Man Lumber Enterprises, an Oregon corporation** (hereinafter referred to as The Cave Man), O. and C. Logging Road Right-of-Way Permit No. [old permit No.] for the purpose of management and removal of timber and other forest products **[use exact wording from specific Permit]** from land owned or controlled by **The Cave Man** as of the time of exercise by Permittee of the rights granted by the government; and

[recitals of chronological events follow here (amendments, assignments, name changes, etc.)]

WHEREAS, on [DATE], Amendment No. 1 to said Permit and Agreement No. [old permit No.] was approved and subsequently recorded on [DATE] in the Deed Records of _____ County at Book _____, Page _____; and

WHEREAS, on [DATE], Amendment No. 2 to said Permit and Agreement No. [old permit No.] was approved and subsequently recorded in the Deed Records of _____ County at Book _____, Page _____; and

WHEREAS, on [DATE] the UNITED STATES approved an assignment of said Permit No. [old permit No.] from **The Cave Man** to Yadda Yadda, Inc., an Oregon corporation; and

WHEREAS, on [DATE], Amendment No. 3 to said Permit and Agreement No. [old permit No.] was approved and subsequently recorded in the Deed Records of _____ County at Book _____, Page _____; and

WHEREAS, on [DATE], a Certificate of Merger was filed with the State of Oregon, Secretary of State, documenting the merger of Yadda Yadda, Inc., into Pleasant Valley Paper, Inc., with Pleasant Valley Paper, Inc. being the surviving corporation; and

WHEREAS, on [DATE] the UNITED STATES approved an assignment of said Permit [old permit No.] from Yadda Yadda, Inc., to Pleasant Valley Paper, Inc.; and

[Option: Just summarize all amendments into one recital “said permit and agreement being amended on (no.) of occasions. Should list all assignments though to document chain of title.]

Illustration XI-7

Partial Assignment Boilerplate Template

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[recital for documenting a prerequisite amendment needed to correct errors in legal descriptions before assignment of permit could be approved]

WHEREAS, Amendment No. 3 to said Permit and Agreement No. [old permit No.] contained scrivener errors and Amendment No. 4 to said Permit and Agreement No. [old permit No.] corrected those errors, said Amendment No. 4 being approved on [DATE] and subsequently recorded on [DATE] in the Deed Records of _____ County as document No. _____; and

[recital for documentation of land transfer leading up to assignment when the transferred lands are listed in Schedule 2]

WHEREAS, Assignor, by Warranty Deed recorded on [DATE] in the Deed Records of _____ County as document No. _____, has conveyed to Assignee those lands of Assignor listed on Schedule 2 of said Permit and Agreement No. [old permit No.] which are described on Schedule 2 **[insert appropriate letter]** attached hereto and made a part hereof, and

[recital for documentation of land transfer leading up to assignment when the transferred lands are not listed in Schedule 2]

WHEREAS, Assignor, in a Warranty Deed recorded on [DATE] in the Deed Records of _____ County as document No. _____, has conveyed to Assignee those certain lands served by said permit [old permit No.] described on Schedule 2 attached hereto and made a part hereof, and

[recital for why assignment is being made]

WHEREAS, certain rights granted by the UNITED STATES under said Permit No. [old permit No.] are needed by the Assignee for the management and removal of timber and other forest products **[use exact wording from Permit]** from some or all of the said conveyed lands, **[use wording for the purposes of permit as described in the permit being assigned. Sometimes the wording is slightly different.]**

Illustration XI-7
Partial Assignment Boilerplate Template
Page 5 of 23

NOW THEREFORE SECTION

**[SETS OUT WHAT IS BEING ASSIGNED,
AGREEMENTS BETWEEN ASSIGNEE/ASSIGNOR, ETC.]**

[Required language if there are no in-common uses:]

NOW, THEREFORE, Assignor, for and in consideration of the sum of [usually One Dollar (\$1.00)] and other valuable consideration, hereby assigns, transfers, and sets over to Assignee all of its right, title and interest in and to said Permit No. [parent permit No.] as granted by the UNITED STATES over the lands, roads and rights-of-way described in “**Schedule 1[suffix] – Rights Fully Assigned**”, attached hereto and made a part hereof, including the right to use roads owned and/or controlled by the UNITED STATES, also described in “Schedule 1[suffix] – Rights Fully Assigned,” to the extent such privileges and rights pertain to said conveyed lands together with the related duties and obligations imposed by said Permit [old permit No.].

**[Required language if ALL OF THE RIGHTS THAT ARE ASSIGNED ARE
ASSIGNED in-common WITH THE ASSIGNOR]:**

NOW, THEREFORE, Assignor, for and in consideration of the sum of [usually One Dollar (\$1.00)] and other valuable consideration, hereby assigns, transfers and sets over to Assignee in common with Assignor all of its right, title and interest in said Permit No. [parent permit No.] as granted by the UNITED STATES over the lands, roads and rights-of-way described in “**Schedule 1[suffix] – Rights Assigned in Common**”, attached hereto and made a part hereof, including the right to use roads owned and/or controlled by the UNITED STATES, also described in Schedule 1[suffix] – Rights Assigned in Common to the extent such privileges and rights pertain to said conveyed lands together with the related duties and obligations imposed by said Permit [old permit No.].

**[Required language if some of the rights are transferred in common and some
are WHOLLY transferred]:**

NOW, THEREFORE, Assignor, for and in consideration of the sum of [usually One Dollar (\$1.00)] and other valuable consideration, hereby assigns, transfers and sets over to Assignee:

Illustration XI-7

Partial Assignment Boilerplate Template

Page 6 of 23

1) All of its right, title and interest in and to said Permit No. [old permit No.] as granted by the UNITED STATES over the lands, roads and rights-of-way described in “**Schedule 1[suffix] – Rights Fully Assigned**”, attached hereto and made a part hereof, including the right to use roads owned and/or controlled by the UNITED STATES, also described in “Schedule 1[suffix] – Rights Fully Assigned”, and

2) In common with Assignor, all of its right, title and interest in said Permit No. [parent permit No.] as granted by the UNITED STATES over the lands, roads and rights-of-way described in “**Schedule 1[suffix] – Rights Assigned in Common**”, attached hereto and made a part hereof, including the right to use roads owned and/or controlled by the UNITED STATES, also described in “Schedule 1[suffix] – Rights Assigned in Common” to the extent such privileges and rights pertain to said conveyed lands, together with the related duties and obligations imposed by said Permit No. [old permit No.].

[Use if the assignment includes the transfer of control of any Permittee-owned roads on U.S. lands]:

3) All of Assignor’s ownership and control of certain roads on UNITED STATES land shown as “Roads Transferred to Assignee” on Exhibit C and also identified as “Assignee Road Ownership After Assignment” in Attachment C, both being attached hereto and made a part hereof.

[Use when the parties agree that payments owed by the U.S. for any previously calculated deficit share (payable to the Assignor) will STILL be paid to the Assignor]:

Notwithstanding the foregoing, the deficit share of the UNITED STATES for any road(s) covered by the Right-of-Way and Road Use Agreement No. ____ and O. and C. Logging Road Right-of-Way Permit No. ____, for which shares have been previously established, shall be paid to the Assignor. Said road(s) and deficit share balance(s) are shown on Attachment C.

Illustration XI-7

Partial Assignment Boilerplate Template

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[Use if the Assignor will still control existing roads on U.S. lands where permit rights are assigned in common or has the right to construct new roads on such lands. This situation occurs in most partial assignments involving common use]:

Future deficit shares of the UNITED STATES established for roads controlled by Assignor on or across the land described on “**Schedule 1[suffix] – Rights Assigned in Common**”, shall be paid as and when payable to Assignor.

[Use if the assignment transfers control of any road on U.S. lands from the Assignor to the Assignee (and Assignor agrees to have future shares of the U.S. payable to the Assignee) or the Assignee is acquiring the right to construct new roads on U.S. lands where rights are being assigned either wholly or in common (the usual case).]

Future deficit shares of the UNITED STATES established for roads controlled by Assignee on or across the land described on “**Schedule 1[suffix] – Rights Fully Assigned**” or “**Schedule 1[suffix] – Rights Assigned in Common**” shall be paid as and when payable to Assignee.

[Use when Assignor will remain liable for payment to the U.S. of any deficit road shares over BLM roads or improvements, which were previously established for Assignor’s use.]

[Assignor name] shall remain solely liable for deficit road shares previously established, except those deficit shares listed on Attachment B, which deficit shares are attributable to the lands and timber it still owns, and shall pay sub-grade and improvement fees, as and when payable, based on the volumes of timber, mineral and other forest products it hauls over said roads.

[Use when Assignee assumes responsibility for some or all of existing deficit shares owed by the Assignor (payable to the U.S.)]

[Assignee name] shall be solely liable for the deficit road shares previously established for use of U.S. roads or improvements, which shares are identified on Attachment B and are attributable to the lands and timber it now owns, and shall pay sub-grade and improvement fees, as and when payable, based on the volumes of timber, mineral and other forest products it hauls over said roads.

[Illustration XI-7
Partial Assignment Boilerplate Template
Page 8 of 23

[Mandatory when there is common use]

While certain rights and privileges have been assigned, transferred and set over in common between Assignor and Assignee, the duties and obligations arising out of these rights and privileges assigned herein shall be the several and separate obligation of Assignor and Assignee, respectively. The failure by either to comply with any regulation or to perform their respective obligation or duty under said Right-of-Way and Road Use Agreement No. [old permit No.] and O. and C. Logging Road Right-of-Way Permit No. [old permit No.], shall not constitute a failure or default by the other nor be the cause for termination of the other party's rights and privileges.

[Mandatory in all Partial Assignments—Documents Existence of U.S. Rights in Schedule 2]

The United States heretofore acquired certain rights over Assignor's lands (or an Assignor's predecessor in title) under Right-of-Way and Road Use Agreement (Agreement) No. _____, (as described in the above recital), serial No. OR _____ and/or certain amendments thereto. The rights acquired by the United States under Agreement No. _____ are a title encumbrance when land is transferred. By agreeing to this partial assignment, a separate agreement with the Assignee (for exercise of the U.S. rights over the Assignee's lands) is hereby created. The Assignee and Assignor agree that the Schedule 2 attached hereto and made a part hereof represents those lands transferred to the Assignee over which the United States currently has rights. Assignor and Assignee understand and agree that the U.S. rights that encumber the lands, roads or rights-of-way identified in the attached Schedule 2 are not affected by the partial assignment and they continue in full force and effect from the date of acquisition of those rights by the U.S. and that the rights and obligations of the Assignor in connection with the U.S. exercise of those rights is now the responsibility of the Assignee. If lands, roads or rights-of-way over which the U.S. currently holds rights in said Agreement No. _____ and those lands have been transferred to the Assignee and those lands are inadvertently omitted from the Schedule 2, it does not affect the U.S. rights and the parties agree to modify the Schedule 2 to correct any such error or omission.

Illustration XI-7

Partial Assignment Boilerplate Template

Page 9 of 23

[Mandatory in all partial assignments]

Assignor's rights, duties, and obligations under said Permit No. [old permit No.] shall remain unchanged, EXCEPT for those rights herein assigned to, and those duties and obligations herein assumed by Assignee.

Dated this ___ day of _____, 20__

Pleasant Valley Paper, Inc.
an Oregon corporation

By: _____

Title: _____

Attest: _____

Title: _____

Date: _____

Illustration XI-7
Partial Assignment Boilerplate Template
Page 10 of 23

ASSIGNOR ACKNOWLEDGEMENT (NOTARY) BLOCKS - MANDATORY

Assignor Acknowledgement If Individual
(Use multiple if more than one individual signor)

STATE OF OREGON)
) ss:
COUNTY OF) [ENTER COUNTY WHERE PERMITTEE WILL SIGN]

On the _____ day of _____, 20____, personally came before me, a notary public in and for said County and State, the within-named _____, to me personally known to be the identical person(s) described in and who executed the within and foregoing instrument and acknowledged to me that (he/she) executed the same as his/her free and voluntary act and deed, and for the uses and purposes therein mentioned.

[SEAL]

Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

Illustration XI-7
Partial Assignment Boilerplate Template
Page 13 of 23

ACCEPTANCE OF ASSIGNMENT

[ALWAYS START ON NEW PAGE]

Assignee hereby accepts the foregoing partial assignment of O. and C. Logging Road Right-of-Way Permit No. [old permit No.] and, in consideration of UNITED STATES approval of such assignment, agrees as follows:

1. To assume and perform from and after the date hereof all duties and obligations of Assignor under said Permit No. [old permit No.] arising out of the rights assigned herein to Assignee.
2. To comply with and to be bound by the terms and conditions of said Permit No. [old permit No.] and the applicable regulations of the Department of the Interior in force as of the date of approval of this assignment.
3. That the Assignee's interest in said Permit No. [old permit No.] shall hereafter be designated and referred to as O. and C. Logging Road Right-of-Way Permit No. [new permit number with letter suffix], serial No. [new serial No.].

Dated this ___ day of _____, 20 ____

Wee Wanna Log II, Inc.
an Oregon corporation

By: _____

Title: _____

Attest: _____

Title: _____

Date: _____

Illustration XI-7

Partial Assignment Boilerplate Template

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ASSIGNEE ACKNOWLEDGEMENT (NOTARY) BLOCKS - MANDATORY

(Use same acknowledgement blocks as shown for Assignor as appropriate.)

Illustration XI-7
Partial Assignment Boilerplate Template
Page 15 of 23

APPROVAL OF ASSIGNMENT

[ALWAYS START ON NEW PAGE]

[Mandatory wording]

Approval of this assignment is not intended to modify or limit the rights of the United States Bureau of Land Management as provided for in the O. and C. Logging Road Right-of-Way Permit, No. [old permit No.].

APPROVAL:
UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Signature (Field Manager) or (DM)
Title: _____

Name of Field Office (or Resource Area)

Illustration XI-7
Partial Assignment Boilerplate Template
Page 16 of 23

Agency (BLM) Acknowledgement

STATE OF OREGON)

) ss:

COUNTY OF)

[ENTER COUNTY WHERE BLM
AO WILL SIGN]

On this ____ day of _____, 20__, before me personally appeared _____, being duly sworn, did say that he/she is the [Field Manager][District Manager] of the _____ [Resource Area] [District Office] of the Bureau of Land Management, and that he/she executed the foregoing instrument by authority of and in behalf of the United States of America; and he/she acknowledged said instrument to be the act and deed of the United States of America

[SEAL]

Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

Illustration XI-7
 Partial Assignment Boilerplate Template
 Page 17 of 23

United States Department of the Interior
 Bureau of Land Management
 Oregon State Office

SCHEDULE 1[suffix] – RIGHTS ASSIGNED IN FULL

This schedule to be attached to Permit No. [new permit with suffix]

Permittee (Assignee):						
Meridian:		Willamette	County:			
All rights, title and interest held by the Assignor over the following U.S. lands in Permit No. [old permit No.] are FULLY assigned, transferred and set over to the Assignee:						
			Subdivision			Period of Time
All rights, title and interest held by the Assignor over the following U.S. rights-of-way over private lands which are included in Permit No. [old permit No.] are FULLY assigned, transferred and set over to the Assignee:						
Township	Range	Section	Subdivision	Recording Information	Easement or Right-of-Way Agreement No.	Period of Time
*All rights, title and interest held by the Assignor over the following U.S. roads on U.S. lands which are included in Permit No. [old permit number] are FULLY assigned, transferred and set over to the Assignee, such roads being designated by a [] line type on the Exhibit C map.						
Township	Range	Section	Subdivision	Road No.	Segment	Period of Time

*Note: Use this section where the ROADS ONLY are authorized in parent permit and the rights over those roads are being assigned in common.

Illustration XI-7
 Partial Assignment Boilerplate Template
 Page 18 of 23

United States Department of the Interior
 Bureau of Land Management
 Oregon State Office

SCHEDULE 1[suffix] – RIGHTS ASSIGNED IN COMMON

This schedule to be attached to Permit No. [new permit with suffix]

Permittee (Assignee):						
Meridian:		Willamette	County:			
All rights, title and interest held by the Assignor over the following U.S. lands in Permit No. [old permit No.] are assigned, transferred and set over to the Assignee, IN COMMON WITH THE ASSIGNOR:						
			Subdivision			Period of Time
All rights, title and interest held by the Assignor over the following U.S. rights-of-way over private lands which are included in Permit No. [old permit No.] are assigned, transferred and set over to the Assignee IN COMMON WITH THE ASSIGNOR:						
Township	Range	Section	Subdivision	Recording Information	Easement or Right-of-Way Agreement No.	Period of Time
*All rights, title and interest held by the Assignor over the following U.S. roads on U.S. lands which are included in Permit No. [old permit number} are assigned, transferred and set over to the Assignee, IN COMMON WITH THE ASSIGNOR, such roads being designated by a [] line type on the Exhibit C map.						
Township	Range	Section	Subdivision	Road No.	Segment	Period of Time

*Note: Use this section where the ROADS ONLY are authorized in parent permit and the rights over those roads are being assigned in common.

Illustration XI-7

Partial Assignment Boilerplate Template - Exhibit C Map

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Exhibit C Map
New Permit No. [M-1000A]
New Serial No.

Required Legend items:

Schedule 1 [] – U.S. lands, roads or right-of-way fully assigned.

Schedule 1 [] – U.S. lands, roads or rights-of-way assigned in common.

Legend items for road specific issues:

Road control that has been transferred to Assignee

U.S. roads that will be used in common between Assignor & Assignee

U.S. roads that will be used solely by Assignor.

U.S. roads that will be used solely by Assignee.

Permittee-controlled roads on the transferred lands where control has been reserved by Assignor.

Permittee controlled roads where the U.S. has rights which are located outside the transferred lands and where road control has been transferred from Assignor to Assignee.

Road involved with other specific situations that need to be identified graphically

May want to designate free use status of roads.

Illustration XI-8

Sample Letter Notifying Assignee of U.S. Rights over Transferred Lands

Page 1 of 2

2810[Org Code]

[Permit No.]

[Serial No.]

We Wanna Log II, Inc.

Dear _____:

We have received the completed form OR 2812-4a for processing your request for partial assignment of O&C Logging Road Right-of-Way Permit No. _____ (serial No. OR _____FD). We will work closely with you in completing the assignment and will notify you if we need additional information.

Attached is copy of Page ___ of ___ of the form OR 2812-4a with the last column completed, indicating which transferred lands now owned by you are included in Schedule 2 of the associated reciprocal Road Use and Right-of-Way Agreement No. _____ (serial No. OR _____ PT). This means the United States has rights under the Right-of-Way and Road Use Agreement over lands now owned by you. As a successor in interest in the land we are notifying you that you have certain rights and obligations under the Agreement whether or not the Permit is assigned.

If you do not already have a copy of the Agreement, we will provide one to you at your request and would be glad to meet with you to help you understand your rights and obligations. These rights and obligations under the Agreement may include (but not be limited to):

The right to be compensated by the U.S. (through an amortization of the road cost) for the use of roads or rights-of-way owned or controlled by you.

The first right to perform maintenance on roads you own or control and to collect fees for such maintenance;

The obligation to execute License Agreements with BLM timber sale purchasers in the form prescribed by the Agreement (we can provide a copy at your request).

Illustration XI-8

Sample Letter Notifying Assignee of U.S. Rights over Transferred Lands

Page 2 of 2

The right to establish reasonable traffic rules for the use of roads owned or controlled by you.

The right to have lands amendment out of the Agreement if the lands are not longer needed by the U.S. for the purposes acquired.

For any of the lands shown on the attached Form OR 2812-4a that don't have a Schedule 2 location identified, we will be evaluating them to see if the U.S. may need additional rights from you. Under the provisions of the 43 CFR 2812 regulations, the U.S. may require you to grant additional rights, if needed, as a condition of approving the assignment. We will notify you if we will be requesting such rights.

If you have any questions, please call _____, at _____.

Sincerely,

Field Manager
_____ Resource Area

[THE ATTACHMENT IS PAGE ___ OF THE FORM OR 2812-4a WITH THE "BLM CHECK" COLUMN COMPLETED]

THIS PAGE INTENTIONALLY LEFT BLANK.

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XII. AMENDMENTS AND RELEASES

A. Purpose

The purpose of this chapter is to describe types, procedures, and documentation requirements for amending and/or releasing reciprocal right-of-way agreements. Portions of the procedures described below also apply to amending unilateral permits.

A general format for the amendment document is provided in Section E. of this chapter.

B. Background and Need for an Amendment

During the administration of reciprocal right-of-way agreements or unilateral permits, a need for modification is often identified for a wide variety of reasons. These reasons include such things as adding, modifying, or deleting terms and conditions as well as adding or deleting lands or interests in lands of either party. All substantive changes or additions which affect the nature or scope of rights granted or received by the parties must be made through an amendment action, regardless of the type of reciprocal right-of-way agreement (arbitration, detailed, or semi-detailed) or unilateral permit.

Each amendment document is written for a particular purpose. The amendment process often involves some negotiations between the parties. The BLM should make every effort during amendment negotiations to modify terms and conditions to be consistent with the standard template found in Chapter V. (Form OR 2812-16—Illustration V-2).

Common reasons for and types of amendment actions include, but are not limited to the following:

- adding lands or interests in lands to either the Agreement or Permit,
- deleting lands or interests in lands from the Agreement or Permit,
- correcting errors or omissions,
- bringing a Permit current with existing regulations upon an assignment,
- eliminating overlapping rights held by a permittee in multiple permits,
- adding, revising or deleting terms and conditions,
- revising recorded ancillary documents (such as license agreements), and

- consolidating multiple reciprocal right-of-way agreements with one permittee.

Amendment actions generally require bi-lateral approval and are subject to mutual agreement by the parties. However, there are some circumstances described in this chapter in which one or both parties have previously given up either full or limited discretion to approve or deny an action. These requirements (either in regulations or reciprocal right-of-way agreement provisions) place an obligation on one or both parties. These are referred to in this chapter as nondiscretionary amendments. The applicability of NEPA to any amendments is discussed in Section C. below.

Illustration XII-1 is a standard amendment template that has been developed to aid in the preparation of amendment actions associated with the reciprocal right-of-way agreements.

C. Discretion and Applicability of NEPA (if Action Involves U.S. Lands)

As discussed below, one of the initial steps in processing amendment documents is to determine whether the BLM or permittee has retained sufficient discretion in either the reciprocal right-of-way agreement or regulations to approve or deny an amendment. This section provides guidance for determining what discretion BLM or the permittee have to deny or approve an action as well as for determining whether a new NEPA analysis is required.

1. Nondiscretionary Amendments Not Subject to New NEPA Analysis

There are specific amendment actions for which either the BLM and/or the permittee have previously given up full or partial discretion to deny or approve. This lack of discretion may have been established through terms of a reciprocal right-of-way agreement, by regulation, or through the legal interpretation or opinion of a court of law. These types of amendments are commonly referred to as “nondiscretionary” amendments. Nondiscretionary amendments are not subject to new NEPA analysis. Nondiscretionary amendments include the types described in the following subsections.

a. Adding Newly Acquired Lands, Roads or Rights-of-Way under Certain Circumstances

Many reciprocal right-of-way agreements include operative language which obligates both parties to add “newly acquired” lands, roads or rights-of-way (easements) which either party has acquired (or gained control of) since the time the reciprocal right-of-way agreement was approved. The following provisions are commonly found in Exhibit B of the Agreement:

If either party to this agreement acquires any additional lands (shown on Exhibit C), it agrees to grant to the other party rights-of-way and rights of road use across such lands under the same terms and conditions as contained in this agreement. [Underline added.]

Many reciprocal right-of-way agreements also contain the following:

If either party to this agreement acquires the ownership or control of any roads or rights-of-way across lands of others (shown on Exhibit C), it will grant to the other party the right to use such roads or rights-of-way under the same terms and conditions as contained in this agreement, but subject to the terms and conditions contained in the instruments by which such ownership or control is obtained; provided, however, that in the negotiation for additional roads or rights-of-way, each party shall attempt in good faith to obtain rights that can be used by the other party. [Underline added.]

Some reciprocal right-of-way agreements replace the wording “shown on Exhibit C” with the following:

. . . within the Agreement Area boundary shown on Exhibit C.

The Regional Solicitor has provided the following interpretation of the two provisions shown above:

Basically, the above two provisions mean that both parties have given up discretion in whether or not newly-acquired lands or rights-of-way are amended into the reciprocal right-of-way agreement for use by the other party. However, there have been differences in interpretation and administration of these stipulations between BLM Districts. The stipulations refer to adding lands (or rights-of-way) as “shown on Exhibit ___.” Typically, the lands identified in the Exhibit C are: 1) U.S. lands, 2) permittee lands and 3) Third Party lands. One interpretation is that the “additional lands (shown on Exhibit ___)” most likely would refer to those third party lands if they were acquired by either party.

This would mean that both parties gave up discretion to deny granting rights to any newly-acquired lands or rights-of-way that were identified as third party lands in the Exhibit C (or amendments thereto). [Underline added.]

1) Obligation of the Acquiring Party

If either of the above (or similarly worded) provisions exist in a reciprocal right-of-way agreement, the acquiring party gave up discretion and is obligated to grant rights over any of their newly acquired lands, roads, or rights-of-way, to the non-acquiring party, if requested.

If either party requests rights over acquired lands, roads or rights-of-way of the other party, an evaluation should be made under the above provisions to see if the lands, roads or rights-of-way qualify as “newly acquired” and therefore the acquiring party has no discretion to deny the request. The following questions should help make this determination:

- Were the lands, roads or rights-of-way in question acquired after the provision became a part of the reciprocal right-of-way agreement? (Note: Lands shown on Exhibit C or “within the agreement area boundary shown on Exhibit C”) that were already owned by the party on the date the reciprocal right-of-way agreement was approved, but were not included on Schedule 1 or Schedule 2, do not qualify under this provision—that is, there is no obligation to grant rights over them. Typically these lands would be identified as “Other United States Lands” or “Other Permittee Lands” on the Exhibit C map. If U.S. or permittee lands were identified on an Exhibit C map but were not identified on either the Schedule 1 or on the Exhibit C as being Schedule 1 lands, then those lands were already owned by the U.S. or the permittee at the time the reciprocal right-of-way agreement was approved and they would never qualify as newly acquired lands.
- Did the agreement area map that existed at the time the provisions were added show the lands, roads or rights-of-way in question? (The lands would normally be identified on the Exhibit C map as “third party lands”—or they could be undesignated but are actually third party lands). Only third party lands (either designated as third party or undesignated lands) could qualify as “newly acquired.” The roads or rights-of-way may not have a specific legend type on the Exhibit C map or they would show as “third party roads.” Lands identified as third party lands will fulfill the requirement of “as shown on Exhibit C” of the obligating provision.
- Was there an agreement area boundary line on the map that defined the geographical limits to which this provision would apply? If so, are the acquired lands within that boundary area?
- If only rights-of-way (or easements) are acquired, were sufficient rights of control acquired in order to grant rights to the other party? For example a non-exclusive easement usually does not contain sufficient rights to convey to others. Prior to adding rights for the U.S. over a permittee-

acquired easement, the private easement must be reviewed to determine whether or not the permittee acquired sufficient rights of control in order to grant rights to the U.S. At a minimum, such easement shall be reviewed by the Oregon State Office (and/or Solicitor if required).

If all of the above questions can be answered affirmatively, then the lands, roads or rights-of-way in question can be considered to have imposed an obligation **on the part of the acquiring party**.

If the lands, roads or rights-of-way do not qualify as newly acquired as described above, then the granting of rights by the acquiring party would be subject to the discretion of the acquiring party.

If BLM acquires any of the following types of interests that meet the criteria described below, BLM may be obligated to grant rights:

- exclusive easements (if we acquired full “control” and/or rights for “permittees”),
- acquisition of land in fee title, and
- roads owned or controlled by BLM over third party permittee land (generally roads constructed by BLM, its licensees or permittees under the terms of a reciprocal Agreement).

If U.S. lands qualify as “newly acquired” and an amendment is prepared to grant rights to the permittee over such U.S. newly acquired lands, the provisions cited are clear that those lands should be added under the same terms and conditions of the original permit. These lands, roads, or rights-of-way that qualify as newly acquired should not be added to a Schedule 3 with additional provisions because of the words “under the same terms and conditions as contained in this agreement.”

2) Obligations of the Non-Acquiring Party

Over the years, a question has been raised whether there is an obligation on the part of the non-acquiring party to grant rights over their land in order to provide access to the newly acquired lands of the other party. The Regional Solicitor has provided guidance as follows:

A review of the standard contract language revealed that there are no provisions in the ROW agreements that require either party to grant rights-of-way to the other for lands that are newly acquired by the other party.

However, should the U.S., as the non-acquiring party, agree to grant rights of access over its lands to reach the acquired lands of the other party, that

amendment is discretionary and those lands could be added subject to additional terms and conditions as determined appropriate by the AO. Any provision not appearing in the standard template (Form OR 2812-16 – Illustration V-2) shall not be used unless it is approved by the Oregon State Office and/or Regional Solicitor.

If the permittee is the non-acquiring party, and the U.S. requests rights over the permittee's lands to reach the newly acquired lands of the U.S., the permittee is not obligated to grant those rights. However, as discussed in Chapter III. and Chapter V., if the permittee later applies for an amendment or assignment, the AO can require them to grant reciprocal rights, or the permittee request for an amendment or assignment can be denied (43 CFR §2812-0-6(d) and 43 CFR §2812-3-1).

b. Correcting Errors and Omissions

Administrative errors or omissions in reciprocal right-of-way agreements may be discovered during the review or use of reciprocal right-of-way agreements, particularly in the listing of legal description of lands or rights-of-way in either Schedule 1 or 2. These are often referred to as scrivener errors. The Regional Solicitor has indicated that the correction of errors or omissions is an administrative action (to comply with regulations or otherwise) which is obligatory in nature. A determination that an error or omission has occurred must be adequately supported by evidence in the file. This evidence may be provided by the permittee or may be discovered in the BLM file. Examples could include the following:

- Documentation that a road use fee calculation has been made and/or road use fees are being paid and accepted on a road segment, but the underlying lands or rights-of-way were excluded from the appropriate land schedule as required per the regulations in 43 CFR §2812.3-6. This indicates that the parties believed or acted as if the underlying lands were included at the time the fees were paid or calculated.
- A deed (or other title evidence), or the BLM Master Title Plat (MTP) indicates that a typographical or scrivener error has been made in a legal description included in either Schedule 1 or 2. It may occasionally also be necessary to correct errors in unilateral permits.
- Discovery that lands are shown on the agreement area map (Exhibit C) as Schedule 1 or Schedule 2 lands but they were never included by legal description on the appropriate Schedule 1 or Schedule 2. This indicates intent that the lands should have been included in the appropriate schedule.

- Discovery that lands were included either on Schedule 1 or Schedule 2 but were not designated as Schedule 1 or Schedule 2 lands on the Exhibit C map. This indicates that the lands were intended to be part of the reciprocal right-of-way agreement and should be added to the appropriate Exhibit C map.
- A right-of-way plat (construction, improvement, etc.) was filed and considered to have been approved either by default (because no objection was filed within the required 30 days (or terms of specific reciprocal right-of-way agreement), or the plat was returned signed by the landowner, but it was later discovered that the lands were not on the Schedule 1 or 2. Both parties acted as if the lands were included and therefore should be added to the Schedule 1 or 2 and the Exhibit C map. However, the description would be limited to the right-of-way description. Illustration XII-2 is a sample amendment adding a right-of-way description only.

Scrivener errors are corrected through the amendment procedures outlined in this chapter.

See Illustration XII-1 for standard amendment wording for correcting errors or omissions. Recital [R-12] and granting clause [G-3] are the appropriate clauses.

c. Bringing a Permit Into Compliance with Applicable Regulations Upon Assignment

As a condition of assignment of a permit, the assignee(s) agrees to be “bound by the applicable regulations of the Department of the Interior in force as of the date of such approval of the assignment (43 CFR §2812.7).” Older reciprocal right-of-way agreements, particularly the arbitration-type, were executed under O&C right-of-way regulations which existed at that time and are not likely to be in compliance with current 43 CFR 2812 regulations.

If a determination is made by the BLM that the permit to be assigned does not comply with the 43 CFR 2812 regulations (current at the time of assignment), a coincidental amendment should be prepared and executed in conjunction with (or as a condition of) approval of the assignment (or partial assignment) by the BLM Authorized Officer. This type of amendment is obligatory in nature and not subject to NEPA.

This section provides guidance on what provisions should be added to meet current regulations. Examples of regulatory items that are required to be included by amendment include the following:

- fee calculation formulas for both replacement cost and capital improvements,

- requirements for terms and conditions in advance of use,
- adding US rights over assignee's lands or interests in lands,
- insurance requirements,
- bonding requirements,
- use of exclusive easement if road built with appropriated funds,
- requirement for permittee to purchase U.S. timber severed in conjunction with roads built on U.S. land, and
- that the U.S. rights in an Agreement inure to the benefit of and shall be binding on the successors.

This does not imply that there is an obligation to add the standard environmental provisions since they are not a requirement in the current regulations.

Seek advice from the State Office and/or Regional Solicitor when assigning or amending a Permit of this vintage to determine with certainty which provisions in the Form OR 2812-16 (or regulatory provisions) must be added or which provisions in the arbitration agreement must be deleted in order for the Permit to be consistent with current regulations at the time of assignment.

It would be difficult to merely amend an arbitration agreement since there would provisions that need to be deleted as well as provisions that would need to be added to bring the permit current with regulations. Instead, it is preferable to replace the outdated arbitration agreements with a newer semi-detailed agreement because it will be easier to administer in the future.

This type of compliance amendment should be executed at the same time as and as a condition of approval of the assignment by the BLM, usually called a "coincidental" amendment (see Chapter XI., Section L.2.). As alternatives to the amendment: (1) a new reciprocal right-of-way agreement can be negotiated which replaces the old reciprocal right-of-way agreement in its entirety, or (2) the lands in an arbitration type agreement could be added to a newer permit which contains the newer provisions required by regulation (a type of consolidation amendment).

The above discussion also applies to assignment of unilateral permits if they do not conform to current applicable regulations.

See Illustration XII-1 for standard wording to bring a permit consistent with current regulations. Use Recital No. [R-17] and Granting Clause No. [G-17] for amendments to bring a permit current with regulations.

d. Eliminating Overlapping Rights

The assignment of a unilateral or reciprocal permit to a permittee that holds another unilateral permit or reciprocal Permit over the same U.S. lands or interests in lands creates an overlap of Permit rights. An overlap of Permit rights creates an administrative problem for the U.S. and the permittee in determining which permit rights are being exercised. An overlap of permit rights is also problematic in light of the following language found in the standard form reciprocal right-of-way agreement (and as contained in most semi-detailed agreements:

All rights of Permittee with respect to the use of roads and rights-of-way across the lands described in Schedule 1 shall hereafter be determined in accordance with this Permit. All outstanding rights heretofore granted to the Permittee to use such roads and rights-of-way are hereby terminated.

Since the above provision may result in the inadvertent elimination of previous rights held by the permittee, the resolution of a permit overlap before assignment is critical to prevent a potential loss of rights previously granted to a permittee/assignee. An amendment should be executed coincidentally with the approval of the assignment of a permit to eliminate (by deletion) the overlapping U.S. lands from Schedule 1 of either the assigned permit or the assignee's existing permit.

In addition, rights and obligations which have been exercised by the permittee (assignee or its predecessor) under the overlapping permit should be brought forward into the newly-assigned permit with the same priority date. Examples of rights that have been exercised include approved right-of-way plats, approved first use buy-ins, deficit balances, and credit for payment of road use fees.

Particular attention must be paid in situations where the same road has been cost shared by both the assignor (under the permit being assigned) and the assignee (under its existing permit). The amendment document for the surviving permit should clearly transfer any remaining amortization deficits created under the other permit into the surviving permit. For example, if the permittee had paid its share under the surviving permit and had "free use" under that permit, and the amendment transfers the remaining deficit balance from the other permit, the permittee will no longer have "free use" until the transferred balance has been paid, because the share was calculated for a different tributary area for each permittee.

Although the Schedule 1 (U.S.) lands may overlap, there should not generally be overlapping rights in Schedule 2 (permittee) lands, as the BLM acquires rights from the landowner of record as of the time those rights are acquired, and those rights do not change and never have to be assigned, regardless of how many

times that land is subsequently transferred. In the rare case where the U.S. has acquired rights over the same lands more than once (usually by errors when consolidating reciprocal right-of-way agreements), thus creating overlapping Schedule 2 lands, the overlapping lands should be deleted by amendment, taking care not to inadvertently lose a superior date of acquisition of rights. However, the AO should consult with the Oregon State Office if there are any questions about releasing U.S. rights. If an entire reciprocal right-of-way agreement needs to be released; only the Deputy State Director has authority to do so. See Sections J., K., and L. of this chapter for further guidance on releasing U.S. rights.

An amendment for this purpose is another type of “coincidental” amendment (see Chapter XI., Section L.2.).

This type of amendment is considered to be “nondiscretionary” since there is an implied obligation to eliminate overlapping rights. Therefore, it would not be subject to any new NEPA analysis.

2. Discretionary Amendments and Applicability of NEPA

If either the BLM or the permittee has not previously given up discretion to deny an action (by regulation or provisions in the reciprocal right-of-way agreement), the amendment is considered to be discretionary. That is, one or both parties have full “discretion” to approve or deny the action (neither party is “obligated” to go forward with the amendment). The discretionary amendments described below fall into two types regarding NEPA: 1) Those that are not subject to new NEPA analysis (because they are administrative in nature), and 2) those that are subject to new NEPA analysis because they confer new rights or may have an impact on the ground. Examples of these two types of amendments are described below.

a. Discretionary But Administrative Amendments Not Requiring a New NEPA Analysis

The following types of discretionary amendments are administrative in nature and are not subject to a new NEPA analysis. However, before the document is approved by the AO, a Lands Decision Memo should be prepared to document why a new NEPA analysis is not necessary and to document the decision by the AO. See sample Lands Decision Memorandums as illustrations in Chapter XIII.

1) Deleting Lands or Interest in Lands

Either party may voluntarily agree to delete lands or interests in lands of the other from their Schedule of Lands. This type of amendment is not generally subject to a new NEPA analysis because it deletes, instead of adds to, rights that either party has and is merely an administrative action.

However, the BLM should proceed with caution when considering releasing (or deleting) lands from the reciprocal right-of-way agreement to ensure that nothing is given up that could possibly be needed in the future. Reasons for deleting U.S. rights are limited, but may include the following:

- As a part of a consolidation process, both parties usually agree to delete lands in Schedules of Permits and Agreements that will no longer be used by either party. All roads associated with a consolidation amendment should be verified to determine if percentage shares have been calculated. If there are any deficit balances they should either be swapped out or carried forward into the surviving Permit and Agreement after the consolidation Agreement/Permit is done.
- Some reciprocal right-of-way agreements contain a provision which provides for the removal of lands from the schedules which are potentially more valuable for uses other than growing timber. For example, if either party sells some of their non-productive timber lands to private landowners who wish to develop the property for residential purposes, the reciprocal right-of-way agreement rights may be either released or replaced with an easement(s). When the AO is willing to replace aliquot part descriptions in Schedule 2 with road easement(s), the aliquot part description should not be deleted until the new rights have been secured. Typically the U.S. does not release its interests without a thorough evaluation of its future access needs. Proceed with caution before deleting Schedule 2 lands to ensure the U.S. does not lose valuable access needs in the future.

When deleting lands or interests in lands, the Exhibit C and agreement area boundary may require adjustments to exclude those lands or interests in lands being deleted. For this reason, there is usually an amended Exhibit C and agreement area boundary accompanying this type of amendment.

See Provision Nos. [R-10] and [R-11] (in the “Purposes” Recitals Section), and provision Nos. [G-5] and [G-6] (in the “Now Therefore” (granting clause) section) of the amendment boilerplate found in Illustration XII-1 for the approved language to use when deleting rights for the U.S. over permittee lands, roads, or rights-of-way.

2) Adding, Revising, or Deleting Terms and Conditions

An amendment may be used to modify, add, or delete the terms and conditions of a unilateral permit or reciprocal right-of-way agreement. This type of amendment is a discretionary action because typically it is subject to mutual agreement between the parties. A new NEPA analysis is not required where the terms and conditions do not cause BLM to give up or limit future discretion regarding any resource values. Some of the most common reasons include:

- modifying insurance and bonding requirements,
- deleting terms and conditions which are inconsistent with current regulations,
- adding additional reasons to object to road construction.

When the parties mutually agree to add provisions, consideration must be given to whether the provision should be added to the Permit, the Agreement, or to both. Since provisions affecting both parties are contained in the Exhibit B of most Agreements, it may only be necessary to add a provision to the Exhibit B for it to be binding on both parties. Care should be given to the wording of any “non-standard” provision to ensure that existing and future rights of either party will not be diminished. Any non-standard provisions shall not be used unless they are reviewed and approved by the Oregon State Office (and/or the Regional Solicitor’s Office) prior to use. Non-standard provisions are those that are not contained in Form OR 2812-16 (Illustration V-2).

While the mere deletion of provisions may be an administrative action typically not subject to a new NEPA review, care needs to be exercised to determine with certainty whether a NEPA analysis might be appropriate or not. For example, if a proposal was made to delete one or more of the reasons to object to road construction, there could be unforeseen environmental consequences and a NEPA analysis should probably be included in this type of action.

An amendment MAY NOT be used to delete a provision which will release any rights previously acquired by the U.S. in the Agreement. Deleting such provisions should only be done by a Release of Rights (see Section K. of this chapter). In addition, provisions may not be deleted from a Permit or Agreement if they are prescribed by BLM policy or the 43 CFR 2812 regulations, especially if they pertain to minimizing damage to public lands or otherwise requiring a permittee’s compliance with applicable laws or regulations. Special care should be taken in the writing of an amendment to ensure that the rights of either party are not inadvertently lost or diminished. If a provision is inadvertently removed, it may be difficult to add it back.

CAUTION: DELETING ANY PROVISIONS REQUIRES CONSULTATION WITH THE OREGON STATE OFFICE BEFORE THEY ARE DELETED. Notify the permittee if consultation will take longer than 30 days.

See Illustration XII-1 for language modifying or adding terms and conditions. No sample wording is provided for the deletion of provisions as this practice is discouraged unless needed to comply with current applicable regulations. See the Oregon State Office or program lead for recommended wording once concurrence is given that deleting certain provisions is acceptable.

3) Revising Accessory Documents

The three main accessory documents associated with reciprocal right-of-way agreements are: 1) license agreements, 2) the exclusive easement form, and 3) Exhibits. The exclusive easement form cannot be revised since it is based on Dept. of Justice and Regional Solicitor guidance.

The license agreement included as part of Form OR 2812-16 (as shown in Illustration V-2, Page 38) is the standard approved format. Modifying the license agreement is a discretionary action subject to mutual agreement by both parties and approval by the AO per the language in the standard provision included in Exhibit B of the Agreement. See Chapter VIII. for guidance in modifying the license agreement form. This amendment action is administrative, and not subject to NEPA review. Any revisions to the license agreement which are not consistent with the form attached to the Form OR 2812-16 must be approved by the State Office. If the license agreement is a part of a recorded document, it must be modified by a recorded amendment.

See Illustration XII-1 for the recommended wording for replacing the license agreement (Recital clause No. [R-6] and Granting Clause No. [G-11]).

4) Consolidating Existing Reciprocal Right-of-Way Agreements

It may be desirable from an administrative standpoint to consolidate two or more existing reciprocal right-of-way agreements which are held by a specific permittee. This is accomplished with a consolidation amendment which is not subject to a new NEPA analysis (as long as new rights are included in the amendment).

However, if the proposed amendment will also be adding new (discretionary) rights for the permittee in Schedule 1 (and/or 3), the AO must ensure that NEPA compliance is completed for any new rights granted to the permittee. Nondiscretionary amendments should not be mixed with discretionary amendments in the same document in order to keep the NEPA compliance documentation clean.

Consolidation amendments are the most complex type of amendment encountered and detailed guidance for completing these actions are provided in Section D.4. of this chapter.

5) Adding Rights for the U.S. to Schedule 2

It may be necessary to prepare an amendment which adds rights for the U.S. over permittee lands or interests in lands (i.e. right-of-way) to Schedule 2. This

type of amendment is considered an administrative action not subject to NEPA analysis. Any NEPA analysis would occur with the implementation of on-the-ground projects (such as road construction to access a timber sale).

When adding lands or interests in lands to Schedule 2, the Exhibit C and agreement area boundary (if one exists) may also need to be amended to include the additional lands or interests in lands being added. For this reason, there is usually an amended Exhibit C and agreement area boundary map which accompanies this type of amendment.

When adding rights for the U.S. to Schedule 2, the permittee must have sufficient control (direct or indirect) of the land or interest in land in accordance with the definitions in 43 CFR §2812.0-5(i) and (j). Permittee lands or interests in lands which do not meet the requirements in the above regulations cannot be added to Schedule 2.

b. Discretionary Amendments Requiring NEPA.

If amendments do not fit into one of the above categories: 1) nondiscretionary, or 2) discretionary but administrative, then most likely the action will be subject to a new NEPA analysis and all other applicable federal laws affecting the public lands. Amendments subject to a new NEPA analysis include:

1) Adding Rights for Permittee in Schedule 1 (Not newly acquired lands or roads of the U.S.)

An amendment which involves the granting of additional rights over U.S. lands or interests in lands is a discretionary action. The only exceptions are: 1) if the lands were newly acquired by the U.S., or 2) they are being added due to discovery of an error and/or omission (see Section C.1.a. and b. of this chapter). This type of amendment will require the BLM to comply with statutory requirements under a variety of applicable laws and regulations, including NEPA and ESA compliance and land use plan conformance. Consequently, this type of amendment action may take more time to process.

See Illustration V-4 - Sample Schedules of Land, for proper way to describe existing roads only.

Often, a permittee may agree to limit their request to existing U.S. roads only, which may expedite the required environmental review process since the use of a categorical exclusion (CX) can usually be utilized instead of an environmental analysis (EA). If the amendment is for roads only, the Schedule 1 attached to the amendment should identify: 1) the lands (legal description) underlying the road or roads (for recording purposes), 2) the specific width of the strip of land, and 3) the roads (by number and the map legend type shown on the amendment

(Exhibit C)). All legal descriptions added to Schedule 1 should be described in accordance with the public lands survey system.

When adding lands or interests in lands by amendment, the Exhibit C map and agreement area boundary (if one exists) should be amended as well. For this reason, there is usually an amended Exhibit C and agreement area boundary accompanying this type of amendment. However, if the Exhibit C map for the reciprocal right-of-way agreement does not already contain an agreement area boundary, there should not be a boundary added to the amendment Exhibit C.

2) Adding New Roads to be Constructed by Permittee Over U.S. Lands Not Already in Schedule 1

Frequently, permittees will submit a right-of-way plat requesting to build a road over U.S. lands. Sometimes a permittee may assume that the lands are already included in a Schedule 1 of a Permit and will file a plat assuming that it is nondiscretionary and the BLM can only “object” to the plat based on the limited provisions in the Permit. It is important to verify immediately whether the U.S. lands underlying the plat are in the Permit or not (see Chapter IX., Section B.). If this verification is not done as soon as the right-of-way plat is received, the permittee may assume the lands are in the permit and commence with the construction if they don’t get a response from BLM within 30 days.

If the U.S. lands are not in the permit, the permittee should be notified immediately that their request is being processed as a discretionary amendment subject to a new NEPA analysis (unless they are being added as a result of a discovery of an error and/or omission or unless they are determined to be newly acquired U.S. lands).

This type of discretionary amendment (adding a right-of-way description for road construction) may take some time to work through the NEPA process as there is ground-disturbing activity.

This type of amendment has some unique features which must be included or considered such as:

- construction standards and provisions,
- accurate plat maps showing location of the centerline,
- construction width, and
- the limits of the rights being granted should be described as a linear strip of land only.

When adding lands or interests in lands, ensure that the Exhibit C and agreement area boundary (if the reciprocal right-of-way agreement includes a boundary) are also amended to include those lands or interests in lands being added. For this reason, there is usually an amended Exhibit C and agreement area boundary accompanying this type of amendment.

Illustration XII-2 is a sample discretionary amendment adding a road right-of-way location to be constructed by permittee.

3) Adding Additional Provisions Applicable to Lands Listed on Schedule 1.

In order to comply with current agency policy, in the case of discretionary amendments (which are not administrative in nature), the BLM AO may add environmental provisions, cultural provisions or additional reasons for objecting to road construction (for T&E species) on U.S. lands, roads or rights-of-way identified on Schedule 1. This is accomplished by the use of a Schedule 3 and a supplemental Exhibit A-1. The Schedule 3 is a subset of Schedule 1 and lists those U.S. lands, roads or rights-of-way to which the special or additional provisions in Exhibit A-1 would apply. The amendment must state that the terms and conditions in Exhibit A-1 are in addition to those terms and condition already included in the Agreement and Permit. The amendment language must clearly state that the additional provisions in Exhibit A-1 are applicable only to the lands identified on Schedule 3.

It is important to remember that any U.S. land, roads or rights-of-way listed on Schedule 3 must first also be listed on Schedule 1. The lands must be listed on Schedule 1 to make them subject to the granting clauses in the Permit. In addition, they must be listed on Schedule 1 to make all provisions in Exhibit A and B applicable to those lands as well.

Note: Some reciprocal right-of-way agreements have designed Schedule 3 for some other purpose (such as for listing rights of the Permittee over USDA-FS lands). If Schedule 3 is already designed for another purpose, another Schedule number should be used, but once created that schedule number should be used consistently to identify lands to which additional provision apply.

D. Title Review and/or Clearance When Adding Rights for the U.S.

This section specifies the procedures to be followed by districts when processing amendments which add rights for the U.S.

- All amendments or new reciprocal right-of-way documents should be prepared by (or at least reviewed by) the district acquisition specialist with sufficient experience in federal land acquisitions, title review/clearance, and DOJ title standards

- At a minimum, the district acquisition specialist should order (or have the permittee provide) title evidence (such as a preliminary title report or a copy of the permittee's title policy) and a copy of the vesting deed for the lands or interests in lands being added. These documents shall be reviewed to determine if the permittee has sufficient control of the land or interest in land as described above and if there are any title encumbrances (such as pending bankruptcy or foreclosures, etc.) that could adversely affect the rights being acquired by the U.S.
- If there are questionable encumbrances on the title or if there is a question as to how the grantor name should be written and signed, the title evidence, the vesting deed, and a draft amendment document should be referred to the Oregon State Office acquisition specialist for review.
- If necessary, the State Office acquisition specialist should refer the matter to the Regional Solicitor's office for title review and advice.
- If there is any doubt about the title, title clearance procedures shall be followed as contained in the Acquisition Handbook (H-2100-1).
- In the event that appropriated funds are used in the construction of roads on permittee lands to be added to Schedule 2, a permanent easement (and title opinion by the Regional Solicitor and title policy) are required consistent with DOJ title standards.

E. Processing Amendments

While there is no regulatory guidance or prescribed process for filing for or processing an amendment, there are issues that must be addressed in order to assure that amendments are prepared in a legally sound manner and that it is appropriate to do an amendment. The following sections provide a summary of the minimum steps that should be followed.

1. Filing Requirements

A request for amendment may be initiated by either BLM or the permittee. There is no formal application form involved. All requests for amendments should be in writing and include:

- statement of purpose for amendment (use of existing road, addition/deletion of lands, revision of terms and conditions, etc.),
- period of time for which rights are requested,
- type of amendment (nondiscretionary/discretionary). If the applicant believes the amendment to be nondiscretionary they should provide their

reasons why they believe this to be so (e.g., they believe the U.S. lands are newly acquired).

- applicable provision in the reciprocal right-of-way agreement,
- any maps, attachments or support material needed to describe and support the request, and
- listing of lands or interests in lands involved (if any), and documentation that title to those lands is held by either the BLM or permittee, or documentation that the granting party has sufficient easement rights to grant to the other party.

In advance of submitting a proposal in writing, it is best for all parties involved to meet and outline the proposal and timeframes. It is a good idea to have the permittee review draft versions of the amendment document during the preparation phase and provide them with a final review opportunity prior to the signing of the formal NEPA decision document (for discretionary amendments) and before the AO signs the Lands Memo (for non-discretionary amendments).

2. Numbering of Amendments

For administration and tracking purposes, each amendment to a reciprocal right-of-way agreement must be numbered in sequence for both the Agreement and the Permit. The official case file needs to be verified to determine the next number in sequence. If the reciprocal right-of-way agreement crosses district boundaries, it is imperative for the authorizing district to check with the other district(s) to see whether there are any new numbers assigned for pending or approved amendments. This will ensure that duplicate amendment numbers will not be issued.

In the case of partial assignments, a separate but equal Agreement is established with the new landowner (assignee), so amendments should be numbered starting with No. 1 on both the Agreement and Permit side once a case is created by partial assignment. See Chapter XI.

3. Determination of Discretion

An amendment request may involve both discretionary and non-discretionary components. If the amendment is nondiscretionary (and there are no discretionary components) the case file should document BLM's lack of discretion with a Lands Decision Memorandum. (Note: This is not a NEPA document but merely explains why a NEPA analysis was not done and provides the rationale for approval or rejection of an amendment request.)

It is recommended that nondiscretionary amendments be processed separately from discretionary actions. If the proposed amendment contains nondiscretionary

components, the NEPA analysis and Decision Record must clearly distinguish the nondiscretionary components.

If the amendment action is discretionary or contains discretionary components, BLM must comply with statutory requirements under a variety of applicable laws and regulations, including NEPA, ESA, and land use plan conformance.

In addition, the NEPA Decision Record must contain the proper administrative review language and identification of the effective date of the decision as described in Chapter XIII. (Note: Decisions for discretionary actions under the O&C regulations are not effective immediately (see Chapter XIII., Section D.) Lands Decisions under the O&C regulations are subject to appeal under the regulations at 43 CFR Part 4, Subtitle A.

4. Consideration of Additional Amendment Needs

When a permittee requests an amendment, BLM should review the reciprocal right-of-way agreement involved and determine if there is a need to incorporate any additional actions into the amendment. These additional actions may include the following:

- correcting errors and omissions,
- adding or revising other provisions to bring the reciprocal right-of-way agreement in line with current practice and standards.
- revising the bonding and insurance coverage amounts in Exhibit A and Exhibit B to reflect current industry standards,
- adding permittee lands and/or interests in land to Schedule 2 to allow BLM access to public lands (if the AO determines it appears necessary), and
- deleting BLM lands from Schedule 1 in order to support BLM's management objectives. An example might be the deletion of U.S. lands included in a designated Research Natural Area (RNA) or Area of Critical Environmental Concern (ACEC). (NOTE: the permittee is under no obligation to agree to such a deletion).

5. Verification of Legal Descriptions of Lands or Interests in Lands (Roads)

It is a good practice to develop and verify draft land descriptions as one of the first steps for processing amendments to add or delete lands or interests in lands. The MTP is the main source document for validating legal descriptions of U.S. lands. The source documents for validating legal descriptions of private (permittee) lands are the vesting deeds and/or title policies issued when the lands were acquired by the permittee.

Page 36 of this chapter contains a sample draft schedule of lands with extra columns for verification of legal descriptions and source data. Use of such a form is recommended when preparing schedules of land. The extra columns can easily be deleted once the schedule is final and verified. When adding roads or rights-of-way, records need to be checked (road records, BLM or private easement files, reciprocal right-of-way files, deeds, title reports, BLM's data bases (GTRN, FAMS, etc.)) to ensure that the road numbers and segments are correct and that BLM or permittee has sufficient control or ownership to be able to grant rights to the other for the purposes contained in the reciprocal right-of-way agreement.

Roads built by U.S. via a nonexclusive easement cannot be added to a Schedule 1 as the U.S. does not generally have sufficient control in nonexclusive easements to authorize third party rights. The definitions for "road ownership" and "road control" are included in the Glossary (Chapter II.).

Before adding any easements to a Schedule 1, the easement document must be reviewed (even if it is labeled as an "exclusive" easement) to ensure that the U.S. has sufficient rights of control in order to grant rights to permittees.

6. Examples of Writing Legal Descriptions for Lands or Interests in Lands

The following paragraphs are provided to assist in the writing of legal description of lands or interests in lands (roads, etc.) for amendments.

a. Describing U.S. Lands Added to Schedule 1 (Permittee Use)

For U.S. lands being added to Schedule 1, the legal description should be checked against the MTP. The most common type of land descriptions are:

- An aliquot part (such as the NE $\frac{1}{4}$ NE $\frac{1}{4}$, or the S $\frac{1}{2}$ SE $\frac{1}{4}$, etc.). When describing aliquot parts, if the individual aliquot part descriptions are written together with no comma between (NE $\frac{1}{4}$ NE $\frac{1}{4}$), it means "of the". When they are written with a comma and space between them (NE $\frac{1}{4}$, NW $\frac{1}{4}$) it means "and."
- For example, "NE $\frac{1}{4}$ NW $\frac{1}{4}$ " means "the Northeast quarter of the Northwest Quarter" and contains 40 acres.
- For example, "NE $\frac{1}{4}$, NW $\frac{1}{4}$ " means "the Northeast Quarter and the Northwest Quarter", which combined contains 320 acres.
- A Government Lot: If the MTP lists a government Lot No., the tract should be described as: "Govt. Lot __", etc.

- An unnumbered government lot: If the MTP shows an acreage figure (that is usually more or less than an even 40 or 20 acres (such as “40.21,”)) but with no Lot No., it is an unnumbered government lot and not a true aliquot part subdivision description. The description should be written as “an unnumbered Government Lot commonly known as the NE $\frac{1}{4}$ NE $\frac{1}{4}$, containing ___ acres”, etc.

For formatting examples of descriptions on land schedules, see Illustration V-4. If there is doubt about the proper way to describe a particular tract, seek advice from the cadastral surveyor.

b. Describing U.S. Roads Added to Schedule 1 (Permittee Use)

Existing roads or right-of-way locations must include a description of the lands being crossed, as well as the road number, right-of-way or easement number, and map legend symbol that identifies the road(s) on the Exhibit C map. Examples of the different existing road descriptions are shown on Illustration V-4.

- U.S. roads across U.S. lands,
- U.S. roads constructed across private land via an exclusive easement or O&C reciprocal agreement.

c. Describing Permittee-Constructed Roads on U.S. Land (In Third Party Amendments)

See Chapter VIII., Section H., for guidance in U.S. issuance of third party rights over permittee-constructed roads on U.S. land. A sample description of these lands on a schedule of lands is found on Illustration V-4 page 5.

d. Describing Permittee Lands Added to Schedule 2 (U.S. Use)

For permittee lands being added to Schedule 2, the legal description should be checked against the permittee’s vesting deeds and a Preliminary Title Report. The most common type of land descriptions are:

- An aliquot part (such as the NE $\frac{1}{4}$ NE $\frac{1}{4}$, or the S $\frac{1}{2}$ SE $\frac{1}{4}$, etc.)
- Metes and bounds
- Metes and bounds descriptions should follow the exact wording found in the vesting deeds. For formatting examples see Illustration V-4.

e. Describing Permittee Roads Added to Schedule 2 (U.S. Use)

Existing roads or right-of-way locations must include a description of the lands being crossed as well as the road number, right-of-way or easement number,

and map legend symbol that identifies the road(s) on the Exhibit C map. Examples of the different road scenarios are shown below:

- permittee roads across permittee lands – See Illustration V-4 (page 7),
- permittee roads across third party lands and the road is controlled by the permittee via an easement (see Illustration V-4, page 8). Before adding a road which is controlled by a permittee via an easement, it is important to get a copy of the actual easement to ensure that sufficient rights were acquired for the U.S. As with other title clearance, the easement document should be reviewed by the district acquisition specialist and referred to the Oregon State Office acquisition specialist if there is any doubt whether the permittee has sufficient rights to grant to the U.S.

Permittee roads constructed across U.S. lands MUST be authorized by the U.S., but the permittee is entitled to set reasonable road rules and collect fees.

7. Determine If Environmental Provisions Should be Added

When an amendment to add additional U.S. lands to Schedule 1 is determined to be a discretionary U.S. action, the amendment shall include the standard environmental provisions (if they are not already included in the permit). However, the provisions are applicable only to the newly added lands, roads or rights-of-way. If the permittee does not agree to making these provisions applicable to all of the lands already in the Permit, the lands must be added to a Schedule 3 (in addition to being added to the Schedule 1) and an Exhibit A-1 created which is applicable only to Schedule 3 lands (or other designated schedule No. used for special provisions).

These standard set of environmental provisions is found in the standard template for reciprocal right-of-way agreements (Exhibit A (provision No. 10, page 16), Form OR 2812-16—Illustration V-2).

10. Compliance with Environmental Laws.

The Permittee agrees that in all operations under this permit, during the life of this permit he shall comply with:

A. All provisions of the State and Federal Water Quality Standards as they may apply to any waterway, stream, lake or reservoir, on or near the permit area, together with all applicable State and Federal laws and regulations. The Permittee shall also undertake every reasonable measure to minimize damage to waterways, streams, lakes or reservoirs on or near the permit area in connection with any operations under this permit.

B. All applicable state and federal laws and regulations concerning the use of poisonous substances including insecticides, herbicides, fungicides, rodenticides and other similar substances. Prior to the use of such substances on or near the right-of-way, the Permittee shall obtain from the Authorized Officer approval of a written plan for such use. The plan shall state the type and quantity of material to be used, the pest to be controlled, the method of application and such other information as the Authorized Officer may require. All use of such substances on or near the right-of-way shall be in accordance with the approved plan. If the use of a poison is prohibited by the Secretary of the Interior, it shall not be used. If use of a poisonous substance is limited by the Secretary of the Interior, it shall be used only in accordance with that limitation.

C. If in connection with his operations under this permit, across the lands of the United States, the Permittee encounters or becomes aware of any objects or sites of cultural value, such as historical or pre-historical ruins, graves, grave markers, fossils or artifacts, the Permittee shall immediately suspend all operations in the vicinity of the cultural value and notify the Authorized Officer of the findings. The Permittee's operations may resume at the discovery site upon receipt of written instructions and authorization by the Authorized Officer.

D. All other applicable state and federal environmental laws, regulations and standards.

The Permittee shall immediately discontinue all construction or other operations under this permit upon receipt of written notice from the Authorized Officer that such operations or any part thereof are in violation on this provision

Additionally, if the Permit contains a road construction provision, the language should be revised to reflect the road construction provisions described in the standard template for an O&C reciprocal right-of-way agreement (Form OR 2812-16, Illustration V-2, page 35 and 36 – in Exhibit B.). Reason Nos. 4 and 5 below are the two reasons to object that are most commonly missing from older reciprocal right-of-way agreements.

Prior to the construction of a road on the lands of the other party, a map shall be filed with the landowner. Such map shall be prepared in accordance with 43 CFR 2812.1-2(c) and shall show the route and specifications of the road intended to be constructed. Construction may be commenced after the expiration of a thirty (30) day period following the filing of such map unless in the intervening

period the landowner shall object to such construction. The landowner may object to the proposed construction only if . . .

[newer reasons to object not found in all reciprocal right-of-way agreements:]

(4) an existing road is available and suitable for removal of timber tributary to the proposed road; or (5) may affect a species listed as threatened or endangered under the Endangered Species Act. In the event an objection is made on the basis that a threatened or endangered species is affected, construction of the road will be delayed until consultation with the U.S. Fish and Wildlife Service or National Marine Fisheries Service under Section 7 of the Endangered Species Act has been completed on the proposed road. Based on the biological opinion received from the Fish and Wildlife Service or National Marine Fisheries Service, the objection may be withdrawn, modified, conditioned, or continued.

When these additional reasons to object are added, it may create difficulty in administration if the reasons to object only apply to specific U.S. lands or roads added in a particular amendment. In order to alleviate this problem, it is recommended that an additional Schedule of Lands (Schedule 3) be created and any U.S. lands or roads added in the future would be added to Schedule 3 in addition to Schedule 1 and the provisions would only apply to those U.S. lands listed on Schedule 3.

As an alternative, the permittee and BLM may elect to enter in to a new reciprocal right-of-way agreement or unilateral permit containing the new required provisions rather than complicate an existing reciprocal right-of-way agreement with the addition of a Schedule 3.

8. Approval on Wording of New or Modified Provisions

Any standard provision that is shown on Form OR 2812-16 may be used without approval of the Oregon State Office.

If a new provision is being proposed or an existing provision is being modified, the AO shall submit the proposed wording for review by the Oregon State Office prior to the AO agreeing to add it by amendment. Caution needs to be exercised as specific wording may have unintended legal consequences in the future.

9. Factors to Consider for Discretionary Amendment Requests

The following should be considered when processing a discretionary amendment request:

- Is the permittee willing to grant additional access rights to the U.S. if needed?
- Is the requested amendment contrary to current BLM policy?
- Does the requested amendment conform to BLM's current land use plan?
- Will the requested amendment affect the environment and threatened or endangered species?

The AO should attempt to resolve any disagreements with the permittee informally. If that fails, a formal Decision (with rights of appeal) rejecting the amendment request should be issued to the permittee. See Chapter XIII. – Decisions and Appeals. The Decision should state the specific reasons for rejection according to the 43 CFR 2812 regulations, BLM policy, BLM's current land use plan or other applicable laws or regulations. .

F. Components and Format of the Amendment Document

The 43 CFR 2812 regulations do not prescribe an approved amendment format. However, over the past fifty years, a generally accepted format has been used by western Oregon BLM Field Offices and it is recommended to follow the format as closely as possible. An amendment template is provided as Illustration XII-1. The template provides sample formats and approved wording for various types of amendment actions.

A properly prepared amendment document may include one or more of the following items:

- amendment document including approval and notary blocks,
- Schedule 1 (U.S. Lands) – includes lands, roads or rights-of-way added to and/or deleted from the Permit,
- Schedule 2 (Permittee lands) – includes lands, roads or rights-of-way added to or deleted from the Agreement,
- Schedule 3 (U.S. lands) - This is a subset of Schedule 1 lands, roads or rights-of-way for which special or additional provisions apply. For example, for discretionary amendments, the BLM AO may want to add the environmental provisions, cultural provisions or additional reasons for objecting to road construction (for T&E species). Note: Not all reciprocal right-of-way agreements will have a Schedule 3 (or other designated schedule number used for this purpose),
- Exhibit C—Agreement area map identifying lands, roads or rights-of-way which are subject to certain provisions contained in the reciprocal right-of-

way agreement and identifies lands (by legend type) which are being added to or deleted from a Schedule 1 or Schedule 2, and/or

- any other exhibits or accessory documents based on the specific situation.

The following sections provide detailed guidance regarding specific amendment sections or documents:

1. Header

The heading must specify the amendment number(s) and identify the Agreement(s) and Permit(s) involved. Example of a header is shown in Illustration XII-1, page 3.

2. Recitals

The recitals lay the foundation for what is being amended and why it is being amended. There are two parts of the recitals discussed in this chapter: 1) the opening recitals (providing the historical perspective), and 2) the “purposes” recitals (why the amendment is being done). Examples of these types of recitals are shown in Illustration XII -1(starting on page 4).

a. Opening (Historical) Recitals

The opening recitals must include, as a minimum:

- The Right-of-Way and Road Use Agreement, by number, grantor, and date of the original grant. (See clause [R-1] in Illustration XII-1).
- The O&C Logging Road Right-of-Way Permit, by permit number, date of approval, and name of the original applicant/permittee. (See clause [R-2] in Illustration XII-1),
- If the current permittee is holding the permit in a name different name than the name as of the time the permit was originally granted (or what was recognized at the time the permit was assigned to them), a recital stating acknowledgement recognition of that name change by the BLM. Use Recital No. [R-3a] for this purpose. By including this provision, the name of the permittee shown on the signature block is acknowledged as being different than the name in the original recital for the permit.
- Amendments to the reciprocal right-of-way agreement. At a minimum, there should be one recital containing a summary of all of the amendments to date, with the number, recording and approval date and recording information for the latest amendment. (See clause [R-4] in Illustration XII-1).

- Assignments of the Permit. At a minimum if the current permittee holds rights as a result of an assignment, there should be a recital listing the approved (and/or recording) information for the assignment to the current. (see clause [R-3] in Illustration XII-1).

The recording information for any items listed in the recital which were recorded should include the recording reference such as book, page, volume, reception number, microfiche number, etc. and the date(s) and location by county(ies). Standard practice (as shown in Illustration XII-1) is to list one recital for the original reciprocal right-of-way agreement, one recital for the original Permit, one recital summarizing the total number of amendments (with the last amendment reference by amendment No. & recording information), and one recital showing the assignment (if any) to the current permittee. (See recital Nos. [R-1], [R-2], [R-3], and [R-4].)

b. Purpose Recitals

A recital (or recitals) which describe the reason(s) for the amendment should be included. This identifies all the proposed amendment actions and the purpose or basis for each.

If there is a regulatory or obligatory reason for the amendment it should be stated here.

See recital Nos. [R-5] through [R-18] in Illustration XII-1.

3. Granting “Now Therefore” Section (Specific Agreements)

The next section always begins with the following clause:

NOW THEREFORE, the parties do hereby agree as follows:

In this section, the document identifies the specific amendatory actions and contains the binding words of the amendment.

Some common actions typically found in amendments include:

- adding or deleting lands, roads or rights-of-way to Schedule 1,
- adding or deleting lands, roads or rights-of-way to Schedule 2,
- bringing an arbitration-type permit current to existing regulations at time of amendment,
- modifying or replacing attachments,
- modifying or replacing Exhibit C maps,

- correcting legal descriptions or errors, and/or
- eliminating overlapping rights discovered when doing an assignment.

4. Savings Provision (Mandatory for All Amendments)

All amendments must contain the following statement (which is usually the last provision):

That in all other respects said Agreement and Permit shall continue and remain in full force and effect.

See clause [G-16] in Illustration XII-1.

5. Signature Blocks

A date and signature line for the BLM AO and the designated representative(s) of the permittee must be included. NOTE: Contract purchaser(s) must also sign all amendments where the contract of sale may convey or attempt to convey the permittee's obligations under the reciprocal right-of-way agreement to the contract purchaser (see Chapter X. for guidance in dealing with contract purchasers). The permittee must sign first, followed by the BLM AO.

6. Notary Acknowledgements.

In order for the amendment document to be recorded, each signature must be notarized. There must be a separate notary acknowledgement block for each signatory.

7. Exhibits, Attachments and Accessory Documents

Accessory documents (maps or exhibits) may be included in an amendment and used to supplement the narrative recital(s). The following provides further guidance regarding accessory documents:

a. Exhibit A or B

If the amendment revises either the Exhibit A or Exhibit B provisions, the amendment document itself can cite the revisions in the "Now Therefore" section without including an Exhibit A or B as an attachment. Or, the amendment can refer to an attached Exhibit A or B which contains the revisions. See Chapter V. for an explanation of the purposes and requirements of the Exhibit A and Exhibit B documents

b. Exhibit C Map and Agreement Area Boundary

Some reciprocal right-of-way agreements contain an Exhibit C map and agreement area boundary. In those cases, an Exhibit C map revision and agreement area boundary (if one exists) must be included in the amendment if there is an addition or deletion of lands or interests in lands to the Schedules. If there is no agreement area boundary in the original reciprocal right-of-way agreement there is no need to include a boundary in any amendment.

If the amendment map replaces the Exhibit C map in its entirety, the amendment document should so state. If the Exhibit C map merely adds or deletes lands it should be labeled as:

Exhibit C - Amendment 25, etc.

Or

Exhibit C-25 [for amendment 25]

If the Exhibit C map replaces only specific pages of an Exhibit C map, the amendment Exhibit C map for the amendment should be labeled with the specific page number(s) and clearly noted that the Exhibit C map for the amendment replaces the previous edition of the same page number.

It should be noted that not all reciprocal right-of-way agreements contain an Exhibit C map or agreement area boundary. In those cases, the Exhibit C serves as a visual depiction of lands, roads or rights-of-way added or deleted from a particular Schedule.

All maps must be prepared so that they may be recorded and easily read or interpreted when copied in black and white and on letter size paper (i.e., use black cross hatching or dashed lines in lieu of colors).

c. Amending Recorded Accessory Documents

There are times that an amendment revises or includes accessory documents such as the license agreement, Schedule 3, Exhibit A-1, Maximum or Minimum Road Standards, Exclusive Easement form, etc. In those cases, the “Now Therefore” section should reference the accessory documents as an attachment to the Permit or Agreement as appropriate.

G. Amendment Approval

Before any amendment can be approved, there must be a Lands Decision Memorandum (or a Lands Decision if a discretionary amendment) signed by the AO. Refer to Chapter XIII. for guidance on discretionary and nondiscretionary

decision documents. The signed Lands Decision or Lands Decision Memorandum should be accompanied by two original copies of the amendment document, including all schedules and exhibits and accessory documents. Both copies of the amendment must be signed by the permittee's authorized representative, notarized, and returned to BLM.

When the two original copies of the amendment document have been returned to the issuing office, take the following actions:

- Verify that both amendment document copies have been signed and dated and notarized by the permittee and that the person who signed on behalf of the permittee has the authority to do so (see Chapter III. applicant requirements);
- Verify that the signature has been properly notarized (on both copies);
- If a signature is missing or the notarization is not properly executed, return the copies to the permittee for corrective action;
- When the corrective action has been completed, have both copies of the amendment approved by the AO and properly notarized. Amendments are approved by the appropriate Field Manager. If more than one resource area within a district office is involved, the amendment is signed by the District Manager. If more than one district is involved, the amendment is signed by all affected District Managers (unless by special delegation from the State Director one District manager has been delegated authority to sign on behalf of all districts); and
- Once the amendment has been fully executed by BLM and notarized, one original copy of the document must be recorded in the official records of all affected counties. Amendment actions which change the terms or conditions of the reciprocal right-of-way agreement must be recorded in all counties in which the Schedule 1 and Schedule 2 lands are located. Although 43 CFR §2812.3-3 indicates that the permittee is responsible for recording the documents, BLM normally takes the responsibility and bears the expense of recording these documents to ensure that the rights acquired by the U.S. are recorded as timely as possible. Following recording, the original recorded amendment should be filed in the official BLM case file and a copy with the recording information should be mailed to the permittee and all BLM Field Offices involved in the action.

H. Post Approval Actions

The following actions are required in order to maintain complete and accurate records and to properly administer the reciprocal right-of-way agreement after the amendment.

1. Reporting Units of Accomplishments in MIS

For every amendment of a reciprocal right-of-way agreement, two units of accomplishment are reported:

- For the Permit report a unit of accomplishment under the 6310 sub-activity and ER program element, reported in number of cases.
- For the Agreement – the only available program element is HN, which is reported in acres. Report the number of acres added to Schedule 2. If the amendment does not add acres to Schedule 2, then the action should be reported under an FP program element. Refer to Illustration VI-9.

2. Update LR2000 (Case Recordation)

a. Permit (“FD” part of Serial Register Page)

In the “Location Detail” screen:

- Determine and enter the appropriate legal descriptions and acreages for the lands and interests in land added to Schedule 1.
- For any lands that were deleted from Schedule 1 by amendment, instead of removing the legal descriptions from the SRP, place a “7” in front of the section number for each legal descriptions removed from the Permit. This will leave the legal description on the SRP for historical purposes
- If only a portion of the legal description was removed, re-write the description for that portion that remained in the permit. Also re-write the description for the portion that was deleted by placing a “7” in front of the section number (in place of the zero) for the description that was deleted.
- Manually increase or reduce the acreages in the “Jurisdiction Acres” table to appropriately reflect the lands removed from the permit.
- If lands were added, add legal descriptions for all lands, roads and rights-of-way that were added by the amendment.
- If the amendment corrected a legal description in Schedule 1, also correct that legal description in LR2000.

In the “Action Details” screen:

- Using the date the amendment was approved, enter Action 304 (Authorization Amend/Modified) – enter the date the amendment was signed/notarized by BLM and enter the “Amd. #__” in the remarks column.

- Using the date the amendment was approved, enter Action Code 501 (Reference No.) – Enter the District permit number in the remarks column (e.g., R-1000) if it is not already on the Serial Register Page.
- Enter Action Code 404 (Title Recordation) – Enter the date the amendment was recorded in remarks. Include an entry for each County involved. In the remarks column enter the recording information such as: “Vol. ___ / BK ___.” “Reel ___ / Recep ___” etc.

b. Agreement (“PT” Side of Serial Register Page)

In the “Location Details” Screen

- Determine and enter the appropriate legal descriptions and acreages for the lands and interests in land added to Schedule 2.
- If lands have been deleted, follow the same process as for the “FD” side by adding a “7” in place of the zero in the “Section” field.
- Reduce the acreages appropriately to reflect the lands removed from Schedule 2.
- If the amendment corrected a legal description in Schedule 2, make the same correction in the legal description in LR2000.
- If lands were added, add a legal description for all lands, roads or rights-of-way that were added by the amendment.

In the “Action Details Screen”

- Enter Action 304 (Amended/Modified) – use date the Amendment was signed by BLM.
- Enter Action Code 404 (Title Recordation) – Enter the date the amendment was recorded. In the remarks column, enter the recording information (“Vol. ___ / BK ___.” “Reel ___ / Recep ___” etc.). Include an entry for each County involved.

For additional LR2000 guidance, see the Lands Data Standards in LR2000 for Case types 210003, 210013 and 281230. See also Illustrations VI-9 and VI-10.

I. Consolidation Amendments – Special Processing Requirements

Extensive sales and/or purchases of private timberlands in western Oregon have resulted in some permittees having multiple reciprocal right-of-way agreements administered by the BLM. This creates additional workload for both the permittee and the U.S. which can be reduced through a consolidation amendment action.

A consolidation amendment takes two or more reciprocal right-of-way agreements with the same permittee and merges them into one “surviving” reciprocal right-of-way agreement. The intent of a consolidation amendment is to increase efficiencies in administration of the program as well as protect prior Permit rights.

Consolidation amendments are by mutual consent of the parties and may occur at any time when the right circumstances exist. For example, the need for a consolidation amendment may become evident during the assignment of a Permit. In this situation, a consolidation amendment would carry forward the assignee’s rights, responsibilities and obligations in their existing Permit (i.e. recognition of previous road use fees paid, previous roads constructed by the permittee on U.S. lands, etc.). This is important in light of the following verbiage found in the standard-form Permit (Form OR 2812-16, Illustration V-2, pages 1 and 2.)

All rights of Permittee with respect to the use of roads and rights-of-way across the lands described in Schedule 1 shall hereafter be determined in accordance with this permit. All outstanding rights heretofore granted to the Permittee to use such roads and rights-of-way are hereby terminated.

The net effect of this language is that if the permittee already has rights over U.S. lands, roads or rights-of-way in another Permit, those rights would be terminated by the assignment of another Permit with respect to those U.S. lands, roads, or rights-of-way that are in both Permits.

The consolidation amendment also provides an opportunity to review and revise land schedules to reflect the current ownership of the parties involved. While there are many aspects of the amendment process previously described in this chapter that would apply to a consolidation amendment, there are many aspects that warrant special care. These are described below:

The required provisions for consolidation agreements that are discussed below are all included in Illustration XII-6.

1. Selecting Reciprocal Right-of-Way Agreements to Be Consolidated

It is important that the BLM and permittee agree in advance which reciprocal right-of-way agreements will be consolidated and identify the surviving reciprocal right-of-way agreement. Items to be considered in selecting agreements to be consolidated include the following:

- Location – If consolidation is being considered, all reciprocal right-of-way agreements (and long term unilateral permits) with the same permittee

within an administrative boundary should be considered. Consolidating reciprocal right-of-way agreements that include more than one BLM district should be looked at cautiously and ensure that all inter-district issues are resolved if a decision is made to proceed. If a permittee wishes to consolidate more than two reciprocal right-of-way agreements held by that permittee the recommended practice is to consolidate the permits by district.

- Type of reciprocal agreements - The surviving reciprocal right-of-way agreement should be of the semi-detailed type and can never be of the arbitration or detailed type as those reciprocal right-of-way agreements are not in conformance with current 2812 regulations and does not contain the regulatory provisions that are included in Form OR 2812-16.
- Period of Time - The consolidation process neither diminishes nor enhances the terms of the rights granted or received. Non-perpetual rights in a reciprocal right-of-way agreement should not be consolidated with agreements containing perpetual rights.
- Environmental Compliance - A reciprocal right-of-way agreement that contains the most current environmental provisions (such as the right to object to new road construction because the action may affect a species listed under the Endangered Species Act) should be considered as the surviving reciprocal right-of-way agreement. Under no circumstances should the surviving reciprocal right-of-way agreement eliminate or reduce environmental compliance requirements on public lands.
- Amortization Provisions - When consolidating reciprocal right-of-way agreements that include both system fee agreements and road-by-road agreements, the system fee agreement must be the surviving reciprocal right-of-way agreement. In order to consolidate a road-by-road agreement into a system fee agreement, all roads in the road-by-road agreement must be swapped out prior to consolidating and the remaining deficit balance transferred to the system fee ledger in the surviving agreement.

2. Identification of Lands and Interests in Land

The schedule of lands and interests in lands from the reciprocal right-of-way agreements being consolidated must be compiled, reviewed and accurately described for both parties. Making copies of current land schedules will allow them to be marked and checked as the documents are being prepared and finalized. The final listing of lands or interests in lands should take into consideration the following:

- Schedule 1 and Schedule 2 lands included in all reciprocal right-of-way agreements involved in the consolidation, including original schedule of lands and any subsequent amendments;

- Schedule 3 lands in any of the associated reciprocal right-of-way agreements, if any, along with identification of which provisions apply to the Schedule 3 lands;
- Schedule 1 lands over which permittee will no longer need access, and will not appear on the consolidated listing;
- Schedule 2 lands over which BLM will no longer need access and will not appear on the consolidated listing;
- Other BLM or permittee lands that are “newly acquired” and qualify for obligatory addition to Schedule 1 or Schedule 2;
- Schedule 1 or 2 lands no longer owned by the U.S. or permittee, respectively; and
- any other U.S. or permittee ownership in the consolidation area.

At the beginning of the consolidation process, it is recommended that a draft Schedule of Lands be created which contains extra columns (as shown below) for verifying data. This way, as the lands are added to the schedule they can be verified and noted on the draft version with extra columns. Once all verifications have been done, a final version may be created by deleting the additional verification columns. The draft version with the verification columns should be saved for historical purposes.

SAMPLE DRAFT SCHEDULE OF LANDS CONTAINED ADDITIONAL COLUMNS FOR VERIFICATION OF DATA:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

- Schedule 1 – United States Lands
- Schedule 2 – Permittee’s Lands

RIGHT-OF-WAY LAND DESCRIPTION

This schedule to be attached to Right-of-Way Number

Permittee Name: _____

Meridian: Willamette County: _____

TOWN-SHIP	RANGE	SEC-TION	SUBDIVISION	PERIOD OF TIME	Source document*	MTP**	Exhibit C MAP***
<p>*Shows where the legal description is located in the non-surviving document (original , Amend. #, etc.). **Indicates that legal description as described in source document is correct as to the MTP description. (This is where you catch any changes in legal descriptions resulting from new surveys. ***You can indicate with a check mark that the Exhibit C map has been verified prior to finalizing amendment to ensure this description is included.</p>							

If duplicate legal descriptions are identified in Schedule 1 of the right-of-way agreements being consolidated, these duplicate legal descriptions should be eliminated. Legal descriptions for smaller subdivisions, if owned by the same party, should also be combined in the final Schedule of Lands (e.g., the N½ and S½ would be shown as “ALL” in the final schedule).

3. Adding or Modifying Agreement Map (Exhibit C)

When reciprocal right-of-way agreements are consolidated, the agreement area map (usually Exhibit C) must be updated to show the post-consolidation situation. This is accomplished by creating an entire new Exhibit C map and incorporating it into the surviving reciprocal right-of-way agreement by using the following recital:

That Exhibit C, which is attached to said agreement and permit, shall be replaced by Exhibit C (Amendment No. _____ [use number of the consolidation amendment]), attached hereto and made a part hereof.

It is recommended that the Exhibit C be replaced in its entirety when doing a consolidation amendment. Care should be taken to transfer all information contained on the original Exhibit C maps to the newly created Exhibit C map to protect the rights of both parties, and “other” or “third party lands.” Use of the draft Schedule of Lands (with the verification columns) as shown above, will ensure the accuracy of the legal descriptions and Exhibit C mapping.

a. Agreement Area Boundary

If any of the reciprocal right-of-way agreements being consolidated contains an agreement area boundary (see Chapter V.), it will be necessary to revise the boundary to include the consolidated schedule of lands into the surviving reciprocal right-of-way agreement. The Exhibit C map attached to the amendment should show the new (consolidated) boundary.

The new boundary must include all the land that was previously included with the boundaries of the Permits being consolidated, unless the BLM and permittee mutually agree to remove specific lands from the boundary.

b. Road Ownership, Control, and Amortization

Road ownership, control and amortization status can be shown on the Exhibit C map created for the amendment by using different legend types. This can be helpful in bringing forward in a consolidated manner previous construction and first use supplements. This information should be identified in the road legend for the Exhibit C map using various symbols.

4. Adding or Modifying Terms and Conditions

(See Section C.2.a.2), above, for guidance on adding, deleting, or revising provisions of a reciprocal right-of-way agreement.

5. Bonding and Insurance

While reciprocal right-of-way agreements are being consolidated, it is necessary to review the current bonding amount and insurance coverage limits specified in the surviving reciprocal right-of-way agreement to determine if they are adequate for the consolidated reciprocal right-of-way agreement or need to be increased.

The insurance coverage limits in the surviving reciprocal right-of-way agreement should be reviewed to ensure they are similar to that in general use in the timber industry at the time of the amendment and approved for BLM to use in a new reciprocal right-of-way agreement.

The permittee bonding amount specified in the regulations is a minimum of \$500 per mile or a fraction of a mile of existing road to be used (see Chapter VII.). To assess the adequacy of the existing bond amount, estimate the average mileage of roads that are likely to be used during a reporting period (month or quarter) under the consolidated reciprocal right-of-way agreement. The amount of the bond should be no less than the average historical mileage used (rounded up to the nearest whole mile) multiplied by \$500. The estimate may be derived by reviewing road use reports for the reciprocal right-of-way agreements being consolidated and averaging the mileage used in each reporting period for several reporting periods. If the bond amount specified in the surviving reciprocal right-of-way agreement is not adequate, the amendment should increase the amount to a level that is consistent with the regulations.

Typically bonding amounts in the reciprocal right-of-way agreements have a “not to exceed” amount (like \$10,000) that the parties agree upon in the Exhibits A and B. If the reciprocal right-of-way agreements being consolidated contained two different “not to exceed amounts: the BLM and permittee must negotiate on the amount that will be carried forward in the surviving reciprocal right-of-way agreement.

6. Provisions for Superseding Existing Reciprocal Right-of-Way Agreements (Consolidation Amendments)

Consolidation amendments present unique requirements with respect to the non-surviving reciprocal right-of-way agreements in that their rights no longer exist in their previous form or document but are carried forward in the surviving reciprocal right-of-way agreement.

It is important to provide the necessary operative language in the consolidation amendment to affect this condition as follows:

a. If Reciprocal Right-of-Way Agreements are being Superseded in their Entirety

The “Now Therefore” section in the consolidation amendment for the surviving reciprocal right-of-way agreement must include the following recital for each non-surviving reciprocal right-of-way agreement that is superseded in its entirety:

This amendment supersedes and terminates in its entirety O. and C. Logging Road Right-of-Way Permit No. _____ and Right-of-Way and Road Use Agreement No. _____ entered into on (date) and recorded (recording information).

The rights of the parties hereto with respect to such rights-of-way and road use shall hereafter be determined in accordance with this instrument.

The above provisions bring forward into the surviving reciprocal right-of-way agreement all of the rights in the superseded reciprocal right-of-way agreements while at the same time terminating the old permits. This will enable the old Permits and Agreements to be closed out in LR2000. The provisions in c. and d., below, assures the parties that if any errors are discovered they agree to correct them.

b. If Only Specific Lands, Roads or Rights-of-Way are Being Superseded

The “Now Therefore” section shall include the following recital where only a portion of the non-surviving reciprocal right-of-way agreement is superseded:

This amendment supersedes and terminates, as to: 1) those lands and interests in land of the Permittee described on Schedule 2, and 2) those lands and interest in lands of the United States described on Schedule 1 attached hereto and made a part hereof, O. and C. Logging Road Right-of-Way Permit No. _____ and Right-of-Way and Road Use Agreement No. _____.

The rights of the parties hereto with respect to such rights-of-way and road use for the superseded lands and interests in lands shall hereafter be determined in accordance with this instrument.

As with the earlier provision (in a. above), this above provisions bring forward into the surviving reciprocal right-of-way agreement only the specific rights in the superseded reciprocal right-of-way agreements while at the same time

terminating the rights over those same legal descriptions in the old Schedule 1 and Schedule 2. This will enable amendments to be made in LR2000 to delete the specific lands. The provisions in c. and d., directly below, assure the parties that if any errors are discovered they agree to correct them.

c. Intent of Parties to Correct Errors or Omissions of Lands, Roads or Right-of-Way

The following language shall be included in the “Now Therefore” section to document agreement that if any lands, roads or rights-of-way are inadvertently left out of the consolidation amendment, the parties agree to add those lands, roads or rights-of-way by a future amendment:

It is the intent of the parties that if any lands, roads or rights-of-way are inadvertently left out of this instrument that were intended to be superseded and included in this instrument, the parties hereto agree that they will amend said O. and C. Logging Road Right-of-Way Permit No. _____ and Right-of-Way and Road Use Agreement No. _____ to include those omitted lands, roads or rights-of-way.

If an amendment is needed later to correct such errors or omissions, this language will allow the amendment to be done as a nondiscretionary action.

d. Agreement to Correct Errors in Recognition of Road Ownership or Control, Deficit Balances, Etc.

When a consolidation amendment supersedes one or more reciprocal right-of-way agreements, there is a chance that existing rights in the Permit(s) and Agreement(s) being superseded may be inadvertently omitted from the transfer to the surviving reciprocal right-of-way agreement. In addition, errors in the Accounting Agreement may be made. Such errors or omissions may include: 1) recognition of road ownership or control and rights of the road owner or controlling party, 2) for roads constructed on the other party’s land, rights of road ownership including right to collect road use fees for existing deficit shares on specific road segments, etc. The following language shall be included in all consolidation amendments to document that the parties agree to correct such errors or omissions.

It is the intent of the parties hereto that in superseding and terminating O. and C. Logging Road Right-of-Way Permit No. _____ and Right-of-Way and Road Use Agreement No. _____, as specified above, that the rights and obligations of both parties under said Permits and Agreements existing on the date this amendment is executed as to: 1) road control and road ownership, 2) deficit share balances, 3) the collection or payment

for road use, and 4) first right of road maintenance, etc. are to be transferred to O. and C. Logging Road Right-of-Way Permit No. _____ and Right-of-Way and Road Use Agreement No. _____. If any such rights are inadvertently omitted from this amendment, the parties hereto agree that they will amend said O. and C. Logging Road Right-of-Way Permit No. _____ and Right-of-Way and Road Use Agreement No. _____ to provide for such rights.

A later amendment to correct an error or omissions as described in the above two provisions would be considered a nondiscretionary action and not subject to a new NEPA analysis.

e. Provision for Unreported Road Use

There may be concern that all road use conducted under the reciprocal right-of-way agreements being superseded may not have been reported and appropriate fees paid. To assure that such obligations under the superseded Permit(s) and Agreement(s) are unmistakably carried forward, the following recital is required to be included in all consolidation amendments:

If either party hereto has transported timber or other forest products under the authority of an O & C Logging Road Right-of-Way Permit or Right-of-Way and Road Use Agreement herein superseded, as described above, and has not reported such transportation of timber or other forest products and paid fees as required by said superseded permit or agreement, said party shall remain obligated to report said transportation of timber or other forest products and to pay such fees as may be required under the procedures specified in O & C Logging Road Right-of-Way Permit [No. of surviving reciprocal permit] or Right-of-Way and Road Use Agreement [No. of surviving reciprocal permit], as amended herein.

f. Rights Carry Forward in Surviving Agreement as of the Date First Granted or Received

It is important to acknowledge the consolidation amendment carries forward the rights granted or received in the original Agreement and Permit as of the date the rights were first granted. The following paragraph should be included to recognize the time the rights were first granted or received:

It is the intent of the parties hereto that in superseding O. and C. Logging Road Right-of-Way Permit No. _____ and Right-of-Way and Road Use Agreement No. _____, that the rights and obligations of both parties under said permit and agreement shall continue from the date those rights were first granted or received.

The title interest in the lands also continues from the original reciprocal right-of-way agreement and does not require new title clearance. Following the consolidation, the rights to be exercised by either party will be in accordance with the terms and conditions of the surviving reciprocal right-of-way agreement, unless a separate schedule is created which limits some or all of the lands consolidated to certain provisions contained in the non-surviving permit.

g. Accounting Agreement Required

It is critical that road amortization deficit share balances (or free use status) be included in an Accounting Agreement which is attached to the consolidation amendment. Transferring road amortization deficit shares balances for the reciprocal right-of-way agreements being superseded into the surviving reciprocal right-of-way agreement is one of the most challenging aspects of a consolidation amendment. The parties have several options for accomplishing the transfer. Key steps in this accounting process include the following:

1) Identification of the Roads Within the Consolidated Agreement Area

The first step in reconciling road amortization records is to identify and map all of the road segments within the new consolidated agreement area. Once the map is created, each road needs to be assessed to determine: 1) who owns and controls the road, and 2) who owns any improvements.

2) Identification of Deficit Shares

For each and every road identified in the consolidated agreement area, it is necessary to identify all BLM and permittee roads where road use fee supplements (see Chapter IX., Section C.) have been completed for each reciprocal right-of-way agreement involved in the consolidation. This may include:

- roads or improvements that were brought forward in the surviving agreement as “free use” for either BLM or the permittee (either in the original reciprocal right-of-way agreement documents or by subsequent amendment). In the original reciprocal right-of-way agreement documents, such roads are usually identified in Exhibit A or Exhibit B and/or shown on the original Exhibit C map. In an amendment, they are usually identified by a “Now Therefore” clause.
- roads/improvements that came into the surviving reciprocal right-of-way agreement with an established road use fee and deficit share.

In compiling this information, it is necessary to make sure the road amortization records and reciprocal right-of-way agreement supplements involved are current and complete. It is also necessary to account for all outstanding (unpaid) road

use fees due. Any outstanding road use fee calculation requests should be identified. It is a good idea to start making a listing of all this information, perhaps on a spread sheet.

3) Reconciliation of Records

BLM and the permittee must review the information gathered above and concur that it is complete and accurate or make corrections so that their records are reconciled. The records of the two parties often differ, especially if a reciprocal right-of-way agreement is old or the amortization records have not been reconciled on a routine basis.

While there is no set method for reconciliation of records, the priority tasks for reconciliation should include agreement on the following:

- road ownership and control,
- roads constructed or improved by the other party,
- road amortization records reconciled for:
 - roads with free-use status to either/both parties, and
 - roads with deficit balances for either party, and
- roads which do not yet have road amortization shares and road use fees calculated.

4) Accounting Agreement and Road Deficit Status Map

After the above information is identified, an Accounting Agreement should be prepared which lists each and every road within the consolidated agreement area for which road use fee calculations have previously been completed. The Accounting Agreement would identify: 1) the deficit party, and 2) the current deficit balance (if any) for all roads or improvements identified on the map.

If there are roads within the consolidated agreement area which have been used by either party but for which no road use fee calculations have been completed, the consolidation amendment should not be approved until those fee calculations have been completed, approved by the road or improvement owner, and accepted by the using party. If road use has already occurred and there are road use fees due for these roads with new fee calculations, the fees owed should either be paid or swapped-out. After this swap out or payment of fees is completed, the roads can then be listed on the Accounting Agreement, showing the deficit balance remaining after the approval of the consolidation amendment.

An Accounting Agreement will be useful in tracking the amortization records for all roads included in the consolidation. It will be necessary to carry forward remaining deficit shares to the surviving reciprocal right-of-way agreement. There may be deficit shares to carry forward for both BLM and the permittee. The complexity of tracking individual deficit shares may be minimized if there is a swap out of each party's deficit shares among the reciprocal right-of-way agreements being consolidated (see Chapter VI., section D.2.).

If a system-fee agreement is not intended or created, or if the remaining deficit share is not swapped-out or paid in full, there will be one or more road deficit share balances owed by either BLM or the permittee or both for each segment that has been amortized. These road-by-road deficit share balances are then carried forward into an Accounting Agreement for the surviving reciprocal right-of-way agreement and will remain on the individual road amortization records for future posting of use.

Any roads which have not yet been amortized would be identified on the road amortization status map as "fee calculations needed."

Any remaining permittee balances may be transferred using a "Now Therefore" clause similar to the following:

That the road use deficit share balances shown on Attachment A, attached hereto and made a part hereof, which deficit balances were established under the provisions of O. and C. Logging Road Right-of-Way Permit No. ____ are hereby carried forward into O. and C. Logging Road Right-of-Way Permit No. _____. Permittee shall pay road use fees, at the rates shown on said Attachment A, whenever it hauls timber or other forest products over any road or improvement listed on Attachment A until the deficit share shown on Attachment A for that road has been paid. The Permittee shall thereafter have free use of such road, except for pro rata maintenance expense and except as provided in Paragraph No. _____ of Exhibit A attached to said permit.

Any remaining BLM balances may be transferred using a Now Therefore recital similar to the following:

That the road use deficit share balances shown on Attachment B, attached hereto and made a part hereof, which deficit balances were established under the provisions of Right-of-Way and Road Use Agreement No. ____ are hereby carried forward into Right-of-Way and Road Use Agreement No. _____. The United States or its licensees shall pay road use fees, at the rates shown on said Attachment B, whenever the United States or its licensees hauls timber or other forest products over any road or improvement listed

on Attachment B until the deficit share shown on Attachment B for that road has been paid. The United States and its licensees shall thereafter have free use of such road, except for pro rata maintenance expense and except as provided in Paragraph No. ____ of Exhibit B attached to said agreement.

5) Accounting Agreement if Surviving Agreement will be a System Fee Agreement

If the intent of the parties is to convert the consolidated reciprocal right-of-way agreements into a system-fee agreement, a mass swap out should be completed for each individual reciprocal right-of-way agreement involved in the consolidation, including the surviving reciprocal right-of-way agreement. Each reciprocal right-of-way agreement being consolidated would have a remaining balance owed on one or more roads or improvements for only one party. After completing each agreement specific swap out, the remaining balances in each reciprocal right-of-way agreement would be swapped to come up with one final balance owed by only one party. This would establish the beginning system-fee ledger deficit balance in the surviving reciprocal right-of-way agreement.

a) Identification of Fee Status on Exhibit C Map

In addition to the listing of roads and deficit balances on the Accounting Agreement, it is desirable and recommended that the fee status of each road is identified on the Exhibit C map (or supplemental map) with a legend identifying each road as one of the following:

- deficit share calculated for permittee use,
- deficit share calculated for U.S. use, or
- road use fee calculation needed at time of first use.

b) Reserved

7. Post Consolidation Amendment Actions

A number of tasks will result from completion of the consolidation amendment, including updating the road amortization records, road record files, LR2000, etc. All previous documentation from the non-surviving reciprocal right-of-way agreement files should be incorporated physically or by reference into the surviving reciprocal right-of-way agreement file.

In addition to the LR2000 record updates described in section H above (for all amendments.) Consolidation amendments required special LR2000 updates. See Illustration VI-10 for guidance.

The records for the superseded reciprocal right-of-way agreements must be noted to show that they were totally superseded (and closed) or superseded in part (by removing the lands and interests in land that were superseded) and should identify the surviving reciprocal right-of-way agreement in the remarks section. The LR2000 record for the surviving reciprocal right-of-way agreement should, in addition to showing the addition of lands and interests in land, be noted to identify the unilateral permit(s) and reciprocal right-of-way agreement(s) that were superseded.

There are times that one or both parties do not wish to carry forward lands into a consolidation amendment because they are no longer needed. In this case, after the consolidation amendment is completed, it may also be necessary to release BLM and/or permittee rights for any lands listed in the land Schedules of the superseded reciprocal right-of-way agreements which were not carried forward in the consolidation amendment (see section C.2.a.4) above and sections J., K. and L., below for completing release documents).

The road amortization must be updated to show the results of a swap out of deficit shares if a swap out is done. All road amortization records in the superseded reciprocal right-of-way agreements for which road deficit share balances have been transferred to the surviving reciprocal right-of-way agreement should also be noted to indicate those roads are now incorporated into the surviving reciprocal right-of-way agreement. There should be an accounting entry in the road amortization records of the non-surviving agreement to zero out the deficit balance and show it was transferred to the surviving reciprocal right-of-way agreement.

The road record files for all roads controlled by the U.S. or the permittee on lands of the other party that were transferred to the surviving reciprocal right-of-way agreement should be noted to show that the road use fees and deficit shares are now associated with the surviving reciprocal right-of-way agreement.

J. Release of Roads in Reciprocal Right-of-Way Agreement Areas When Decommissioning is Proposed

The Northwest Forest Plan calls for the decommissioning of existing logging roads to reduce mileage or mitigate additional road construction in key watersheds. See Chapter XV., Section G., for detailed discussion on road closure and travel restriction options. Implementation of this requirement has raised the issue of whether BLM has the right to unilaterally obliterate existing roads which are included in a reciprocal right-of-way agreement.

The Regional Solicitor's Office was asked to analyze the nature of the rights acquired by a permittee under the terms of a reciprocal Permit and the affect on future BLM road obliteration plans. The Regional Solicitor's opinion states in part:

In view of the above it is our opinion that upon entering into a reciprocal right-of-way agreement and Permit the Permittee obtains an irrevocable right-of-way to use roads on the designated BLM lands and any listed easements controlled by the Bureau. The Permittee also has the irrevocable right to construct roads over the listed BLM lands by following the provisions of the Permit and Agreement. Such rights can be terminated under the regulations in accordance with the provisions of 43 CFR § 2812.8, or upon a demonstration of abandonment*. The right is irrevocable whether or not the Permittee has made use of the BLM road or paid a road use fee. While the courts will likely be more emphatic in their protection of the right to use roads constructed or improved by the Permittee or on which fees have been paid or otherwise amortized, the same legal protection appears to exist as to any roads covered by the Permit since the Permit was given in consideration for the grant of valuable rights to the U.S.

*Note: Post-FLPMA Permits contain the following abandonment provision: “Failure of the Permittee to use any right-of-way for the purpose for which it was granted for any continuous five-year period shall constitute a rebuttable presumption of abandonment of that right-of-way.” If a Permit contains this provision or similar language, the BLM will issue a formal decision to terminate the Permit based on the presumption of abandonment with the right of appeal.

Existing reciprocal right-of-way agreements are recognized as valid land uses under the Northwest Forest Plan. It is clear from a legal perspective that the rights acquired under these agreements must be considered in all BLM road obliteration plans. An evaluation must be conducted to identify all existing permittee rights to use the road and a release of interests must be obtained from all permittees prior to initiating on-the-ground work. The lands and interests in land encumbered by a reciprocal Permit are listed in Schedule 1 of the Permit. In some cases, it may be necessary to obtain a release of Permit rights from more than one permittee if the road to be obliterated is included in more than one reciprocal right-of-way agreement. A report can be generated in LR2000 to identify all outstanding rights over a specific legal description.

Under these circumstances, if BLM intends to decommission or restrict travel on roads that are included in a Permit, the AO shall send a letter to the permittee notifying them of the BLM’s proposal on a road-by-road basis. Illustration XV-2 has been developed for this purpose. This letter has a return signature block where the Permittee can indicate: 1) their willingness to consider the proposal (or a portion of the proposal), or 2) their objection to the proposal. The permittee’s answer would determine which release form, if any, would be

appropriate to use. There is no need to send formal release documents until initial communication has occurred and there is an informal agreement on how to proceed.

When a road is greatly deteriorated or of no potential use to the permittee in the future management of his lands, the permittee may agree to release his rights to use that road without requiring BLM to pay a consideration. In other cases, the permittee may require payment for releasing his rights to use the road to be obliterated. When the permittee will not agree to voluntarily release his rights to a road, the only option left for the BLM (if road closure is absolutely necessary to meet the BLM's management objectives) is to use condemnation to acquire the necessary release (see Section 302 of FLPMA).

Three forms are available for use when a permittee agrees to release its rights to a specific road or roads:

- Form OR 2812-1 (Rev. March 1995) - Partial Release of O&C Logging Road Right-of-Way Permit and Sale of Road (Illustration XII-3) is used to release rights to a road constructed and owned by the permittee on BLM lands. The word "partial" indicates that the permittee is releasing only a portion of its rights under its Permit.
- Form OR 2812-2– Release of O&C Logging Road Right-of-Way Permit and Sale of Road (Illustration XII-4) is used when the permittee is releasing ALL of its rights in a Permit.
- Form OR 2812-10 (March 1995) - Partial Release of O&C Logging Road Right-of-Way Permit (Illustration XII-5) is used to release a permittee's interest in a BLM-controlled road. This applies to roads BLM built on both BLM and permittee lands.

The following guidelines will apply when determining the amount of the consideration to be paid to a permittee for relinquishing to the U.S., either voluntarily or by condemnation, its rights to use specific roads or rights-of-way under an O&C Logging Road Right-of-Way Permit:

- Neither the 43 CFR 2812 regulations nor the language of a normal semi-detailed reciprocal Agreement and Permit require the U.S. to pay the replacement cost of the road when the U.S. purchases or condemns a road covered by an Agreement or Permit.
- It is also clear that under the terms of the standard semi-detailed Agreement, that BLM is not bound to pay any outstanding percentage shares when it purchases or condemns the road.

- All roads and interests therein (whether or not they are under a semi-detailed Agreement and Permit) are to be appraised by the usual measure of damages that have been developed by the courts.
- Where an existing road is located on private land, the measure of damages is the difference in the value of the private land with the road and its value after the U.S. acquires the road or the permittee's interest therein.
- Where the road is located on the Bureau's land under a valid Permit, the value of the road is the difference between the before and after market value of the dominant estate which is served by the road. It should also be noted that this appraisal technique may be used to determine the value of an easement interest held by some third party in private lands.

K. Release of U.S. Rights When U.S. Acquires an Exclusive Easement

A partial release of U.S. rights acquired under a reciprocal right-of-way agreement is required by 43 CFR §2812.6-2(a)(11) when the U.S. acquires an exclusive easement over permittee lands listed on Schedule 2. This is required when the BLM is constructing a road with appropriated funds in order to provide adequate rights to the U.S. The form of the exclusive easement is attached to and made a part of the Permit. A release should be executed by the U.S. in conjunction with the easement acquisition and identified in the consideration. The release should identify only those permittee lands which are underlying the easement(s), except for connecting spur roads, if any, across those lands which are necessary for access to public lands. Refer to BLM Acquisition Handbook H-2100-1 for procedures and examples of release documents for a Right-of-Way and Road Use Agreement.

L. Release of U.S. Rights in Agreements

There are two ways to release the rights of the U.S. in a reciprocal Agreement: 1) delete the lands or interest in lands from Schedule 2 by doing an amendment, or 2) if ALL the rights in a specific Agreement are being released, by preparing a Release of Rights. The following provides guidance for releasing U.S. rights in one of these two scenarios.

1. Deleting or Releasing Specific Lands or Interests in Land from Schedule 2

Most reciprocal right-of-way agreements contain a standard provision (generally in Exhibit B) which provides that lands of either party may be deleted from a reciprocal right-of-way agreement by mutual consent if the lands are no longer managed for timber production. The standard provision language is:

Some of the lands covered by this Agreement are potentially valuable for uses other than growing timber. In the event that either party determines that any of its lands are so valuable, upon mutual agreement, the parties hereto shall execute an amendment to this Agreement removing such lands from the descriptions contained on Schedules 1 and 2 provided that no rights shall be released which affect the right to use existing roads and rights-of-way necessary for the administration of public lands.

Typical situations that may involve the use of the above provision include: 1) the zoning for a private parcel is changed from forest management to rural residential or the private parcel is converted to a use that is incompatible with forest management (e.g., rural home site), 2) the BLM, through a planning process, re-designates land for a more restrictive use such as an Area of Critical Environmental Concern (ACEC), etc. Mutual agreement by the parties is required before the land can be removed from the Agreement, thereby making the action discretionary on the part of the permittee.

If only specific permittee lands, roads or rights-of-way are being released from a reciprocal right-of-way agreement, the easiest method to delete them is through an amendment. If lands or interests in lands are deleted, they must be removed from Schedules 1 or 2 of both the Permit and Agreement as both documents contain both Schedules. The lands or interests in land must be described accurately and by proper legal description (and match the way it was described on the original schedule). Caution should be used when preparing the legal descriptions to avoid losing any rights which are still needed.

The delegation of authority for deleting lands from reciprocal right-of-way agreements lies with the Field Manager. See the Oregon/Washington 1203 – Delegation of Authority Manual (Appendix 1, Page 34) under 2810: “Allow the release (deletion) of lands from a reciprocal road right-of-way agreement based on mutual consent of both parties.” This only applies to deletion of lands. See section K.2. below for full release of rights in an Agreement.

Illustration XII-1 includes language for the deletion of lands. See recitals No. [R10] and [R-11] and granting clause Nos. [G-4], [G-5], and [G-6].

2. Full Release of U.S. Rights in a Reciprocal Agreement

The rights acquired by the U.S. under an Agreement are considered a special form of nonexclusive easement and are a recorded encumbrance on the permittee’s lands. This encumbrance may be released, in part or completely, if those rights are not needed by the U.S. for management access and timber removal from public lands.

A partial release may be used to transfer road or right-of-way interests obtained by the U.S. under terms of a Right-of-Way and Road Use Agreement and the regulations in 43 CFR 2812. Refer to BLM Acquisition Handbook H-2100-1 for procedures and an example of a release document for a Right-of-Way and Road Use Agreement.

The delegation of authority for the release of U.S. rights in the Agreement lies with the Deputy State Director, Resources per Oregon/Washington 1203 – Delegation of Authority Manual. U.S. rights may be disposed of under the authority of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. §471 et. seq., and the regulation found in 41 CFR §102-75.936-938. For the purpose of releasing U.S. rights in a Right-of-Way and Road Use Agreement, BLM is the holding agency and is designated as the disposal agency. Before relinquishing U.S. interests, the BLM should prepare the written administrative determination required by the regulation cited above. The BLM must exercise care to insure that no rights are released which are still needed. The release of rights in a Right-of-Way and Road Use Agreement is handled in the same manner as the release of an easement (see Handbook H-2100-1). However, individual lands (legal descriptions) can be deleted by amendment under the authority of the AO (Field Manager or District Manager).

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Illustration XII-1
Standardized Amendment Template
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TEMPLATE FOR AMENDMENT DOCUMENTS

This template has been developed to provide a consistent format and methodology for preparing amendments to O&C reciprocal Agreements and Permits. All language or sections identified as mandatory must be included.

No deviation in wording for individual stipulations shall be made without the concurrence of the Oregon State Office. If new situations develop for which new provisions are needed, seek advice from the State Office and/or Regional Solicitor in developing new wording.

Any verbiage on the template that are bracketed “[]” are for instructional purposes only and the text contained within the brackets should not be included in the amendment document.

If a particular Schedule or Attachment included in this template doesn't apply to a particular amendment, do not change the schedule number or the attachment letter of those that do apply. Whichever schedules and attachments that apply should be named as shown below.

- Amendment document (boilerplate pages and Exhibits A or B) – This document is signed by both the BLM and the permittee.
- Schedule 1 – Identifies U.S. lands, Roads or Rights-of-Way that are either being added to or deleted from Schedule 1 and/or Schedule 3 of the permit.
- Schedule 2 – Identifies permittee Lands, Roads or Rights-of-Way that are either being added to or deleted from Schedule 2 of the Agreement.
- Schedule 3 – The Schedule 3 is a subset of Schedule 1 to which special or additional provisions identified in the amendment (as an Exhibit A-1) apply. The provisions in the Exhibit A-1 are in addition to those already included in the Exhibit A or B of the reciprocal right-of-way agreement. The additional provisions in the Exhibit A-1 apply only to the lands identified on the Schedule 3. It is important to remember that any rights listed on a Schedule 3 must also be listed on the Schedule 1.

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- Exhibit C Map – This will serve the same purpose as the Exhibit C map in the reciprocal right-of-way agreement and is used to depict: 1) lands deleted or added by the amendment to any schedule, or 2) provides reference to specific provisions in the reciprocal right-of-way agreement (i.e. newly acquired lands, roads or rights-of-way).

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HEADER - MANDATORY

Top margin:
Most counties now place a recording label in the upper right corner of the document. Leave at least 3-½ to 4-inch top margin on first page.

After recording, return to:
Bureau of Land Management
_____ District

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Amendment No. ____
To Right-of-Way and Road Use Agreement No. ____ (Serial No. _____ PT)

And

Amendment No. ____
To O&C Logging Road Right-of-Way Permit No. ____ (Serial No. _____ FD)

[Note: An amendment can modify several permits and agreements (such as when it is a consolidation amendment.) List all of the Agreements and Permits that apply, including those which will be superseded. Each reciprocal Agreement and Permit being amended usually have a different amendment No. for that particular Agreement or Permit. Check with other districts if the agreement covers more than one district to ensure no duplication of amendment Nos.]

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**INTRODUCTORY RECITALS SECTION - MANDATORY
 ORIGIN OF PERMIT AND AGREEMENT RIGHTS**

MANDATORY

[R-1] [Recital for denoting the approval/recording information of the original Agreement]

WHEREAS, on [enter date signed by PERMITTEE], [list name of PERMITTEE exactly as contained in original Agreement], granted to the United States of America (hereinafter referred to as UNITED STATES) Right-of-Way and Road Use Agreement No. [District Agreement No.], subsequently assigned as serial No. [enter LR2000 Serial No. including “PT” suffix], hereafter referred to as AGREEMENT, which was accepted by the UNITED STATES on [enter date signed by BLM Authorized Officer], and subsequently recorded in the [“Deed”, “Official”, “Public”] records of , ____ County, said agreement granted for the purpose of management and removal of timber and other forest products from lands of the UNITED STATES [use exact wording from specific Agreement]; and

MANDATORY

[R-2] [Recital for denoting the approval/recording (if any) information of the original Permit]

WHEREAS, on [date Permit approved by the U.S.], the UNITED STATES granted to [list name of PERMITTEE exactly as contained in original permit], O. and C. Logging Road Right-of-Way Permit No. [original District Permit No.], serial No. _____ FD, hereafter referred to as PERMIT, for the purpose of management and removal of timber and other forest products [use exact wording from specific Permit as to purposes authorized] from land owned or controlled by [list name of PERMITTEE] as of the time of exercise by PERMITTEE of the rights granted by the government; and

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[MANDATORY IF THERE HAS BEEN AN ASSIGNMENT TO THE CURRENT PERMITTEE]

[R-3] [This should capture the assignment to the current PERMITTEE (assignments to previous PERMITTEEs are not necessary)]:

WHEREAS, said Permit was [fully] [partially] assigned to [current PERMITTEE] (hereinafter referred to as PERMITTEE), such assignment being approved by the UNITED STATES on [date of approval of assignment by the U.S.] and numbered as [current Permit number—if full assignment the orig. permit No., if partial assignment, the permit No. created by partial assignment] and recorded in the [if assignment was recorded list the recording information here]; and

[MANDATORY IF PERMITTEE HAS HAD A NAME CHANGE]

[R-3a]

WHEREAS , on _____, on _____, the United States issued a Decision acknowledging a [corporate][partnership][individual] name change from [Former name of Permittee] to [new name of Permittee, including "a _____ corporation if applicable], in which the BLM Authorized Officer which now recognizes [new name] as the Permittee and hereinafter is referred to as the PERMITTEE; and

[MANDATORY IF THERE HAS BEEN ANY AMENDMENTS]

[R-4] [It is not necessary to recite all of the amendments, but instead summarize them with this one recital ending with the latest amendment that has been approved]:

WHEREAS, said Permit and Agreement were amended ___ times with Amendment No. ___ [last amendment] being approved on [date approved by the U.S. and recorded on _____ in the {deed}[official][ublic] records of _____ county as document _____; and

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Standardized Amendment Template
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**[EXPLANATORY (PURPOSES) RECITALS SECTION
MANDATORY
(Lays Groundwork for Amendment – The WHY?)]**

***[Use R-5a or R-5b and R-6
TO ADD RIGHTS FOR PERMITTEE OVER
U.S. LANDS, ROADS OR ROW TO SCHEDULE 1 (AND/OR 3)]***

[R-5a] [Adding Rights for PERMITTEE over U.S. Lands to Schedule 1]

WHEREAS, PERMITTEE desires to have certain UNITED STATES lands, roads or rights-of-way added to Schedule 1 and both parties desire and are willing to amend said Agreement and Permit to add said lands; and

[R-5b] [Adding Rights for PERMITTEE over U.S. lands to both Schedule 1 and Schedule 3]

WHEREAS, PERMITTEE desires to have certain UNITED STATES lands, roads or rights-of-way added to Schedule 1 of said Permit and Agreement; and

[R-6] [Use the following with R-5a or R-5b (whichever is selected)]

WHEREAS, the UNITED STATES agrees to the addition of said lands, roads or rights-of-way subject to certain additional provisions; and

[R-7] [Adding Rights for the U.S. over PERMITTEE lands to Schedule 2]

WHEREAS, UNITED STATES desires to have certain PERMITTEE lands, roads or rights-of-way added to Schedule 2 and both parties desire and are willing to amend said Agreement and Permit to add said lands; and

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[R-8] [Non-Discretionary Amendment to Add Newly Acquired Lands]

WHEREAS, the terms and conditions to said Agreement and Permit provides that “if either party thereto acquires any additional lands within the Agreement Area boundary shown on Exhibit C attached to said Agreement . . . it agrees to grant to the other party rights-of-way and rights of road use across such lands under the same terms and conditions as contained in this agreement”; [verify exact wording in agreement, usually Exhibit B or wherever stipulation is contained] and

[Use one of the following in addition to the above.]

[R-8a] [Use when the U.S. has acquired lands.]

WHEREAS, the UNITED STATES has acquired lands within said Agreement Area boundary; and

[R-8b] [Use when the PERMITTEE has acquired lands.]

WHEREAS, the PERMITTEE has acquired lands within said Agreement area boundary; and

[R-8c] [Use when the PERMITTEE and the U.S. have both acquired lands.]

WHEREAS, the PERMITTEE and the UNITED STATES have acquired lands within said Agreement Area boundary; and

[R-9] [Non-Discretionary Amendment to Add Newly Acquired Roads or Rights-of-Way]

WHEREAS, the terms and conditions to said Agreement and Permit provides that “if either party thereto acquires any additional lands within the Agreement Area boundary shown on Exhibit C attached to said Agreement . . . it agrees to grant to the other party rights-of-way and rights of road use across such lands under the same terms and conditions as contained in this agreement”; [verify exact wording in agreement, usually Exhibit B or wherever stipulation is contained] and

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-
[Use one of the following in addition to the R-9 above]

[R-9a] [Use when the U.S. has acquired rights-of-way]

WHEREAS, the UNITED STATES has acquired a right-of-way across the lands within said Agreement Area boundary, and

[R-9b] [Use when the PERMITTEE has acquired rights-of-way]

WHEREAS, the PERMITTEE has acquired a right-of-way across the lands within said Agreement Area boundary, and

[R-9c] [Use when the PERMITTEE and the U.S. have both acquired rights-of-way]

WHEREAS, the PERMITTEE and the UNITED STATES have acquired a right-of-way across the lands within said Agreement Area boundary, and

[R-10] [Deleting U.S. Rights over PERMITTEE Lands from Schedule 2]

WHEREAS, certain lands identified in Schedule 2 of said Permit and Agreement are no longer needed for the management and removal of timber from lands owned or controlled by the U.S.; and

WHEREAS, the parties hereto desire and are willing to relinquish those lands, roads or rights-of-way from Schedule 2; and

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[R-11] [Deleting PERMITTEE Rights over U.S. Lands from Schedule 1 (and Schedule 3 if applicable)]

WHEREAS, certain lands identified in Schedule 1 [include “and Schedule 3” if applicable] of said Permit and Agreement are no longer needed for the management and removal of timber from lands owned or controlled by the PERMITTEE; and

WHEREAS, the parties hereto desire and are willing to relinquish those lands, roads or rights-of-way from Schedule 1 [include “and 3” if applicable]; and

[R-12] [Use for an Amendment to Correct Errors and Omissions]

WHEREAS, _____ [identify document containing error—e.g., amendment No.] of the said Permit No. ____ (and/or Agreement No. ____) contained [a scrivener error] [error in the Exhibit C map, etc.] which both parties desire to correct; and

[R-13] Eliminating Overlapping Permit Rights]

WHEREAS, PERMITTEE is the current holder of O. and C. Logging Road Right-of-Way Permit No. _____ over certain U.S. lands identified in Schedule 1 [include “and 3” if applicable] of said Permit; and

WHEREAS, those same lands of the UNITED STATES are also listed on Schedule 1 of O. and C. Logging Road Right-of-Way Permit No. ____ currently held by said PERMITTEE; and
[list all permits which contain the overlapping rights]

WHEREAS, the terms and conditions in said Permit provide for the termination of prior rights in said U.S. lands and interests in lands described in Schedule 1 [include “and 3” if applicable]; and

WHEREAS, UNITED STATES and PERMITTEE desire to amend said Permit No. ____ and Agreement No. ____ to delete those certain lands of the UNITED STATES from Schedule 1 [include “and 3” if applicable] attached thereto in order to eliminate duplicate rights; and

Illustration XII-1
 Standardized Amendment Template
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[R-14] [For revising stipulations]

WHEREAS, PERMITTEE and UNITED STATES desire to revise stipulation No. _____ of Exhibit __ [identify the stipulation] of said Permit and Agreement because _____ [add rationale for revision]; and

[R-15] [Adding terms and conditions]

WHEREAS, PERMITTEE and UNITED STATES desire to add _____ [identify the terms and conditions to be added] of said Permit and Agreement because _____ [add rationale for the addition]; and

[R-16] [Revising accessory documents (usually License Agreement)]

WHEREAS, PERMITTEE and UNITED STATES desire to modify _____ [identify the accessory document] associated with said Permit and Agreement because _____ [add rationale for the revision]; and

[R-17] [Adding Rights for the U.S. (Schedule 2) over Assignee's Lands as a Condition of Approving an Assignment]

WHEREAS, [exact name of Assignee], [identify whether individual, partnership or corporation], through the conveyance of lands by [Assignor], became the successor in interest to Permit No. ____; and

WHEREAS, said Assignee and Assignor have requested approval by the UNITED STATES of the assignment of said permit, and

WHEREAS, the regulations of the Bureau of Land Management in 43 CFR 2812 require that an Assignee make the same showing as an applicant for an O&C Logging Road Right-of-Way Permit, including the granting of lands, roads and rights-of-way to the UNITED STATES if it appears necessary by the United States for the management and removal of federal timber, and

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WHEREAS, Assignee owns lands or interests in lands over which rights-of-way are needed by the UNITED STATES or its licensees and permittees for such purposes, and

WHEREAS, the UNITED STATES, as a condition of its approval of the assignment to [Assignee] of said permit, requires that the Assignee grant rights-of-way across said lands or interests in lands, and

WHEREAS, the parties hereto desire to amend said Right-of-Way and Road Use Agreement No. ____ and O. and C. Logging Road Right-of-Way Permit No. _____ to add said Assignee's lands or interests in lands over which rights-of-way are needed by the UNITED STATES,

[R-18] [Bringing a Permit Into Compliance with Applicable Regulations Upon Assignment—Prerequisite Amendment As a Condition of Approving Assignment]

WHEREAS, the regulations at 43 CFR §2812.7 require that an Assignee agree to be bound by the applicable regulations of the Department of the Interior (43 CFR 2812) in force as of the date of the approval of an assignment by the UNITED STATES; and

WHEREAS, the terms and conditions of said Agreement and Permit are not in compliance with the above described regulations of the Bureau of Land Management; and

WHEREAS, the PERMITTEE has agreed, as a condition of approval of the assignment of said Permit, to amend the terms and conditions of said Permit in order to comply with the regulations of the Bureau of Land Management in force as of the date of its approval of said assignment; and

[Note: After the last Recital, put a period instead of the semicolon followed by “and.”]

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**[GRANTING (NOW THEREFORE) SECTION
MANDATORY**

(The “WHAT”—This section contains the actual binding statements.)]

[G-1] [Start this section with the following Mandatory phrase:]

NOW, THEREFORE, the parties hereto do mutually agree as follows:

[G-2 provisions]

***[Use one of the following when adding Newly Acquired Lands, Roads or
Rights-of-Way]***

***[When both the U.S. and PERMITTEE have acquired lands, use both G-2a &
G-2b below].***

***[Note: If newly acquired lands are added into the same amendment as
adding new discretionary lands, roads or rights-of-way, they need to be
identified separately on the Schedules and Exhibit C—that is, discretionary
additions may need to be put on a separate Schedule 3 subject to
additional terms and conditions/stipulations.]***

[G-2a] [Use when the U.S. has newly acquired lands.]

The acquired UNITED STATES lands shown on Schedule 1, attached hereto and made a part hereof and further identified on Exhibit C, attached hereto and made a part hereof [identify on the Exhibit C where applicable] should be and are hereby added to Schedule 1, of the said Agreement and Permit under the same terms and conditions and duration as the said Permit and Agreement.

[G-2b] [Use when the PERMITTEE has newly acquired lands.]

The acquired PERMITTEE lands shown on Schedule 2, attached hereto and made a part hereof and further identified on Exhibit C, attached hereto and made a part hereof [identify on the Exhibit C where applicable.] should be and are hereby added to Schedule 2, of the said Agreement and Permit under the same terms and conditions and duration as the said Permit and Agreement.

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[G-2c] [Use when the U.S. has newly acquired rights-of-way.]

The acquired UNITED STATES roads or rights-of-way shown on Schedule 1, attached hereto and made a part hereof and further identified on Exhibit C, attached hereto and made a part hereof [identify on Exhibit C where applicable] should be and are hereby added to Schedule 1, of the said Agreement and Permit under the same terms and conditions and duration as the said Permit and Agreement.

[G-2d] [Use when the PERMITTEE has newly acquired rights-of-way.]

The acquired PERMITTEE roads or rights-of-way shown on Schedule 2, attached hereto and made a part hereof and further identified on Exhibit C, attached hereto and made a part hereof [identify on Exhibit C where applicable] should be and are hereby added to Schedule 2, of the said Agreement and Permit under the same terms and conditions and duration as the said Permit and Agreement.

[G-3] [Use the following to correct errors and omissions in legal descriptions]

A certain land description being found on Page ___ of ___ [identify document with the error, such as amendment No. recorded] contains an error or omission, said description reading as follows:

[Enter description the exact way it is written in error]

The above description is hereby replaced with the following:

[Enter entire description the way it should correctly be described.]

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[G-4] [Use when deleting U. S. lands in Schedule 1 for the purpose of eliminating overlapping permit rights]

That the following U. S. lands, roads or rights-of-way, are hereby deleted from Schedule 1 – U.S. lands attached hereto and made a part hereof, save and except those rights and obligations which have been previously exercised by the PERMITTEE under Permit No. ____ over said lands: [list U.S. lands roads or rights-of-way to be deleted.]

[Note: Make sure that any deficit balances, road ownership and control, etc. are brought forward into the new permit before deleting these lands from the old permit.]

[G-5] [Use when deleting U. S. lands in Schedule 1—usually when they are no longer needed by the PERMITTEE]

That the following U. S. lands, roads or rights-of-way, are hereby deleted from Schedule 1 – U.S. lands attached hereto and made a part hereof: [list U.S. lands roads or rights-of-way to be deleted.]

[G-6] [Use when deleting PERMITTEE lands in Schedule 2—the rights are no longer needed by the U.S. – proceed with caution]

That the following PERMITTEE lands, roads or rights-of-way, are hereby deleted from Schedule 2 – PERMITTEE lands attached hereto and made a part hereof:

[list PERMITTEE lands roads or rights-of-way to be deleted.]

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Standardized Amendment Template
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[G-7] [Use when revising existing terms and conditions]

[Note: No boilerplate stipulations found in OR 2812-16 form can be revised without State Office approval.]

That the following provision No. ____, found in Exhibit ____ of said _____ [identify Permit and/or Agreement]:

[cite provision in its entirety – indent]

Is hereby replaced with the following:

[cite new provision in its entirety – indent]

[G-10] [Use when adding terms and conditions]

[Other than mitigation measures identified as part of an environmental analysis associated with discretionary plats NO NEW STIPS can be added without approval of the State Office]

That the following provision should be and is hereby added to Exhibit __ of said _____ [Permit and/or Agreement]:

[write the provision in its entirety].

[G-11] [Use when revising accessory documents (i.e. License Agreement)]

That the License Agreement referenced in [paragraph No. __ of Exhibit B] or [attached to said Agreement as Exhibit __ --if it was assigned an Exhibit No.] is hereby replaced in its entirety with the License Agreement attached hereto and made a part hereof.

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 Standardized Amendment Template
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***[G-12] [Use when revising accessory documents (i.e. Exhibit C map)]
 [should always use in amendments since the map should always be
 revised as well***

That Exhibit C, which is attached to said Agreement and Permit, shall be replaced in its entirety by Exhibit C, Amendment No. ____ [insert amendment no.], attached hereto and made a part hereof.

***[G-13] [Use when the Exhibit C map only contains the lands, roads or
 rights-of-way that have been added, deleted, or corrected (it does
 not replace the Exhibit C map in its entirety.)***

That the map labeled as]Exhibit C, Amendment ____] or [Exhibit C-2 [amd ##], is attached hereto and made a part of said Agreement and Permit.

***[G-14] [Use when adding stipulations that apply ONLY TO specific U.S.
 lands, roads or rights-of-way contained within a Schedule 3]***

The UNITED STATES lands, roads or rights-of-way shown on Schedule 3 - UNITED STATES lands, attached hereto and made a part hereof (and further identified on Exhibit C-__ [amendment No.], attached hereto and made a part hereof) should be and are hereby added to Schedule 1- UNITED STATES lands, of the said Agreement and Permit and shall be subject to the additional terms and conditions contained in Exhibit A-1 [or amendment No.], attached hereto and made a part hereof.

[A sample Attachment A-1 is shown at the back of this Illustration]

Illustration XII-1
 Standardized Amendment Template
 Page 17 of 28

[G-15] [Use when adding rights for U.S. to Schedule 2]

That the PERMITTEE lands, roads or rights-of-way shown on Schedule 2, Amendment ____, attached hereto and made a part hereof (and further identified on Exhibit C, attached hereto and made a part hereof) should be and are hereby added to "Schedule 2 – PERMITTEE Lands," of the said Agreement and Permit for the term identified in said Schedule 2.

[G-16] [SAVINGS CLAUSE - MANDATORY]

That in all other respects, said Agreement and Permit shall continue and remain in full force and effect.

[G-17] [Bringing an arbitration type Permit into compliance with applicable regulations upon assignment].

[Note: See guidance in Chapter 12 text regarding bringing permits current with regulations. No permit is to be assigned without bringing it current and the State Office and/or Solicitor should review the Permit to provide advice on what deletions and/or additions need to be included in the replacement document or amendment. Most likely the SO and/or Solicitor will recommend replacing the arbitration agreement with a modern semi-detailed agreement.]

That the following provisions found in Exhibit ___ and Exhibit ___ of _____ are hereby deleted.

And, the following provisions are hereby added to Exhibit ___ of said _____.

Illustration XII-1
Standardized Amendment Template
Page 18 of 28

APPROVALS SECTION- MANDATORY

Signature Block If Individual

PERMITTEE: UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Print Name _____
Field Manager

Signature

Date: _____
Field Office (or Resource Area)
Date: _____

Signature Block If Partnership

PERMITTEE: UNITED STATES OF AMERICA
[Name of Partnership] DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Managing Partner _____
Field Manager

Signature _____
Field Office (or Resource Area)

Date: _____
Date: _____

Illustration XII-1
Standardized Amendment Template
Page 19 of 28

Signature Block If Corporation

PERMITTEE:
[Name of Corporation]

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

By: _____

Field Manager

Title: _____

Field Office (or Resource Area)

Attest: _____

Title: _____

Date: _____

Illustration XII-1
Standardized Amendment Template
Page 20 of 28

ACKNOWLEDGEMENT (NOTARY) BLOCKS - MANDATORY

**Permittee Acknowledgement If Individual
(Use multiple if more than one individual signor)**

STATE OF OREGON)
) ss:
COUNTY OF) **[ENTER COUNTY WHERE PERMITTEE WILL
SIGN]**

On the _____ day of _____, 20____, personally came before me, a notary public in and for said County and State, the within-named _____, to me personally known to be the identical person(s) described in and who executed the within and foregoing instrument and acknowledged to me that (he/she) executed the same as his/her free and voluntary act and deed, and for the uses and purposes therein mentioned.

[SEAL]

Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

Illustration XII-1
Standardized Amendment Template
Page 21 of 28

**Permittee Acknowledgement If Partnership
(Use multiple if more than partner must sign)**

STATE OF)
) ss:
COUNTY OF) **[ENTER COUNTY WHERE PERMITTEE WILL SIGN]**

On the ____ day of _____, 20____, personally came before me, the within-named _____, partner(s), to me personally known to be the identical person(s) (or whose identity was proven to me on the basis of satisfactory evidence) and who executed the within and foregoing instrument on behalf of _____, a partnership, and acknowledged to me that he/she/they is/are authorized to execute said instrument, and he/she/they executed the foregoing instrument as the free and voluntary act and deed for the partnership firm.

[SEAL]

Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

Illustration XII-1
Standardized Amendment Template
Page 24 of 28

Exhibit C Map
(Include The Following Typical Legend Types as Shown Below (or as Applicable))

Exhibit C
Permit No. _____
Agreement No. _____
(Serial No. _____)

U.S. Lands Added to Schedule 1
U.S. Lands Deleted from Schedule 1

U.S. Roads Added to Schedule 1 [use for U.S. Roads on U.S. Land]
U.S. Roads Deleted from Schedule 1 [U.S. roads on U.S. land]

U.S. Rights-of-Way Added to Schedule 1 [BLM exclusive easements or roads built by BLM under terms of a reciprocal right-of-way Agreement]

U.S. Rights-of-Way Deleted from Schedule 1 [BLM exclusive easements or roads built by BLM under terms of a reciprocal right-of-way Agreement]

Third Party Roads on U.S. Land Added to Schedule 1 - Subject to 3rd Party Setting Terms and Conditions [Roads built by other PERMITTEES on U.S. land]

Third Party Roads on U.S. Land Deleted from Schedule 1 [Roads built by other Permittees on U.S. land]

PERMITTEE Lands Added to Schedule 2
PERMITTEE Lands Deleted from Schedule 2

Illustration XII-1
Standardized Amendment Template
Page 25 of 28

Legend Types (Cont.)

PERMITTEE Roads Added to Schedule 2 [PERMITTEE Roads on PERMITTEE Lands]

PERMITTEE Roads Deleted from Schedule 2 [PERMITTEE Roads on PERMITTEE Lands]

PERMITTEE Rights-of-way Added to Schedule 2 [PERMITTEE easements on 3rd party lands]

PERMITTEE Rights-of-Way Deleted from Schedule 2 [PERMITTEE easements on 3rd party lands]

Other U.S. Lands

Third party Lands

Agreement Boundary [Include if referenced in the stipulations of the Reciprocal Right-of-Way Agreement]

Illustration XII-1
Standardized Amendment Template
Page 26 of 28

Schedule(s) of Lands

See Illustration V-3 for various samples

Illustration XII-1
Standardized Amendment Template
Page 27 of 28

Exhibit A-1

[Exhibit A-1 is used to identify terms and conditions applicable to Schedule 3 only. The following sample contains standard approved provisions. The provisions contained in this Exhibit A-1 apply only to U.S. lands, roads or rights-of-way contained in Schedule 3.]

EXHIBIT A-1

[Standard Environmental Stipulations]

10. Compliance with Environmental Laws.

The Permittee agrees that in all operations under this permit, during the life of this permit he shall comply with:

A. All provisions of the State and Federal Water Quality Standards as they may apply to any waterway, stream, lake or reservoir, on or near the permit area, together with all applicable State and Federal laws and regulations. The Permittee shall also undertake every reasonable measure to minimize damage to waterways, streams, lakes or reservoirs on or near the permit area in connection with any operations under this permit.

B. All applicable state and federal laws and regulations concerning the use of poisonous substances including insecticides, herbicides, fungicides, rodenticides and other similar substances. Prior to the use of such substances on or near the right-of-way, the Permittee shall obtain from the Authorized Officer approval of a written plan for such use. The plan shall state the type and quantity of material to be used, the pest to be controlled, the method of application and such other information as the Authorized Officer may require. All use of such substances on or near the right-of-way shall be in accordance with the approved plan. If the use of a poison is prohibited by the Secretary of the Interior, it shall not be used. If use of a poisonous substance is limited by the Secretary of the Interior, it shall be used only in accordance with that limitation.

C. If in connection with his operations under this permit, across the lands of the United States, the Permittee encounters or becomes aware of any objects or sites of cultural value, such as historical or pre-historical ruins, graves, grave markers, fossils or artifacts, the Permittee shall immediately suspend all

Illustration XII-1
Standardized Amendment Template
Page 28 of 28

operations in the vicinity of the cultural value and notify the Authorized Officer of the findings. The Permittee's operations may resume at the discovery site upon receipt of written instructions and authorization by the Authorized Officer.

D. All other applicable state and federal environmental laws, regulations and standards.

The Permittee shall immediately discontinue all construction or other operations under this permit upon receipt of written notice from the Authorized Officer that such operations or any part thereof are in violation on this provision.

[Adding Additional Reasons for Objecting to Road Construction in Exhibit B]

Paragraph ____ of Exhibit B to said Agreement No. ____ is hereby amended to add the following reasons the landowner may object to the proposed construction:

(4) an existing road is available and suitable for removal of timber tributary to the proposed road; or (5) may affect a species listed as threatened or endangered under the Endangered Species Act. In the event an objection is made on the basis that a threatened or endangered species is affected, construction of the road will be delayed until consultation with the U.S. Fish and Wildlife Service or National Marine Fisheries Service under Section 7 of the Endangered Species Act has been completed on the proposed road. Based on the biological opinion received from the Fish and Wildlife Service or National Marine Fisheries Service, the objection may be withdrawn, modified, conditioned or continued.

Illustration XII-2

Sample Amendment Adding Discretionary Right-of-Way Plat into Permit
Page 1 of 12

*After recording return to:
Bureau of Land Management
3040 Biddle Road
Medford, OR 97504*

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

AMENDMENT NO. 26
TO
RIGHT-OF-WAY AND ROAD USE AGREEMENT ____
(OR _____ PT)

AND

O. AND C. LOGGING ROAD RIGHT-OF-WAY PERMIT ____
(OR _____ FD)

WHEREAS, the UNITED STATES OF AMERICA, hereinafter referred to as UNITED STATES, and LONG TIMBER, INC, a Delaware corporation, did on April 3, 1962 enter into Right-of-Way and Road Use Agreement (Agreement) numbered _____, recorded in Book of Records of _____ County, Oregon in Volume ____, Page ____, and subsequently recorded in the Deed Records of _____ County on _____ in Vol. ____, Page ____; and

WHEREAS, on January 24, 1962, the UNITED STATES approved an O&C Logging Road Right-of-Way Permit (Permit) issued to LONG TIMBER, INC, and

WHEREAS, Amendment Nos. 1 through 18 of said Agreement and Permit were approved, with Amendment No. 18 being recorded on _____ at Vol. ____, Page _____, in the official records of _____ County and subsequently recorded on _____ in Vol. ____, Page ____, in the official records of _____ County; and

WHEREAS, on _____ LONG TIMBER, INC, assigned all of their right, title and interest in said Agreement and Permit to Toto & Timber, Inc., a New York corporation, said assignment being approved by the UNITED STATES on _____; and

Illustration XII-2

Sample Amendment Adding Discretionary Right-of-Way Plat into Permit
Page 2 of 12

WHEREAS, Amendment Nos. 19 and 20 of said Agreement and Permit were approved, with Amendment No. 20 being recorded on _____ in the Official Records of _____ County in Volume _____, Page _____; and

WHEREAS, on _____, Toto & Timber, Inc., assigned all their right, title and interest in said Permit to Cave Man Timber, LLC, an Oregon limited liability company, said assignment being approved by the United States on _____; and

WHEREAS, on _____, Cave Man Timber, LLC, filed an Amendment to Certificate of Limited Liability Company with the State of Oregon, changing the name of the company to Cave Man Logging, LLC., and the name change was subsequently recognized by the United States on Permit documents; and

WHEREAS, Amendment Nos. 21 through 25 of said Agreement and Permit were approved, with Amendment No. 25 being approved by the United States on March 12, 2007; and

WHEREAS, PERMITTEE and UNITED STATES wish to amend said Agreement and Permit No. _____ to add lands of the UNITED STATES,

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. That Schedule 1 is hereby amended to add two right-of-Way locations over United States lands in T. ___ S., R. ___ W., Sec. __, NE¼SE¼, for construction, use and maintenance of a road by Permittee, such location specifically described on pages 1 through 6 of the attached map labeled as “Exhibit C, [Permit No.], Amendment 26,” attached hereto and made a part hereof. The road location is depicted on Page 6 of 6 of said Exhibit C map by the following legend type:

“ Roads Added to Schedule 1:

~~#####~~ - Permittee Road to be Built Over BLM Land”

2. That the right-of-way location and specifications described on the attached Exhibit C (pages 1 through 6) is to be constructed by the Permittee in accordance with the Special Provisions identified in Attachment A, attached hereto and made a part hereof. When constructed, these roads are recognized as Permittee-owned roads numbered as [road Nos.] for which

Illustration XII-2

Sample Amendment Adding Discretionary Right-of-Way Plat into Permit

Page 3 of 12

Permittee may set road rules and collect fees from others. The United States shall control subject road for purposes of authorizing third party use, subject to terms and conditions established by Permittee.

- 3. Use of the above-described road is limited to the traveled roadway (including turnouts).
- 4. That in all other respects said Agreement and Permit No. _____ shall continue in full force and effect.

PERMITTEE:
CAVE MAN LOGGING, LLC

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

President

Field Manager

Signature

Field Office (or Resource Area)

Date: _____

Date: _____

Illustration XII-2

Sample Amendment Adding Discretionary Right-of-Way Plat into Permit

Page 4 of 12

Permittee Acknowledgement

STATE OF)
) ss:
COUNTY OF) **[ENTER COUNTY WHERE PERMITTEE WILL SIGN]**

On the ____ day of _____, 20____, personally came before me, the within-named _____, partner(s), to me personally known to be the identical person(s) (or whose identity was proven to me on the basis of satisfactory evidence) and who executed the within and foregoing instrument on behalf of _____, a limited liability company, and acknowledged to me that he/she/they is/are authorized to execute said instrument, and he/she/they executed the foregoing instrument as the free and voluntary act and deed for the limited liability company.

[SEAL] _____
Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

Agency (BLM) Acknowledgement

STATE OF OREGON)
)
) ss:
COUNTY OF) **[ENTER COUNTY WHERE BLM AO WILL SIGN]**

[SEAL] _____
Notary Public in and for the
State of: _____
Residing at: _____
My commission expires: _____

Illustration XII-2

Sample Amendment Adding Discretionary Right-of-Way Plat into Permit

Page 5 of 12

Exhibit A-26

Special Provisions – Construction

[Permit No.]
(OR _____ FD)
Amendment 26
Page 1 of 1

The following provisions are required in connection with the road construction approved by Amendment 26:

A. Best Management Practices. Road construction shall be accomplished using the Best Management Practices (BMP) as described in Appendix D of the USDI, Record of Decision and Resource Management Plan (1995).

B. Cultural Resources. If cultural resources are found during project implementation; the project may be redesigned to protect the cultural resource values present, or evaluation and mitigation procedures would be implemented based on recommendations from the resource area archaeologist and concurrence by the _____ Field Manager and State Historic Preservation Office.

C. Water Quality and Soil Productivity-

1. The work period for road construction and associated activities (e.g., drainage improvement, hauling of excavated material) would be from May 15 to October 15 (dry season) unless waiver is granted by the Authorized Officer.
2. Road construction would consist of out-sloping where feasible, adding water dips to minimize rilling and the installation of culverts and downspouts to facilitate road drainage and help reduce erosion.
3. Soil contaminated by excessive leakage of diesel, oil, hydraulic fluid and other hazardous materials as a result of equipment failure or human error would be removed from the site and disposed of in an approved site.
4. Exposed soils, created during construction activities along either side of the constructed roadbed, would be mulched and seeded with native or otherwise BLM-approved grass/forb mix by October 15th to reduce the amount of material that would be prone to erosion.

Illustration XII-2

Sample Amendment Adding Discretionary Right-of-Way Plat into Permit

Page 6 of 12

Exhibit A-26 (Cont.)

5. Work would be temporarily suspended if monitoring indicates that precipitation has saturated soils in the work area to the extent that there is potential for road damage or the potential for excessive stream sedimentation.

D. Invasive Species/Noxious Weeds

1. All ground disturbing equipment would be washed prior to entering federal lands, to remove all soil or plant parts to prevent the spread of noxious weeds into the Project Area.
2. Seed newly created openings with native or otherwise BLM approved grass/forb mix.

Illustration XII-2

Sample Amendment Adding Discretionary Right-of-Way Plat into Permit
Page 7 of 12

CE 1/18 Sec. 8 T32S, R3W

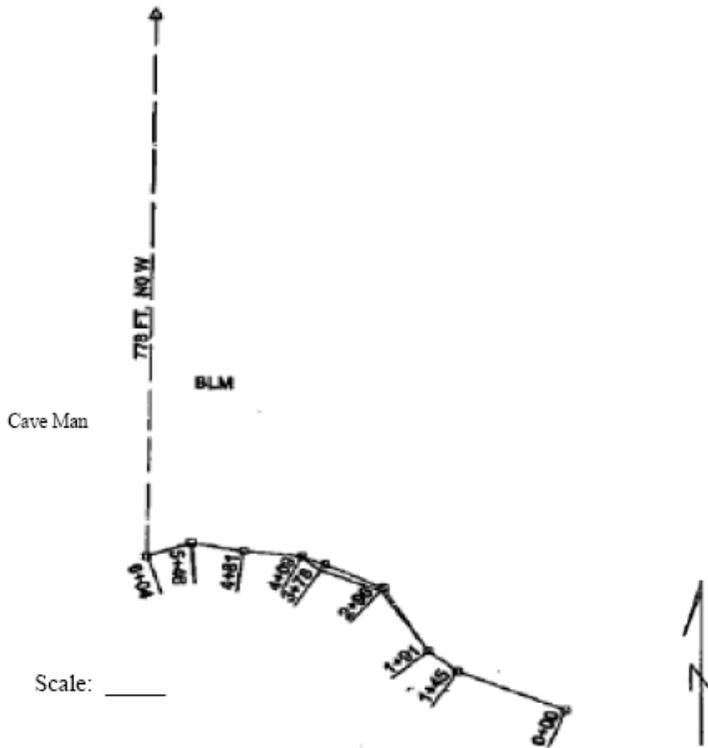


Exhibit C
Page 1 of 6
M-200
Amendment 26

CAVE MAN LOGGING, LLC
BAT CAVE
RIGHT-OF-WAY PLAT
SPUR 1
T. 32 S., R. 3 W., SEC. 8

Scale: _____

Form 4-411

I, Forest R. Mann, state that I am by occupation a forester employed By Cave Man Logging, LLC to make a survey of one road, for a total length over lands of the United States of 883 feet as shown and as described on this map, that the survey of said roads was made by me under authority, commencing on February 20,2004 and ending the same day, and such survey is accurately

Forest R. Mann
Date

Form 4-412

This is to certify that Caleb E. Clubber, who subscribed the statement hereon is the person employed by Cave Man Logging, LLC to prepare this map, which has been adopted by the applicant as the approximately final location of the road thereby shown and that this map is filed as part of the complete application for the road right-of-way filed as part of the complete application for the road right-of-way across lands of the United States and further certify that the right-of-way herein described is desired for the purpose of transporting forest products and forest management.

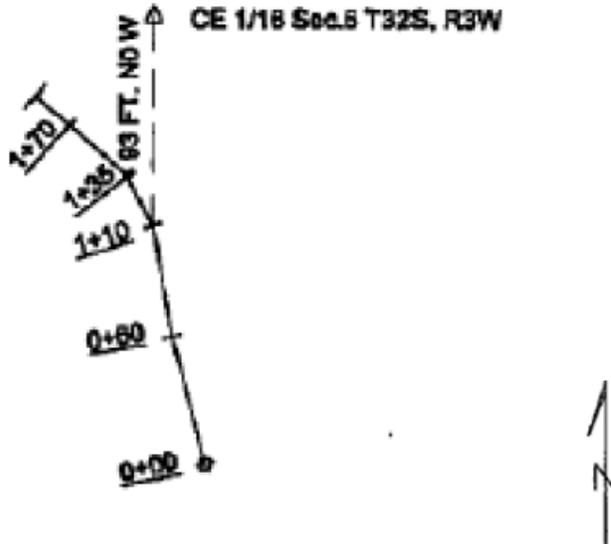
Caleb E. Clubber
May 15, 2005

Illustration XII-2

Sample Amendment Adding Discretionary Right-of-Way Plat into Permit

Page 8 of 12

Exhibit C
Page 2 of 6
M-200
Amendment 26



CAVE MAN LOGGING, LLC
BAT CAVE
RIGHT-OF-WAY PLAT
SPUR 1
T. 32 S., R. 3 W., SEC. 8

Scale: _____

Form 4-411

I, Forest R. Mann, state that I am by occupation a forester employed By Cave Man Logging, LLC to make a survey of one road, for a total length over lands of the United States of 883 feet as shown and as described on this map, that the survey of said roads was made by me under authority, commencing on February 20, 2004 and ending the same day, and such survey is accurately

Forest R. Mann
Date

Form 4-412

This is to certify that Caleb E. Clubber, who subscribed the statement hereon is the person employed by Cave Man Logging, LLC to prepare this map, which has been adopted by the applicant as the approximately final location of the road thereby shown and that this map is filed as part of the complete application for the road right-of-way across lands of the United States and further certify that the right-of-way herein described is desired for the purpose of transporting forest products and forest management.

Caleb E. Clubber

May 15, 2005

Illustration XII-2

Sample Amendment Adding Discretionary Right-of-Way Plat into Permit

Page 9 of 12

Exhibit C
 Page 3 of 6
 M-200
 Amendment 26

**Bat Cave Road Crossing
 T. 32 S., R. 3 W., Sec. 6, W.M.
 P-Line Traverse Notes**

P-Line Sta.	SD FT.	Azimuth Deg.	Grade %	Culvert W X L	Centerline Notes
Spur 1				18"X36'	
0+00					
	145	292	12		
1+45					
	46	310	14		
2+96				18"X40'	ADD DOWNSPOUT AS NEEDED
	82	291	15		
3+78					BEGIN FULL-BENCH TO 6+04
	31	312	15		
4+09				18"X40'	ADD DOWNSPOUT AS NEEDED
	72	276	15		
4+81					
	65	280	15		
5+46					
	58	251	15		
6+04					PROPERTY LINE
Spur 2					
0+00				18"X40'	FULL BENCH
	60	346	12		
0+60					FULL BENCH
	50	350	12		
1+10					PROPERTY LINE

Illustration XII-2

Sample Amendment Adding Discretionary Right-of-Way Plat into Permit

Page 10 of 12

Exhibit C
 Page 4 of 6
 M-200
 Amendment 26

BAT CAVE ROAD PROJECT
 T. 32 S., R. 3 W., Sec. 6
 ROAD SUMMARY AND SPECIFICATIONS

Project summary

Stations new construction = 7.14

ROAD SPECIFICATIONS

Subgrade Construction

Subgrade width: 16' with 3' ditch (1' below subgrade), 6" centerline crown

Minimum curve radius – 60'

Maximum adverse grade = 3%

Maximum favorable grade – 15%

Cutslopes*

Sideslopes angles (in Percent)

Cutslope ratio

0% to 53% (common)

¾:1

Over 53% (common)

½:1

All side slopes in rock

¼:1

*Cut slopes will be rounded at top of cut.

Fill Slopes

All fill slopes are 1½:1 unless otherwise specified.

Fill widening

1. Fill widening is required on all fills, unless otherwise specified. Fill widening specifications are based on fill heights at toe of fill.
2. Add 1' of extra road width for each 5' of fill height.
 Curve widening:
 1. Curve widening is required on switchbacks and sharp curves, unless otherwise noted.
 2. Curve radius 50' thru 74' add 5' extra road width.
 3. Curve radius 75' thru 100' add 3' extra road width.
 4. No curve widening required on curve radius greater than 100'.

Illustration XII-2

Sample Amendment Adding Discretionary Right-of-Way Plat into Permit

Page 11 of 12

Exhibit C
Page 5 of 6
M-200
Amendment 26

Truck turnouts

Turnouts will be 50' long with 25' taper on each end.

Culverts and drainage

Road drainage will consist of ditch-outs and culvert installations as needed. Cross drain culvert spacing is expected to be from 300' to 600' on average depending on road grade and degree of side slope.

Surfacing

Both spurs will be natural surfaced and blocked when not in use.

Waste Areas

Two waste areas are proposed for this project and will be utilized as end haul sites for full-bench construction. The southern site will be utilized for excavation from Spur 1. Approximately 1,600 cubic yards of material would be deposited on an existing roadbed and out-sloped for drainage. The northern waste area will be utilized for excavation from Spur 2. Approximately 1,5000 cubic yards of material would be deposited beyond an existing landing onto a ridge top. Both sites are flagged with glo-green flagging.

Comments

Road centerline is marked with orange-top stakes and orange flagging. P-line stations and culvert locations are marked on stakes. Proposed clearing limits will be marked by Cave Man Logging, LLC prior to the right-of-way appraisal with lime-green flagging.

Tie-In:

Spur 1: The CE 1/16th corner of Section 6, T. 32 S., R. 3 W., W.M. bears approximately 778' horizontal distance north.

Spur 2: The CE 1/16th corner of Section 6, T. 32 S., R. 3 W., W.M. bears approximately 93' north.

Illustration XII-2

Sample Amendment Adding Discretionary Right-of-Way Plat into Permit

Page 12 of 12

Exhibit C
 Page 6 of 6
 M-200
 Amendment 26

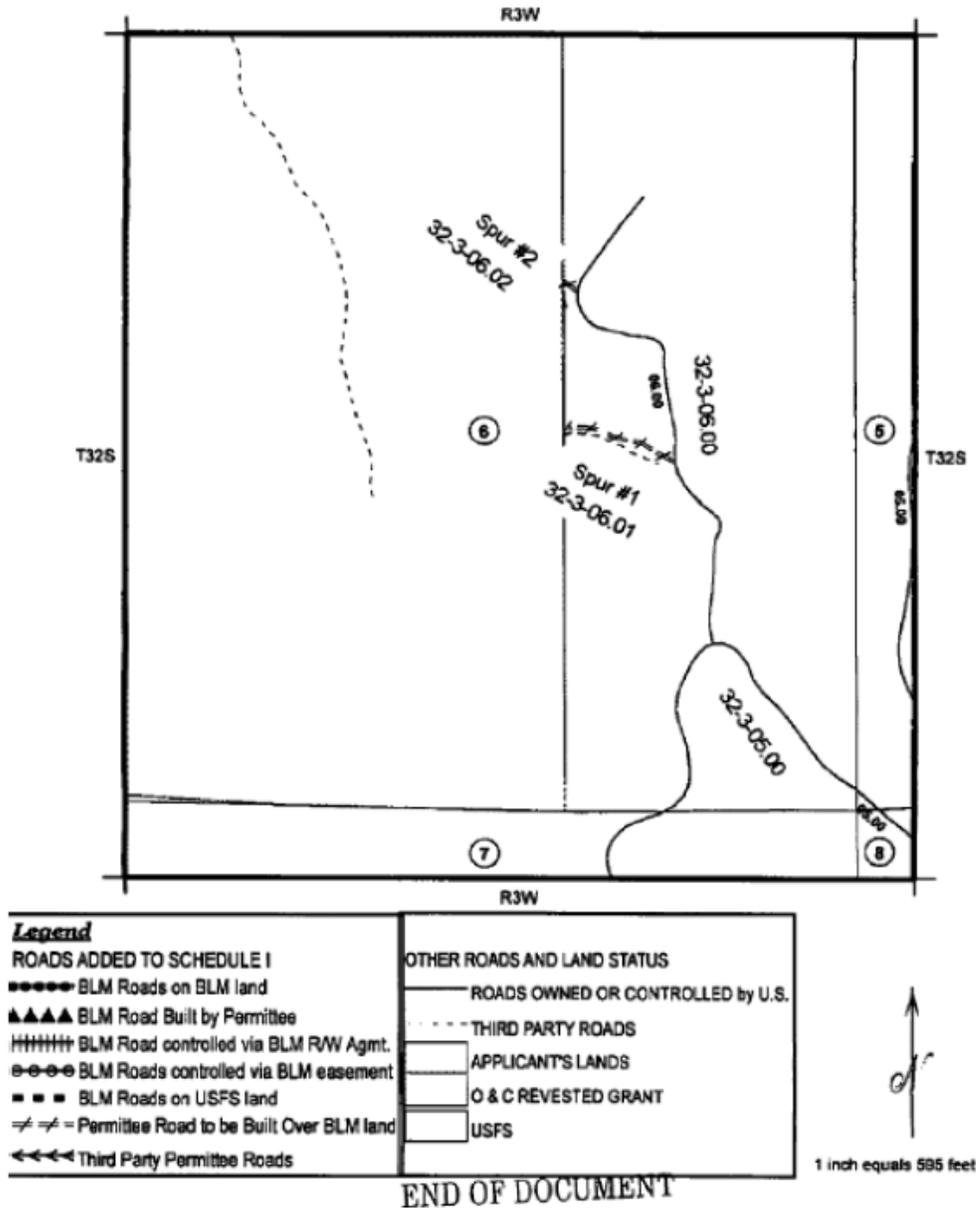


Illustration XII-3

OR 2812-1 – Partial Release of O&C Logging Road Right-of-Way

Permit and Sale of Road

Page 1 of 1

Form OR 2812-1
(October 2009)

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
PARTIAL RELEASE OF O&C LOGGING ROAD RIGHT-OF-WAY PERMIT and SALE OF ROAD

WHEREAS, pursuant to the provisions of 43 CFR 2812, the United States Department of the Interior, Bureau of Land Management, issued O&C Logging Road Right-of-Way Permit No. _____, dated _____, Serial No. OR_____, _____, hereinafter referred to as Grantor; and,

WHEREAS, in accordance with the terms of said permit, Grantor has constructed a logging road at the locati shown on Exhibit A, which exhibit is attached hereto and made a part hereof; and

WHEREAS, the United States desires to purchase said road; and

WHEREAS, the Grantor has agreed to sell and convey said road to the United States and to release said right-of-w permit insofar as it applies to said road.

NOW, THEREFORE, in consideration of \$_____, receipt of which is hereby acknowledged, the Grantor sells and conveys to the United States of America and its assigns, all of its right, title, and interest in and to said ro; and does hereby release and relinquish all of its right, title, and interest in said right-of-way permit insofar as it rela to said road. In all other respects the said permit shall remain in full force and effect.

The Grantor covenants and warrants that he is the holder and owner of the said permit and that he has the full rig power, and authority to execute this release, and that said road is free and clear of all liens, claims a encumbrances.

Dated this _____ day of _____, 20_____.

If Individual or partnership, sign here:

If corporation, sign here:

Signature

Name of Corporation

Printed Name of Individual or Partnership

Signature

Address

Printed Name and Title

If Individual or partnership, sign here:

Attest Signature

Signature

Printed Attest Name and Title

Printed Name of Individual or Partnership

CORPORATE SEAL

Address

Illustration XII-4

Form OR 2812-2 – Release of O&C Logging Road Right-of-Way Permit and Sale of Road

Page 1 of 1

Form OR 2812-2
(October 2009)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

RELEASE OF O&C LOGGING ROAD RIGHT-OF-WAY PERMIT
and
SALE OF ROAD

WHEREAS, pursuant to the provisions of 43 CFR 2812, the United States Department of the Interior, Bureau of Land Management, issued O&C Logging Road Right-of-Way Permit No. _____, Serial No. OR _____, dated _____ to _____, hereinafter referred to as Grantor; and

WHEREAS, in accordance with the terms of said permit, Grantor has constructed a logging road at the location shown on Exhibit A, which exhibit is attached hereto and made a part hereof; and

WHEREAS, the United States desires to purchase said road; and

WHEREAS, the Grantor has agreed to sell and convey said road to the United States and to release said right-of-way permit.

NOW, THEREFORE, in consideration of _____, receipt of which is hereby acknowledged, the Grantor sells and conveys to the United States of America and its assigns, all of its right, title, and interest in and to said road, and does hereby release and relinquish all of its right, title, and interest in said right-of-way permit.

The Grantor covenants and warrants that he is the holder and owner of the said permit and that he/she has the full right, power, and authority to execute this release, and that said road is free and clear of all liens, claims and encumbrances.

Dated this _____ day of _____, 20____

If Individual or partnership, sign here:

If corporation, sign here:

Signature

Name of Corporation

Printed Name of Individual or Partnership

Signature

Address

Printed Name and Title

If Individual or partnership, sign here:

Attest Signature

Signature

Printed Attest Name and Title

Printed Name of Individual or Partnership

Address

CORPORATE SEAL

Illustration XII-5

Form OR 2812-10 – Partial Release of O&C Logging Road Right-of-Way Permit

Page 1 of 1

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

PARTIAL RELEASE OF O&C LOGGING ROAD RIGHT-OF-WAY PERMIT
(Form OR 2812-10, February 2009)

WHEREAS, pursuant to the provisions of 43 CFR , the United States Department of the Interior, Bureau of Land Management, issued O&C Logging Road Right-of-Way Permit No. _____, Serial No. OR _____, dated _____, 20____, to _____, hereinafter referred to as Releasor; and,

WHEREAS, in accordance with the terms of said permit, Releasor has acquired certain rights and interests in logging road(s) as shown on Exhibit A, which is attached hereto and made a part hereof, for the purposes of management and removal of timber from lands which are owned or controlled by the Releasor; and

WHEREAS, the United States desires to remove said road(s) from service for the protection and management of the watershed; and

WHEREAS, the Releasor agrees to quitclaim all interest in said road(s) to the United States and to release said right-of-way permit insofar as it applies to said road(s).

NOW, THEREFORE, in consideration for , receipt of which is hereby acknowledged, the Releasor quitclaims to the United States and its assigns all of its right, title, and interest in and to said road(s), and does hereby release and relinquish all of its right, title, and interest in said right-of-way permit insofar as it relates to said road(s). In all other respects the said permit shall remain in full force and effect.

Dated this ____ day of _____, 20____

If Individual or partnership, sign here:

If corporation, sign here:

Signature

Name of Corporation

Printed Name of Individual or Partnership

Signature

Address

Printed Name and Title

If Individual or partnership, sign here:

Attest Signature

Signature

Printed Attest Name and Title

Printed Name of Individual or Partnership

Address

CORPORATE SEAL

Form OR 2812-10 (February 2009)

Illustration XII-6
Provisions for Consolidation Amendments
Page 1 of 3

Consolidation Agreement Provisions

The following provisions will be included in the “Now Therefore” section of consolidation amendments. If the provision is mandatory it is shown in bold instructions.

[Use if the non-surviving reciprocal right-of-way agreement(s) are being superseded in their entirety.]

This amendment supersedes and terminates in its entirety O. and C. Logging Road Right-of-Way Permit No. _____ and Right-of-Way and Road Use Agreement No. _____ entered into on (date) and recorded (recording information).

The rights of the parties hereto with respect to such rights-of-way and road use shall hereafter be determined in accordance with this instrument.

[Use if only specific lands, roads or rights-of-way are being superseded.]

This amendment supersedes and terminates, as to: 1) those lands and interests in land of the Permittee described on Schedule 2, and 2) those lands and interest in lands of the United States described on Schedule 1 attached hereto and made a part hereof, O. and C. Logging Road Right-of-Way Permit No. _____ and Right-of-Way and Road Use Agreement No. _____.

The rights of the parties hereto with respect to such rights-of-way and road use for the superseded lands and interests in lands shall hereafter be determined in accordance with this instrument.

[Mandatory in all to indicate that the parties agree to correct errors or omissions of lands, roads or rights-of-way if any such errors are discovered after approval of the amendment.]

It is the intent of the parties that if any lands, roads or rights-of-way are inadvertently left out of this instrument that were intended to be superseded and included in this instrument, the parties hereto agree that they will amend said O. and C. Logging Road Right-of-Way Permit No. _____ and Right-of-Way and Road Use Agreement No. _____ to include those omitted lands, roads or rights-of-way.

Illustration XII-6
Provisions for Consolidation Amendments
Page 2 of 3

[Mandatory in all to indicate agreement by the parties to correct errors in the Accounting Agreement or recognition of road ownership or control, deficit balances, etc.]

It is the intent of the parties hereto that in superseding and terminating O. and C. Logging Road Right-of-Way Permit No. _____ and Right-of-Way and Road Use Agreement No. _____, as specified above, that the rights and obligations of both parties under said Permits and Agreements existing on the date this amendment is executed as to: 1) road control and road ownership, 2) deficit share balances, 3) the collection or payment for road use, and 4) first right of road maintenance, etc. are to be transferred to O. and C. Logging Road Right-of-Way Permit No. _____ and Right-of-Way and Road Use Agreement No. _____. If any such rights are inadvertently omitted from this amendment, the parties hereto agree that they will amend said O. and C. Logging Road Right-of-Way Permit No. _____ and Right-of-Way and Road Use Agreement No. _____ to provide for such rights.

[Mandatory in all to indicate agreement by the parties to report and pay for previously unreported road use.]

If either party hereto has transported timber or other forest products under the authority of an O & C Logging Road Right-of-Way Permit or Right-of-Way and Road Use Agreement herein superseded, as described above, and has not reported such transportation of timber or other forest products and paid fees as required by said superseded permit or agreement, said party shall remain obligated to report said transportation of timber or other forest products and to pay such fees as may be required under the procedures specified in O & C Logging Road Right-of-Way Permit [No. of surviving reciprocal permit] or Right-of-Way and Road Use Agreement [No. of surviving reciprocal permit], as amended herein.

[Mandatory in all to indicate that the rights of both parties carry forward in the surviving reciprocal right-of-way agreement as of the date first Granted or received.]

It is the intent of the parties hereto that in superseding O. and C. Logging Road Right-of-Way Permit No. _____ and Right-of-Way and Road Use Agreement No. _____, that the rights and obligations of both parties under said permit and agreement shall continue from the date those rights were first granted or received.

Illustration XII-6
Provisions for Consolidation Amendments
Page 3 of 3

[Mandatory in all to indicate that the Exhibit C map in the surviving agreement is replaced.]

That Exhibit C, which is attached to said agreement and permit, shall be replaced by Exhibit C (Amendment No. _____ [use number of the consolidation amendment]), attached hereto and made a part hereof.

[Use if there are any permittee deficit balances carried forward into the surviving agreement.]

That the road use deficit share balances shown on Attachment A, attached hereto and made a part hereof, which deficit balances were established under the provisions of O. and C. Logging Road Right-of-Way Permit No. ___ are hereby carried forward into O. and C. Logging Road Right-of-Way Permit No. _____. Permittee shall pay road use fees, at the rates shown on said Attachment A, whenever it hauls timber or other forest products over any road or improvement listed on Attachment A until the deficit share shown on Attachment A for that road has been paid. The Permittee shall thereafter have free use of such road, except for pro rata maintenance expense and except as provided in Paragraph No. _____ of Exhibit A attached to said permit.

[Use if there are any U.S. deficit balances carried forward into the surviving agreement.]

That the road use deficit share balances shown on Attachment B, attached hereto and made a part hereof, which deficit balances were established under the provisions of Right-of-Way and Road Use Agreement No. are hereby carried forward into Right-of-Way and Road Use Agreement No. _____. The United States or its licensees shall pay road use fees, at the rates shown on said Attachment B, whenever the United States or its licensees hauls timber or other forest products over any road or improvement listed on Attachment B until the deficit share shown on Attachment B for that road has been paid. The United States and its licensees shall thereafter have free use of such road, except for pro rata maintenance expense and except as provided in Paragraph No. ____ of Exhibit B attached to said agreement.

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XIII. DECISIONS, APPEALS AND NEPA

A. Purpose and Objectives

This chapter serves several purposes in regards to decisions, appeals and the applicability of the National Environmental Policy Act (NEPA) when processing O&C right-of-way actions associated with the regulations at 43 CFR 2812. The purposes of this chapter include:

- explaining the requirement for issuing formal decisions and the process to be followed when preparing decisions for O&C right-of-way actions.
- providing guidance for filing and processing appeals of final decision of the AO.
- explaining the need for and provides guidance on preparing “Lands Decision Memorandums” which documents the administrative record for why a new NEPA analysis was not required for certain nondiscretionary or routine administrative actions.
- providing guidance regarding the applicability of NEPA for various O&C right-of-way actions.
- explaining the “effective date” of O&C right-of-way decisions in regards to the start of the appeal period.

The objective of this chapter is to provide direction that will result in clearly written, legally sound and administratively correct decisions for O&C right-of-way actions.

B. Policy

Bureau Manual 1841 sets forth BLM’s policy to issue timely decisions in lands and minerals cases in order to secure compliance with laws and regulations, and to further management objectives. Uniform application of the law and provisions of rights of appeal are vital to furtherance of the O&C right-of-way program. The decisions written for O&C right-of-way actions are considered “lands” decisions for purposes of this section.

C. Lands Decisions in General

1. Authorities

Act of September 5, 1966 (Administrative Procedures Act) as amended (5 U.S.C. 551 et seq.), Chapter 5, Subchapter II.

The National Environmental Policy Act (NEPA) [42 U.S.C. 4321 et seq., January 1, 1970

43 CFR §2812.9 [Appeals].

43 CFR, Part 4.

2. Responsibility

State Directors are responsible for ensuring that the objectives of this chapter are met.

Authority for signing O&C right-of-way decisions has been delegated. Decisions are written in organizational units, i.e., the Section, Branch, Division or office subordinate to or supervised directly by the AO. The AO signs the decision (see the Oregon/Washington supplement to the BLM Manual 1203 - Delegation of Authority Manual).

3. References

Bureau Manual 1841.05A (Decision Procedures)
Delegation of Authority Manual 1203 (Oregon/Washington Supplement)
BLM Handbook H-1790-1, National Environmental Policy Act

4. Purpose

Decisions serve several purposes, including:

- fulfilling the agency obligations under the Administrative Procedures Act which requires that the agency shall make available for public inspection and for copying final opinions, as well as orders, made in the adjudication of cases;
- informing interested parties (including applicants and other qualified parties of interest) about the disposition of BLM actions;
- taking an action or set a course for future action;
- completing (in the case of final decisions) the written record of action taken in connection with the application under consideration; or (in the case of interlocutory action), inform about what actions or items are still needed to make a final decision;
- disposing of a case in a certain way, by setting forth the facts, laws and reasoning which require that disposition;

- establishing an historical and legal administrative case record; and
- serving as a vital piece of the administrative record for consideration by the Interior Board of Land Appeals (IBLA) in case an appeal is filed. The BLM will often prevail in or lose an appealed case based on the completeness of the administrative case record and, more often than not, ambiguity may go against the government.

Decisions also provide important information to applicants such as:

- any actions required by the applicant;
- any defects in their application which can be remedied;
- any defects in their application which cannot be remedied (e.g., if they aren't a citizen, they cannot quickly become one);
- requirements of any federal, state or local law which they must fulfill and the time limit for compliance;
- requirements of law or regulation which the applicant has failed to meet and cannot now meet;
- remedial action which the applicant can take to comply;
- penalty for failure to take remedial action (e.g., rejection of application, etc.);
- penalty for having failed to meet legal or regulatory requirements which cannot now be met because of expiration of time (e.g., they were notified of a permit expiration in the near future and they did not apply for a renewal prior to expiration);
- their rights of appeal and instruction for filing for an appeal; and
- the legal basis for the decision.

5. Administrative Decision Defined

The definition of a “decision” as described in BLM Manual 1841.05A is:

. . . a written document, signed by a Bureau official under delegated authority, which disposes of a stated issue or issues in a case situation.

6. Final vs. Interlocutory and Categories of Decisions

Each decision that is written should be identified as being either final or interlocutory.

A final decision is one that makes a final determination (or fully disposes of) an issue or issues in a case situation. There is nothing further to decide.

An interlocutory decision is one in which there are one or more issues which still need to be resolved before the decision is final. This is also called a “conditional decision;” that is, the applicant must meet certain conditions or perform certain actions for the decision to become final. For example, a permit is approved, provided that the advance fees and performance bond is submitted within a certain period of time.

Whether a decision is final or interlocutory, they generally fall into the following four categories:

a. Approval Decisions

Approval decisions are those decisions which approve, grant or extend rights or privileges to named beneficiaries. There are no further decisions to make or further actions required on the part of the applicant. These are Final decisions.

b. Adverse Decisions

Adverse decisions deny or reject the rights or privileges sought by an applicant. These could be final or they could be interlocutory in nature (with the decision being reconsidered or reversed if the applicant performs certain measures).

c. Combination Decisions

Combination decisions are those decisions which can approve in part and deny in part. It could also be one in which there are multiple decisions made, some being adverse and some being approval.

d. Conditional Decisions

Conditional decisions are those decisions which require that specified conditions be met. Examples of conditional decisions are: 1) an application for an O&C permit is rejected because the applicant has not provided evidence that they are the owner of the land or timber to be served by the permit, 2) a decision is issued to deny a permit because the applicant did not submit their performance bond, but if the bond is submitted within a specified time the process will continue forward and, 3) the action is approved conditioned upon successful execution of special conditions (mitigation measures).

D. Effective Date of O&C Right-of-Way Decisions

When processing O&C right-of-way actions it is important for the applicant to understand when a decision legally becomes effective so they will not have unreasonable expectations. There is a distinction between rights-of-way issued under Title V of FLPMA (and the regulations at 43 CFR 2801) vs. the right-of-way actions approved under the O&C regulations at 43 CFR 2812.

The regulations for FLPMA right-of-way actions state:

43 CFR §2801.10

All BLM decisions under this part remain in effect pending appeal unless the Secretary of the Interior rules otherwise. [70 FR 21058, Apr. 22, 2005]

Thus, FLPMA Title V rights-of-way are effective immediately (and remain in effect pending resolution of any appeals filed).

Conversely, for O&C right-of-way actions, this wording (stating that the decision remains in effect pending appeal) is absent in the 43 CFR 2812 regulations.

The only reference in the O&C regulations (43 CFR 2812) that will provide information on the effective date of decisions (for appeal purposes) is under the “Appeals” section at 43 CFR §2812.9:

An appeal pursuant to part 4 of 43 CFR Subtitle A, may be taken from any final decision of the authorized officer, to the Board of Land Appeals, Office of the Secretary.

Therefore, lacking specific wording as to effective date in the 2812 regulations themselves, we are referred to the appeal regulations to make this determination. The operative wording in the appeal regulations is underlined below:

§43 CFR Part 4.21(a):

1) Except as otherwise provided by law or other pertinent regulation: A decision will not be effective during the time in which a person adversely affected may file a notice of appeal; when the public interest requires, however, the Director or an Appeals Board may provide that a decision, or any part of a decision, shall be in full force and effective immediately.

2) A decision will become effective on the day after the expiration of the time during which a person adversely affected may file a notice of appeal unless a petition for a stay pending appeal is filed together

with a timely notice of appeal, a petition for a stay may be filed only by a party who may properly maintain an appeal.

3) A decision or that portion of a decision, for which a stay is not granted will become effective immediately after the Director or an appeals Board denies or partially denies the petition for a stay, or fails to act on the petition within the time specified in paragraph (b)(4) of this section. [Underline and bold added.]

In summary, an O&C right-of-way decision, or that portion of a decision for which a Stay has not been granted by IBLA, becomes effective:

1) on the day after the 30 (calendar) day appeal period expires (or the 31st day)--unless a Petition to Stay has been filed along with a timely filed Notice of Appeal, or

2) if a Petition to Stay was filed and IBLA does not grant the Stay within 45 days, then the decision becomes effective 45 days after the end of the appeal period (or on the 76th day).

When the public interest requires, the Director or IBLA may provide that a decision, or part of a decision, shall be in full force and effect immediately.

The Solicitor's Office should be consulted if there are any questions relating to the effective date of a decision.

It may be helpful to refer to the comparison chart found at Illustration XIII-1 which shows the differences between the 2800 and 2812 regulations regarding effective dates.

E. Applicability of NEPA for Specific O&C Right-of-Way Actions

This section provides guidance on: 1) whether or not a NEPA analysis is required, 2) the required administrative remedy and appeal language for each type, and 3) examples of the typical O&C right-of-way actions for each.

There are two types of O&C decisions that are routinely processed under the O&C right-of-way regulations:

1) those that require a new NEPA analysis, and

2) those decisions which do not require a new NEPA analysis.

The following paragraphs describe the types of actions that fall into these two categories. In addition, guidance on the required documentation for each type is included.

1. Decisions Requiring NEPA Analysis

Decisions requiring NEPA analysis are those which are discretionary (the BLM retained full discretion to authorize or deny the action). In these discretionary actions, the federal action requires an analysis under NEPA (categorical exclusion determination (CX), Determination of NEPA Adequacy (DNA), Environmental Assessment (EA), or Environmental Impact Statement (EIS)).

In some cases, the examples in this chapter combine a NEPA decision with a lands decision. The advantage of creating a combined NEPA and lands decision is that the decision could be published or mailed to both the proponent (applicant) and other identified parties at the same time (thus starting the appeal period at the same time for all parties).

The appeal period starts with one of the following: 1) the date the “lands” decision is published in the *Federal Register* (which is rare), or 2) the date of service. The date of publication of the Notice of Decision in the local newspaper does not qualify as the start of the appeal period according to the regulations in 43 CFR Subtitle A §§4.411 and 4.413l because the only “publication” that would qualify is publication in the *Federal Register*.

Therefore, since the notice is usually put in the local paper for the O&C right-of-way actions, the appeal period starts with the date the last person signed the certified mail receipt for the Notice of Decision/lands decision.

The Notice of Decision for EAs is published in the local newspaper per BLM NEPA policy. This is a NEPA decision. However, for this example, the NEPA decision can be married with the lands decision so that the lands decision can be mailed to the proponent and any parties who have participated in the process at the same time. This will allow the appeal period to start at the same time for all (see effective date discussion in Section D. above).

The following actions are examples of O&C actions which are discretionary and require a new NEPA analysis:

a. Discretionary Right-of-Way Plats Over U.S. Lands That Are Not in the Permit

When a right-of-way plat is filed over U.S. lands that are not contained in the reciprocal Permit (they are neither identified in Schedule 1 nor shown on the Exhibit C as Schedule 1 lands) the right-of-way must be added by amendment to the Permit. In this case the right-of-way plat is processed as a discretionary amendment (see Illustration XII-2 for a sample amendment of a discretionary right-of-way plat). Most likely the NEPA compliance would be accomplished with an Environmental

Assessment (EA) (or EIS if required) because it would involve ground disturbing activity and the action cannot be categorically excluded.

A sample combined NEPA and lands decision approving an amendment for a discretionary right-of-way plat is included as Illustration XIII-2.

A sample letter transmitting the discretionary amendment for signature by the applicant during the appeal period is included as Illustration XIII-3.

b. O&C Unilateral Permits

New applications for unilateral permits are also discretionary actions. Typically, they are for use of existing U.S. roads and would qualify for a CX; but if the proposed action involves new construction or any exceptions to the CX exist, an EA or EIS would be required and it would be processed similarly to road construction under reciprocal Permits as described in Section 1.a. above.

Since CX's are not typically published, the applicant is usually the only party who receives the decision. However, if anyone else has participated in the CX process, they must also be provided with a copy of the Decision. Parties other than the applicant would only receive notice of the decision made in the NEPA document and that decision would not include the information on the determination of fees, bonds, insurance, reciprocal rights, etc. that only affect the applicant.

A sample Notice of Decision and letter transmitting the unilateral permit for signature is found at Illustration XIII-4. This letter serves two purposes: 1) establishes the start of the appeal period (the day the applicant receives the permit by certified mail) upon which the effective date is determined, and 2) transmits the actual permit to the applicant for signature and requests the fees, bonds, insurance, etc. If they return the permit and required fees, bonds, etc. the permit can usually be signed by the AO on the 31st day (if no legal request for stay is filed).

The appeal period in this case would start on the day the applicant received and signed the certified mail receipt. Or, if one or more other parties participated in the process and were sent a notice, it would be the date of the latest receipt of the Notice of Decision by certified mail.

c. Amendments to Add Existing U.S. Roads or Rights-of-Way to a Permit (Newly Acquired by U.S.)

If a permittee requests an amendment to add existing U.S. roads or rights-of-way to the Schedule 1, the amendment would be a discretionary action and subject to a new NEPA analysis. The NEPA compliance can typically be accomplished with a CX (if no exceptions to the CX apply). If exceptions exist, then an EA or EIS would be required (extremely rare).

If the existing U.S. roads or rights-of-way qualify as newly acquired (see Chapters X. and XII.), then the action would be nondiscretionary not require a new NEPA analysis.

A Notice of Decision and transmittal letter for an amendment which adds existing U.S. roads is included as Illustration XIII-5. As with the Notice of Decision for unilateral permits, the amendment document should be included in the transmittal letter. If the permittee agrees with the terms and conditions, the permit can be signed and returned within the appeal period. If no timely request for stay is filed, the amendment could be approved by the AO and become effective on the 31st day.

d. Amendments to Add New U.S. Lands to Existing Permit (Aliquot Part or Government Lot Descriptions)

If a permittee requests an amendment to add aliquot part or government lot descriptions to the Schedule 1, this would be a discretionary action and would require a new NEPA analysis as well (unless the lands were “newly acquired” or were being added as a result of an error or omission). However, the NEPA analysis for this type of action could be quite extensive and lengthy. If such a request is made, the AO should meet with the permittee and explain what it would take to accomplish the NEPA analysis for adding land descriptions versus limiting the proposal to existing roads or defined construction right-of-way locations. An estimate of the time frame for completing the analysis based on staffing, priorities and other workloads.

2. Decisions Not Requiring NEPA Analysis

For some decisions, the Regional Solicitor has determined that no NEPA analysis is necessary as the BLM has no (or limited) discretion to deny the action. These actions are considered non-discretionary decisions (or limited discretion) and include the following examples.

a. Assignment of Permits

The regulations cited below dictate two requirements which the applicant must meet in order to obtain an approval of an assignment:

§ 2812.7 Assignment of permit.

Any proposed assignment of a permit must be submitted in duplicate, within 90 days after the date of its execution, to the authorized officer for approval, **[1]** accompanied by the same showing and undertaking by the assignee as is required of an applicant by §§ 2812.1-2 and 2812.3-1 to 2812.3-5, [2] and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the permit and the applicable regulations of the

Department of the Interior in force as of the date of such approval of the assignment. [Underline added.]

The Regional Solicitor has determined that the BLM has limited discretion to deny an assignment of a permit (see Chapter XI., Section E.); therefore, the processing of assignment requests is not subject to a new NEPA analysis.

1) Denial or Rejection

However, if the BLM denies an assignment due to one of the limited reasons, this would be considered to be an adverse action and a formal decision with rights of appeal should be sent to the applicant. A sample decision for denial of an assignment is provided as Illustration XIII-6. Any such decision should fully explain the reason(s) for denial.

2) Approval

If the assignment is being approved, a Lands Decision Memorandum should be prepared to document the administrative record with the rationale for why a new NEPA analysis was not required and to document the nondiscretionary nature of the decision. See Illustration XIII-7.

b. Nondiscretionary Right-of-Way Plat Supplements (U.S. Lands are in the Permit)

Since the BLM has only limited rights to “object” to a right-of-way plat where the underlying U.S. lands are already contained within the Permit, these actions are considered nondiscretionary and thus not subject to a NEPA analysis. See Chapter IX., Section B., for detailed guidance on processing nondiscretionary right-of-way plats, including the non-applicability of Sec. 7 of the Endangered Species Act (ESA) if the ESA is not one of the reasons to object.

1) No Objection

If the BLM has no grounds to “object” for one of the reasons contained in the Permit, there is no need to issue a formal “Decision” with rights of appeal. Instead, a simple “Notice of Non-Objection” could be prepared (see Illustration XIII-8), along with attaching a signed copy of the plat. This will document the administrative record so there is no confusion in the future as to who owns the road.

2) Objection

If the BLM is “objecting” to a right-of-way plat for one of the reasons in the Permit, this would be considered an adverse decision and the permittee is entitled to receive the objection in the form of a formal Decision with rights of appeal. A sample decision “objecting” to the right-of-way is found at Illustration XIII-9).

Or, a sample “conditional” decision is issued (in which the AO states that the objection will be removed if certain conditions are met (e.g., mitigation performed). See sample at Illustration XIII-10.

c. Non-Discretionary Amendment to Add Rights for Permittee over Newly Acquired Lands, Roads or Rights-of-Way of the U.S.

The Regional Solicitor has provided guidance that if either party to the agreement acquires new lands, roads or rights-of-way the acquiring party is obligated to provide rights to the other party across their newly acquired lands. The obligation is only on the acquiring party. Therefore, if BLM acquires lands roads, or rights-of-way (easements or rights in other reciprocal agreements) and a permittee desires access across our newly acquired lands, roads or rights-of-way, the BLM is obligated to grant those rights (see Chapters X. and XII.). Thus, these types of actions are non-discretionary decisions.

Since this type of request is non-discretionary on the part of BLM, there is neither requirement nor need for a NEPA analysis. The administrative record should instead be documented with a Lands Decision Memorandum as found in Illustration XIII-11.

d. Consolidation Amendments

Consolidation amendments merely “consolidate and restate” the rights of a single permittee and the U.S. into one existing reciprocal agreement, thus improving the administration of the agreement. While the BLM has discretion whether to complete a consolidation amendment or not, they are merely administrative actions since no new rights are conferred.

To document the administrative record a Lands Decision Memorandum for this type of action should be prepared as found in Illustration XIII-12.

e. Amendments Changing Administrative Terms

Amendments which merely change administrative terms of a Permit and Agreement (such as insurance requirements, bonding requirements, reporting requirements, or the form of license agreement to be used are administrative in nature and would fit the definition of routine administrative actions. These types of actions should also be documented with a Lands Decision Memorandum and the format and categorical exclusion No. referenced in Illustration XIII-13 would apply. Only the proposed action needs to be revised.

f. Amendments to Correct Errors or Omissions

As described in Chapter XII., if an error is discovered in either the Schedule of Lands (1 or 2) or the Exhibit C map (the lands are on one but not the other document), it is a nondiscretionary action to correct the error or omission. Therefore, it is neither necessary nor appropriate to prepare a new NEPA analysis to correct the error because if the lands, roads or right-of-way were described on either the Schedule of Lands or on the Exhibit C map as being lands contained in a Schedule of Lands, the rights were considered to be granted and the correction amendment to either add the lands to the Schedule of Lands or to the Exhibit C map is merely an administrative exercise to acknowledge rights that already existed. A sample Lands Decision Memorandum to cover this action is included as Illustration No. XIII-14.

g. Fee Calculations**1) Agreement Reached – Fees Accepted**

If the BLM and the permittee have reached agreement on road use fee calculations, there is no need for any further documentation or Lands Decision Memorandum. The reciprocal agreements have already set forth the formula for such calculations and the “approved” and “accepted” signatures are sufficient for the administrative record. Merely a letter transmitting the approved fees would suffice. See Chapter X. for further guidance.

2) Agreement Not Reached

Some agreements contain a provision wherein if BLM and the permittee do not agree on the fees, then the matter will go to arbitration to be settled. If the agreement has arbitration as the resolution and a decision is not reached, seek advice from the State Office on how to proceed.

Provision No. 1 to both the Exhibit A and B of Form OR 2812-16
(Illustration V-2 contains the following wording at the end of the provision:

If the parties hereto cannot agree on the replacement cost within thirty (30) days after written notice from either party, computation thereof shall be made by the United States Bureau of Land Management and its decision shall be final, provided that the right of the Permittee to appeal pursuant to the provisions of 43 CFR Part 4 shall not be affected.

This wording is found in most semi-detailed agreements as well. If this wording is present, and the parties cannot reach an agreement on the fee calculations, the BLM AO should issue a decision with rights of appeal in order to settle the matter.

h. Attachment of a Performance Bond for Non-Compliance

Attachment (or seizure) of a performance bond for noncompliance is an administrative action and a NEPA analysis is not required. However, since attaching the bond is an adverse action, the permittee is entitled to a formal decision with rights of appeal (see sample at Illustration VI-3).

i. Formal Notice of Trespass

Once informal trespass procedures (as identified in Chapter XIV.) are exhausted, a formal determination that a party is in trespass is required. This constitutes an adverse decision and requires the alleged trespasser to be given this determination in the form of a notice with rights of appeal. Illustration XIV-7 is a sample formal trespass decision.

j. Acquisition of Rights for the U.S. over Permittee Lands, Roads or Rights-of-Way

The acquisition of rights for the U.S. over private land is in and of itself merely a paper exercise. The federal on-the-ground action (such as a timber sale) will not occur until later. Since the later federal action would be analyzed in a NEPA document, this action (the acquiring of rights) can merely be documented with a Lands Decision Memorandum. See Illustration XIII-17.

F. Required Administrative Remedy and Appeals Language

The following provides guidance on the required language to be included in Decision Records, Notices of Decision or Notice of Availability of EA's or EIS's.

1. Language When NEPA is Required

The following language has been developed by the Oregon State Office and the Regional Solicitor and is required in certain documents as shown below.

2. Language to be Included in EA's and EIS's and Notice of Availability of EA (or EIS) for Public Comment

The Regional Solicitor, in coordination with the Oregon State Office has developed the following required administrative remedy language that must be included in every Notice of Availability of EA (or EIS) for public comment. It also must be included in the NEPA document itself.

ADMINISTRATIVE REMEDIES:

“Administrative review of right-of-way decisions requiring National Environmental Policy Act (NEPA) assessment will be available under 43 CFR Part 4 to those who have a “legally cognizable interest” to which there is a substantial likelihood that the action authorized would

cause injury, and who have established themselves as a “party to the case.” (See 43 CFR § 4.410). Other than the applicant/proponent for the right-of-way action, in order to be considered a “party to the case” the person claiming to be adversely affected by the decision must show that they have notified the BLM of their alleged injury through their participation in the decision-making process. (See 43 CFR §4.410(b) and (c)). The publication of the legal Notice of Decision in the *Federal Register*, or, if the notice is not published in the *Federal Register*, then the date of receipt of the Notice of Decision establishes the date initiating a 30-day appeal period.”

The above language is to be included in the Notices published in any local newspaper or other local publications or internet sites (such as the *Medford Messenger* (or other district equivalent)). The Notice must also clearly identify the public participation process.

a. Appeal and Other Language to be Included in Decision Record and/or Notice of Decision (if EA or EIS)

The required language for an O&C right-of-way decision requiring NEPA analysis and which is accomplished with an EA or EIS is included as Illustration XIII-17. The entire language (including attaching Bureau Form 1842-1) is required. Since Notices of Decision are usually published, the language should also be included in the publication or to the individual notices sent by certified mail.

b. Appeal & Other Language to be Included in Decision Record and/or Notice of Decision Completed (if a CX)

The required language for an O&C right-of-way decision completed with a Categorical Exclusion (CX) Determination is included as Illustration XIII-18. The decision must include the entire verbiage (including attaching the BLM Form 1842-1).

If the Notice of Decision is mailed to the applicant and/or only a few entities who have participated in the process, the Notice can merely reference an attached Decision Record which contains the required language.

3. Standard Appeals Language for Decisions Which Do Not Require a New NEPA Analysis

For those decisions not requiring a new NEPA analysis (and thus, no NEPA Decision Record), the decision is provided to the applicant in a letter format Decision and should contain the standard Appeal Language as found in Illustration XIII-19). In addition, the decision must be transmitted along with Bureau Form 1842-1 (Illustration XIII-20).

G. Recommended Format and Thought Process for Writing Decisions

While there is not an exact format required for the written decision, through the years the BLM has developed the “IRAC” process (Issue, Rule, Analysis, and Conclusion) as an effective proven format which should result in a clearly written decision that is legally sound.

1. Issue, Rule, Analysis, and Conclusion

The **Issue** describes what the action is (such as an application for a unilateral permit, an amendment to add new U.S. lands, roads or rights-of-way, etc.). The “issue” is basically the proposed action and this section of the Decision should include, as a minimum:

- name of applicant,
- Permit No.,
- Amendment No. (if applicable),
- road Nos. (if applicable), and
- description of the project (what is proposed, term (duration), project design features, etc.).

The **Rule** would include the regulations, law, Solicitor’s opinions, permit provisions, etc. which govern or provide guidance on the type of action being processed.

The **Analysis** is self-explanatory. The decision document can merely make reference that the action has been analyzed under the NEPA document (such as EA, categorical exclusion, etc.) or make reference as to why no further NEPA analysis or documentation would be required.

The **Conclusion** would include the decision wording itself and the rationale or justification for the decision. This section includes the rationale or justification for why the decision was reached (based on the analysis). The conclusion needs to clearly identify whether the decision is a Final or Interlocutory (conditional) decision.

2. Statement of Final Decision Required for All Final Decisions

Regardless of whether NEPA is required or not, if a decision is a final decision, it must contain the following language (or words to this effect):

This decision represents the final decision of the BLM with respect to the issues addressed herein.

H. Distribution of Decisions

Decisions should be served to the named party or parties in interest and copies provided to any other parties expressing direct or indirect interest. Serve all decisions in such a manner that proof and time of service are established using certified, registered mail, or courier delivery. This is important because it provides proof of service and establishes appeal periods.

For decisions requiring NEPA analysis, the distribution would include anyone who has participated in the NEPA process.

For decisions not requiring further NEPA analysis, the distribution would normally only include the applicant (proponent/permittee).

I. Appeals

An applicant, permittee, grantee, or holder may disagree with a part or all of a final decision issued by the BLM. There may also be cases where a member of the public is adversely affected by one of our decisions.

1. Authority

Revised Statutes (R.S.) 2478, as amended: 43 U.S.C. 1201

2. Responsibility

State Directors are responsible for insuring that objectives of this section are met.

3. Policy

Uniform application of the law and regulations related to rights of appeal are vital to furtherance of the O&C right-of-way program.

4. References

43 CFR §2812.9
43 CFR Subtitle A, Part 4

5. Decisions Subject to Appeal

An appeal pursuant to 43 CFR Subtitle A Part 4 may be taken from any final decision of the AO, to the Board of Appeals, Office of the Secretary.
(43 CFR §2812.9) The address of the Interior Board of Land Appeals is:

Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St. Suite 300
Arlington, VA 22203

Conditional decisions requiring that specified conditions be met such as submission of additional evidence, payment of fees, and execution of special provisions are interlocutory or interim in nature and do not have the right of appeal as they are not a final decision of the Bureau.

6. Eligible Appellants

Any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management may appeal a decision (43 CFR §4.410). In addition to the party or parties of interest in a particular case, a member or members of the public, public interest, or public advocacy groups may appeal our decisions.

7. Procedures to be Followed Upon Receipt of a Notice of Appeal

BLM loses jurisdiction of a case once an appeal has been filed. No further BLM actions that may affect the outcome of the case are allowed during the pendency of an appeal. The requirements for the agency response to an appeal are found in the regulations at 43 CFR Part 4, Subpart E.

This handbook purposefully does not contain the detailed guidance for BLM once an appeal is received, as the appeal regulations may change from time to time. If an appeal on an O&C right-of-way action is received, refer to the regulations at 43 CFR Part 4 and the District personnel with the most recent expertise for handling appeals. Guidance may also be received from the Oregon State Office and/or Regional Solicitor if needed.

The designated Field or District Office employee assigned responsibility for and having the most familiarity with handling appeals will provide the current agency guidance to the right-of-way staff for individual case appeals.

a. LR2000 Updated for Appeal

After the appeal has been sent to IBLA, LR2000 must be updated using Action Code 042 and the district file docket that the files have been sent to IBLA.

b. Reserved

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Illustration XIII-1

Comparison Chart – Effective Date of Right-of-Way Decisions

Page 1 of 2

Comparison Chart for Effective Date of Right-of-Way Decisions
(under 43 CFR GROUP 2800--FLPMA and O&C Rights-of-Way Regulations)

43 CFR Part 2800 FLPMA (Title V) Right-of-Way	43 CFR Part 2810, Subpart 2812 O&C Right-of-Way
<p>43 CFR 2801.10 Regulation: All BLM decisions under this part remain in effect pending appeal unless the Secretary of the Interior rules otherwise. [70 FR 21058, Apr. 22, 2005]</p> <p>Interpretation: WO has issued policy guidance that right-of-way decision under 43 CFR Part 2800 (and Part 2880) are full force and effect.</p>	<p>43 CFR 2812.9 – Appeals: Regulation: An appeal pursuant to part 4 of 43 CFR Subtitle A, may be taken from any final decision of the authorized officer, to the Board of Land Appeals, Office of the Secretary [41 FR 29123, July 15, 1976].</p> <p>Interpretation: Since this regulation does not specify an effective date of decision then the following guidelines from the agency appeals regulations under Part 4 apply:</p>
<p>Effective Decision Date:</p> <p>(b) All decisions of the authorized officer under this part shall remain effective pending appeal unless the Secretary rules otherwise. Petitions for the stay of a decision shall be filed with the Office of Hearings and Appeals, Dept. of the Interior. [45 FR 44526, July 1, 1980, as amended at 53 FR 17702, May 18, 1988].</p>	<p>Effective Decision Date 43 CFR Part 4.21(a) : Except as otherwise provided by law or other pertinent regulation: <u>A decision will not be effective during the time in which a person adversely affected may file a notice of appeal;</u> when the public interest requires, however, the Director or an Appeals Board may provide that a decision, or any part of a decision, shall be in full force and effective immediately.</p> <p>A decision will become effective on the day after the expiration of the time during which a person adversely affected may file a notice of appeal unless a petition for a stay pending appeal is filed together with a timely notice of appeal, a petition for a stay may be filed only by a party who may properly maintain an appeal;</p> <p>A decision or that portion of a decision, for which a stay is not granted will become effective immediately after the Director or an appeals Board denies or partially denies the petition for a stay, or fails to act on the petition within the time specified in paragraph (b)(4) of this section.</p> <p>Section (b)(4): The Director of an Appeals Board shall grant or deny a petition for a stay pending appeal, either in whole or in part, on the basis of the factors listed in paragraph (b)(1) of this section, within 45 calendar days of the expiration of the time for a filing of a notice of appeal.</p>

Illustration XIII-1
 Comparison Chart for Effective Date of Right-of-Way Decisions
 Page 2 of 2

Comparison Chart for Effective Date of Right-of-Way Decisions (Cont.)
 (under FLPMA and O&C Rights-of-Way Regulations)
 43 CFR GROUP 2800

43 CFR Part 2800 FLPMA (Title V) Right-of-Way	43 CFR Part 2810, Subpart 2812 O&C Right-of-Way
<p>Summary: Decisions under Part 2800 are full force & effect when NEPA decision is signed.</p>	<p>Summary: Since there is no other law or regulation that applies, then effective date of decisions under Part 2810, Subpart 2812 are determined by the appeal regulations above (decision is effective on the 31st day after the NEPA decision is signed). If a stay is filed, and IBLA does not act on the stay, the decision is effective on the 46th day after the end of the appeal period (or 76th day after decision is issued).</p>

Illustration XIII-2

Sample NEPA/Lands Decision Approving an Amendment for a
Discretionary Right-of-Way Plat

Page 1 of 7

United States Department of the Interior
Bureau of Land Management
_____ District
_____ Resource Area
_____ County, Oregon

FINAL NEPA and LANDS DECISION
To Approve
Amendment No. __ to
O&C Logging Road Right-of-Way Permit No. _____ (OR _____ FD)
Adding Lands for a New Right-of-Way Location
For Cave Man Logging, Inc.
Rainy Forest Road Construction Project

Environmental Assessment Number # OR-XXX-XX-007

INTRODUCTION

An environmental assessment (EA) was prepared for an application by Cave Man Logging, Inc. to have their O&C Logging Road Right-of-Way Permit No. _____ amended (Amendment No. 15) to add certain United States lands for their Rainy Forest Road Construction Project (EA Number OR-XXX-XX-007). The EA, including a Finding of No Significant Impact (FONSI), was made available for a 15-day public review period on _____. _____ letters were received. The Bureau of Land Management's (BLM) responses to the comments in these letters are found in Attachment 1 and public comments were considered in reaching a final decision. A copy of the EA can be obtained from: **[List Office address]**. Office hours are Monday through Friday, 8:00 am to 4:30 PM, closed on holidays.

[List Plan conformance, etc. information here or other legal or court references as appropriate.]

The Rainy Forest Project proposes construction of a single road _____ feet in length of natural surface road in T. __ S., R. __ E., Section __, off BLM road No. _____ for Cave Man Logging, Inc. to access their land in T. __ S., R __ E., Sec. __. The new road would be identified as road No. _____. The construction would occur in the South Umpqua/Galesville Late Successional Reserve (LSR). Approximately ½ acre of timber containing late-successional trees would be removed for the road construction.

Illustration XIII-2

Sample NEPA/Lands Decision Approving an Amendment for a Discretionary Right-of-Way Plat

Page 2 of 7

DECISION

Based on site-specific analysis, the supporting project record, as well as the management direction contained in the Record of Decision and Standards and Guidelines of the Northwest Forest Plan (1994), _____ District Resource Management Plan and Record of Decision (Year) and [other decision sources or references], I have decided to implement Alternative 2 (approval of Amendment No. 15 to O&C Logging Road Right-of-Way Permit No. _____) hereafter referred to as the “Selected Alternative”. Alternative 2 was analyzed in the Cave Man Logging Rainy Forest Road Construction Project EA, pp. _____.

ALTERNATIVES CONSIDERED [NEPA Document preparer will complete this section—the following text is only an example.]

The alternatives considered in detail included the No Action Alternative (Alternative 1) which serves as the baseline to compare effects, and the Proposed Action (Alternative 2) which initiated the environmental analysis process. A description of each alternative is found on pages ____ of the EA.

REASONS FOR THE DECISION [Preparer will complete this section—the following text is only an example.]

The Selected Alternative addresses the purpose and need of implementing the _____ RMP through providing Right-of-Way access to private land through Late Successional Reserve land allocation (RMP ROD p. _____) and to plan road systems that meet resource objectives and minimize detrimental impacts on water and soil resources (RMP ROD p. ____).

Alternative 1 was not selected because this alternative would not meet the purpose and need of the project (described in Chapter 1 of the EA) to consider as valid uses access to nonfederal lands through late-successional reserves and existing rights-of-way agreements (RMP/ROD p. 35) and to plan road systems that meet resource objectives and minimize detrimental impacts on water and soil resources” (RMP ROD p.157). Alternative 1 would require development of a helicopter landing and decking within 50 ft of a water quality limited anadromous fish stream, require renovation and maintenance of ½ to ¾ mile of road within 100 ft of the stream, and hauling would require right-of-way five intermittent streams.

Illustration XIII-2

Sample NEPA/Lands Decision Approving an Amendment for a Discretionary Right-of-Way Plat

Page 3 of 7

New information regarding the NSO from the following four reports was also considered in this decision. . . .

The two letters received in response to the 15-day comment period on the EA and FONSI addressed several concerns. Refer to Attachment 1 for full disclosure of public comments and BLM's response to those comments.

The effects of the Rainy Forest road construction were adequately analyzed in the EA.

One-half acre of commercial timber containing late-successional trees would be removed by the implementation of this decision. The construction of a permanent ___ ft of ridge top or near ridge top road spurs would remove ½ acre of suitable habitat for the threatened northern spotted owl. Road construction would not negatively affect endangered, special status, or survey and manage fish, wildlife, or botany species.

Road densities would remain at 4.8 mi/mi² within the Upper Cow Creek-Galesville HUC 6 and 4.0 mi/mi² within the Dismal Creek HUC 6 drainages, with the 0.1 mile (604 ft) and 0.03 mile (170 ft), respectively, of road proposed for construction (EA p. 25).

The benefit of providing access to private land outweighs the impacts to hydrology, water quality, and soil productivity on 0.2 acre of soil disturbance and .1 acre of soil compaction (productivity loss). "Given the scope and location of this proposed spur road, this action is anticipated to have a negligible impact to soil productivity on federal lands at the 6th field sub-watershed scale... Additionally, it would not be expected that this project would measurably contribute to an increase in flow or runoff timing" (EA, p.24).

FINDING OF NO SIGNIFIANT IMPACT

[Preparer will complete this section.]

ADMINISTRATIVE REMEDIES [required wording to include in all per Solicitor]

Administrative review of right-of-way decisions requiring National Environmental Policy Act (NEPA) assessment will be available under 43 CFR Part 4 to those who have a "legally cognizable interest" to which there is a substantial likelihood that the action authorized would cause injury, and who have established themselves as a "party to the case." (See 43 CFR § 4.410). Other than the applicant/proponent for

Illustration XIII-2

Sample NEPA/Lands Decision Approving an Amendment for a Discretionary Right-of-Way Plat

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the right-of-way action, in order to be considered a “party to the case” the person claiming to be adversely affected by the decision must show that they have notified the BLM of their alleged injury through their participation in the decision making process. (See 43 CFR § 4.410(b) and (c)). The date of service (by certified mail) of the Notice of Decision by those who have a “legally cognizable interest” will establish the date initiating a 30-day appeal period.

EFFECTIVE DATE OF DECISION [required language for all]

This is a lands decision on a right-of-way action in accordance with BLM regulations at 43 CFR Subpart 2812. All BLM decisions under 43 CFR 2812 will become effective on the day after the expiration of the appeal period (30 days after latest receipt of the Notice of Decision by certified mail) where no petition for a stay is filed, or 45 days after the expiration of the appeal period where a timely petition for a stay is filed, unless the Director of the Office of Hearings and Appeals or an Appeals Board has determined otherwise in accordance with specified standards enumerated in 43 CFR 4.21(b).

RIGHT OF APPEAL [required language in all lands decisions.]

This decision may be appealed to the U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Board) by those who have a “legally cognizable interest” to which there is a substantial likelihood that the action authorized in this decision would cause injury, and who have established themselves as a “party to the case.” (See 43 CFR § 4.410). If an appeal is taken, a written notice of appeal must be filed with the BLM officer who made the decision in this office by close of business (____ p.m.) not more than 30 days after the date of service by certified mail. Only signed hard copies of a notice of appeal that are delivered to the [district office] will be accepted. Faxed or emailed appeals will not be considered.

In addition to the applicant, anyone who has participated in the National Environmental Policy Act process for this project by providing public comments on the environmental assessment will qualify as party to the case. (See 43 CFR § 4.410(b)). However, in order to qualify as an appellant, a “party to the case,” you also have the burden of showing possession of a “legally cognizable interest” that has a substantial likelihood of injury from the decision. (See 43 CFR § 4.410(d)). Furthermore, you may raise on appeal only those issues you raised in comments on the environmental assessment or that have arisen after the opportunity for comments closed. (See 43 CFR § 4.410(c)).

Illustration XIII-2

Sample NEPA/Lands Decision Approving an Amendment for a Discretionary Right-of-Way Plat

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The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR § 1.3. The appellant also has the burden of showing that the decision appealed from is in error. The appeal must clearly and concisely state which portion or element of the decision is being appealed and the reasons why the decision is believed to be in error. If your notice of appeal does not include a statement of reasons, such statement must be filed with this office and with the Board within 30 days after the notice of appeal was filed.

According to 43 CFR Part 4, you have the right to petition the Board to stay the implementation of the decision. Should you choose to file one, your stay request should accompany your notice of appeal. You must show standing and present reasons for requesting a stay of the decision. A petition for stay of a decision pending appeal shall show sufficient justification based on the following standards: The relative harm to the parties if the stay is granted or denied,

- The likelihood of the appellant's success on the merits,
- The likelihood of immediate and irreparable harm if the stay is not granted, and
- Whether the public interest favors granting the stay.

A notice of appeal with petition for stay must be served upon the Interior Board of Land Appeals, the Regional Solicitor and [Insert the Right of Way applicant, and any other adverse party identified by name in the decision (e.g. other right of way users)] at the same time such documents are served on the deciding official at this office. Service must be accomplished within fifteen (15) days after filing in order to be in compliance with appeal regulations. 43 CFR §4.413(a). At the end of your notice of appeal you must sign a certification that service has been or will be made in accordance with the applicable rules (i.e., 43 CFR §§4.410(c) and 4.413) and specify the date and manner of such service.

The IBLA will review any petition for a stay and may grant or deny the stay. If the IBLA takes no action on the stay request within 45 days of the expiration of the time for filing a notice of appeal, you may deem the request for stay as denied, and the BLM decision will remain in full force and effect until IBLA makes a final ruling on the case.

Illustration XIII-2

Sample NEPA/Lands Decision Approving an Amendment for a Discretionary Right-of-Way Plat

Page 7 of 7

Attachment 1

Public Comments to
Cave Man Logging, Inc.
Rainy Forest Road Construction Project EA
and BLM Response

The Cave Man Logging Rainy Forest Road Construction Project was published in the [name of publication—e.g., *Medford Messenger*] quarterly _____ beginning in winter 2006. To provide for public scoping a brief description of proposed projects, legal description and general vicinity map were provided along with a comment sheet for public responses. Although inquiries were made about the project, no site specific comments were provided.

The Cave Man Logging Rainy Forest Road Construction Project environmental assessment (EA) was made available for public comment on _____, 2006. The BLM received ___ comment letters or emails. BLM responses to public comments are found below and will be considered in reaching a decision for granting the Rainy Forest right-of-way.

If a number of comments are identical or very similar, agencies may group the comments and prepare a single answer for each group. Depending on the volume of comments received, responses may be made individually to each substantive comment or similar comments may be combined and a single response made. The Code of Federal Regulations (40 CFR §1503.4) identifies five possible types of responses for use with environmental impact statements.

- Modify alternatives including the Proposed Action.
- Develop and evaluate alternatives not previously given serious consideration by the agency.
- Supplement, improve or modify the analysis.
- Make factual corrections.
- Explain why the comments do not warrant further agency response, citing the sources, authorities or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

Comment 1:

Response:

[CONTINUED FOR OTHER COMMENTS]

Illustration XIII-3

Sample Letter Transmitting Discretionary Amendment for Right-of-Way Plat to Permittee for Signature (Decision Mailed Under Separate Cover)

Page 1 of 2

2812 (OR [Org. Code])
[Permit No.]
OR _____ FD

[date]

Mr. Burly Logger, Forest Manager
Cave Man Logging III, LLC.
545 Clubber Lane
Cave Junction, OR _____

Dear Mr. Logger:

The NEPA/Lands Decision for your Rainy Forest Road Construction Project in which I made a decision to approve Amendment 15 to your _____ O&C Logging Road Right-of-Way Permit was published in the [newspaper] and you were mailed a copy of that Decision under separate cover. This amendment adds a right-of-way location across U.S. lands for your construction of a new road (designated as road No. _____ for future reference). The appeal period will start with the latest date that parties being sent a copy of the decision received their Decision by certified mail. Your appeal rights are included in the Decision mailed under separate cover.

Enclosed are two copies of Amendment No. 15 to _____. If you agree with the amendment as written, please sign the two original copies where indicated and return them to _____ at the above address. If you return the signed amendment within 30 days of the start of the appeal period, I am willing to sign the amendment on the 31st day, provided there are no timely requests for stay filed. If there is a petition for stay filed within the required time frame, I cannot sign the amendment for an additional 45 days after the start of the appeal period (or on the 76th day—unless the stay is granted, in which case the action is stopped until the stay is lifted).

Illustration XIII-3

Sample Letter Transmitting Discretionary Amendment for Right-of-Way Plat to Permittee for Signature (Decision Mailed Under Separate Cover)

Page 2 of 2

Once I sign the amendment, I will have the BLM copy recorded and return a copy to you with the recording information for your records. If you have any further questions, call _____ at (541)_____.

Sincerely,

Field Manager
_____ Resource Area

[ENCLOSURES ARE 2 COPIES OF THE AMENDMENT]

Illustration XIII-4

Sample Notice of Decision to Approve Unilateral Permit and Transmittal of Permit for Signature (NEPA Done With CX)

Page 1 of 4

2812 (OR 112)

[Permit No.]

[Serial No.]

CERTIFIED MAIL – RETURN RECEIPT REQUESTED (XXXXXXX)

:

_____ : O&C LOGGING ROAD RIGHT-OF-WAY
 _____ : PERMIT
 _____ : [Permit No.]
 _____ : [OR _____]

NOTICE OF DECISION TO APPROVE
O&C LOGGING ROAD RIGHT-OF-WAY PERMIT

Dear _____:

Enclosed is the Categorical Exclusion Determination and NEPA/Lands Decision Record (No. _____) in which I have made a decision to approve your O&C Logging Road Right-of-Way Permit No. _____ (OR _____).

Background

On _____, 20__, [Permittee] submitted an application for an O&C Logging Road Right-of-way Permit under the provisions of 43 CFR 2812 to use Bureau of Land Management (BLM) road(s) for commercial log hauling from your property in T. __ R. __ W., Section __.

A Categorical Exclusion (CX) Determination has been prepared. A review of the regulations and manual guidance has been completed in order to determine the appropriate level of road fees, performance bond and insurance requirements. O&C Permit No. _____ is attached to the CX Determination and Decision Record and includes the required fees, insurance, bonding, etc.

The regulations at 43 CFR 2812.3-1 authorize the U.S., as a condition precedent to the issuance of the permit, to require the applicant to grant rights to the United States, its licensees and permittees, over lands directly controlled by the applicant.

Illustration XIII-4

Sample Notice of Decision to Approve Unilateral Permit and Transmittal of Permit for Signature (NEPA Done With CX)

Page 2 of 4

You have provided a listing of your ownership and the BLM made a review to determine if reciprocal rights are needed by the United States. I have determined that no reciprocal rights are necessary.

This letter provides you with the Notice of Decision made in the attached Categorical Exclusion Determination and Decision and your receipt of this notice by certified mail will start the appeal period.

The effective date of decision and administrative remedy is included in the attached Decision.

How to Appeal This Decision¹

If you believe this decision (or the Decision associated with the attached Categorical Exclusion Determination and Decision is in error, you may file an appeal with the Interior Board of Land Appeals (Board), Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4 within 30 days of your receipt of this decision. In deciding whether to file an appeal, you have the burden of showing this decision is in error.

If you decide to file an appeal, you must carefully follow the procedure described in the enclosed Form 1842-1. If you do not file your appeal at the locations specified on the form within 30 days, the Board may dismiss your appeal as untimely without considering its merits. Be sure to send a copy of your notice of appeal to each party named in this decision and to all of the addresses on the enclosed Form 1842-1.

How to Obtain a Stay of this Decision While Your Appeal is Pending.²

You may also ask the Board to stay or suspend the effect of this decision while your appeal is pending. If you desire a stay, you must enclose your request for a stay with your notice of appeal. You have the burden of showing a stay is justified.

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,

Illustration XIII-4

Sample Notice of Decision to Approve Unilateral Permit and Transmittal of Permit for Signature (NEPA Done With CX)

Page 3 of 4

- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

If You Agree with the Decision:

Enclosed are two copies of the Permit with all of the requisite attachments (Exhibit A map, Exhibit B – Special Provisions, and Exhibit C – Table of Advance Fees).

Please read the permit carefully so that you are aware of all of the requirements. If you accept the terms and conditions as contained in the attached, please sign both copies where indicated and return them to the attention of _____, Roads and Right-of-Way Specialist, at the above address.

Along with two copies of the signed permit, you must submit payment for the advance road fees in the total amount of \$_____, broken down as follows:

Road Use Fees	Surface Replacement Fees	Maintenance Fees	Totals

These fees are broken down by road No. on the Exhibit C attached to the permit.

[If a bond is required use the following paragraph:]

As shown in paragraph ____ of the Permit, you are also required to file a performance bond in the amount of \$_____. You may file either a cash bond or one underwritten by a surety company (a surety bond). If you submit the cash bond with a check, it must be provided by a certified check made payable to: "USDI-BLM". Whether the cash bond is fulfilled with cash or by certified check, it must be accompanied by the attached Form OR 2812-9 – Personal (Cash or Equivalent) Road Use Bond. If you decide to fulfill your bonding requirements with a surety bond you must use the attached Form OR 2812-12 – Individual Bond – O&C Logging

Road Right-of-Way. You should call _____ at (XXX)-_____ to discuss your options for fulfilling the bonding requirement.

[If the bond is waived, use the following paragraph:]

As indicated in the permit, the bond is waived because you meet the qualifications for waiver: 1) you have not had a bond waived in the last 12 months and the permit is for a period of 12 weeks or less.

Illustration XIII-4

Sample Notice of Decision to Approve Unilateral Permit and Transmittal of Permit for Signature (NEPA Done With CX)

Page 4 of 4

[If insurance is required, use the following paragraph:]

You must also submit proof of commercial liability insurance in your name (or the name of your logger) in the following types and amounts mounts prior to my signing the permit:

Bodily injury for injury to any one person - \$_____;

Bodily injury for any one occurrence - \$_____

Loggers Property Damage - \$_____ - for any one occurrence.

If you return the signed permit, along with any required fees, bond and insurance binders within 30 days of your receipt of this decision, I am willing to sign the permit on the 31st day (after the appeal period), provided there are no timely requests for stay filed. If there is a petition for stay filed within the required time frame, I cannot sign the permit for an additional 45 days after the publication of the legal notice (or on the 76th day).

Please be aware that you may not legally carry out any proposed activities on public lands managed by BLM until you have received the permit signed by me or an official acting on my behalf.

Sincerely,

Field Manager
_____ Resource Area

Attachments:

- 1 – Categorical Exclusion Determination and Decision Record (____ pp)
- 2 – Permit No. M-_____ (____ pp)
- 3 – Individual Surety Bond Form 2812-12 (2 pp)
- 4 – Cash Bond Form 2812-9 (1 p)
- 5 – “How to File an Appeal” Form 1842-1 (2 pp)

cc: Accounting Technician
Lead Engineer

¹ 43 Code of Federal Regulations Parts 4 and 4.413

² 43 Code of Federal Regulations Parts 4.21 or 2804.1

Illustration XIII-5

Sample Notice of Decision (CX) to Approve Discretionary Amendment to Add Existing U.S. Roads to Permit and Transmit Permit to Permittee for Signature
Page 1 of 3

2812 (OR 112)
[Permit No.] / [Serial No.]

CERTIFIED MAIL – RETURN RECEIPT REQUESTED (XXXXXX)

_____	:	O&C LOGGING ROAD RIGHT-OF-WAY
_____	:	PERMIT
_____	:	M-_____,
_____	:	OR _____

NOTICE OF DECISION TO APPROVE AMENDMENT
TO ADD EXISTING U.S. ROADS OR RIGHTS-OF-WAY

Dear _____:

Enclosed is the Categorical Exclusion Determination/NEPA and Lands Decision Record (No. _____) in which I made a decision to approve Amendment No. ____ to your O&C Logging Road Right-of-Way Permit No. _____ (OR _____) to add existing United States' roads or rights-of-way.

Background

On _____, 2____, [company name of permittee, or "you" if individual] submitted an application to amend your O&C Logging Road Right-of-way Permit No. _____, under the provisions of 43 CFR 2812 to add existing roads owned or controlled by the Bureau of Land Management (BLM). This was assigned as Amendment No. ____.

This letter provides you with the Notice of Decision made in the attached Categorical Exclusion Determination and Decision and your receipt of this notice by certified mail will start the appeal period.

The effective date of decision and administrative remedy is included in the attached Decision.

Illustration XIII-5

Sample Notice of Decision (CX) to Approve Discretionary Amendment to Add Existing U.S. Roads to Permit and Transmit Permit to Permittee for Signature
Page 2 of 3

How to Appeal This Decision¹

If you believe this decision (or the Decision associated with the attached Categorical Exclusion Determination and Decision is in error, you may file an appeal with the Interior Board of Land Appeals (Board), Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4 within 30 days of your receipt of this decision. In deciding whether to file an appeal, you have the burden of showing this decision is in error.

If you decide to file an appeal, you must carefully follow the procedure described in the enclosed Form 1842-1. If you do not file your appeal at the locations specified on the form within 30 days, the Board may dismiss your appeal as untimely without considering its merits. Be sure to send a copy of your notice of appeal to each party named in this decision and to all of the addresses on the enclosed Form 1842-1.

How to Obtain a Stay of this Decision While Your Appeal is Pending.²

You may also ask the Board to stay or suspend the effect of this decision while your appeal is pending. If you desire a stay, you must enclose your request for a stay with your notice of appeal. You have the burden of showing a stay is justified.

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.

Illustration XIII-5

Sample Notice of Decision (CX) to Approve Discretionary Amendment to Add Existing U.S. Roads to Permit and Transmit Permit to Permittee for Signature
Page 3 of 3

If You Agree with the Decision

Enclosed are two copies of Amendment No. _____ with all of the requisite attachments (Schedule 1, Exhibit C map).

Please read the amendment document carefully so that you are aware of all of the requirements. If you accept the terms and conditions as contained in the attached, please sign (and notarize) both copies where indicated and return them to the attention of _____, [title], at the above address.

If you return the signed amendment within 30 days of your receipt of this decision, I am willing to sign the amendment on the 31st day (after the start of the appeal period), provided there are no timely requests for stay filed. If there is a petition for stay filed within the required time frame, I cannot sign the permit for an additional 45 days after the publication of the legal notice (or on the 76th day).

Please be aware that you may not legally carry out any proposed activities on the public lands identified in the amendment until you have received the amendment signed by me or an official acting on my behalf. After I sign the amendment I will immediately return a signed original to you and have the other original recorded. We will provide a recorded copy to you later.

Sincerely,

Field Manager
_____ Resource Area

Attachments:

- 1 – Categorical Exclusion Determination and Decision Record (____ pp)
- 2 – Amendment No. _____ (____ pp)
- 3 – “How to File an Appeal” Form 1842-1 Form (2 pp)

cc: Lead Engineer

¹ 43 Code of Federal Regulations Parts 4 and 4.413

² 43 Code of Federal Regulations Parts 4.21 or 2804.1

Illustration XIII-6
Sample Decision Denying an Assignment of Permit
Page 1 of 5

2812 (OR 112)
[Permit No.]
[Serial No.]

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

_____ : O&C LOGGING ROAD RIGHT-OF-WAY
PERMIT
_____ : [Permit No.]
_____ : OR _____

DECISION
DENIAL OF ASSIGNMENT
OF O&C LOGGING ROAD RIGHT-OF-WAY PERMIT

Dear _____:

On _____, 20__, you submitted an application to have the O&C Logging Road Right-of-way Permit No. _____, currently held by _____, assigned to you under the provisions of 43 CFR 2812.

Your application for assignment is denied for the following reason(s):

[Identify one or more of the following—reasons for rejection are limited to the reasons found in Chapter 11 of O&C Handbook H-2812-1.]

[Use if application was not properly filed.]

Your application for assignment was not properly filed. [If this reason is cited, provide the details of why it was improperly filed (wrong form, incorrect or missing information (including failure of assignee and assignor to reach an accord on accounting issues, road control, etc.)--be specific.

[Use if the assignee is not a qualified applicant.]

You do not meet the qualifications of an applicant for an assignment as follows: [explain the reasons based on the regulations—see Chapter III.]

Illustration XIII-6

Sample Decision Denying an Assignment of Permit

Page 2 of 5

[Use if the applicant is a naturalized citizen and they have not provided proof of citizenship.]

You have not provided documentation of your citizenship. The regulations state:

43 CFR 2812.1-2:

(a) An individual applicant and each member of any unincorporated association which is an applicant must state in the application whether he is a native born or a naturalized citizen of the United States. Naturalized citizens will be required to furnish evidence of naturalization pursuant to the provisions of § 2802.1-4.

[Use if they have not provided sufficient corporate documentation (or proof of status of other business entity).]

You are a corporation but have not provided sufficient documentation to show that you are authorized to do business in the State of Oregon. The regulations state:

43 CFR 2812.1-2:

(b) An application by a private corporation must be accompanied by two copies of its articles of incorporation, one of which must be certified by the proper official of the company under its corporate seal, or by the secretary of the State where organized. A corporation organized in a State other than Oregon must submit a certificate issued by the State of Oregon attesting that the corporation is authorized to transact business within that State. The requirements of this paragraph shall be deemed satisfied if the corporation, having once filed the required documents, makes specific reference to the date and case number of such previous applications, states what changes, if any, have been made since the prior filings, and includes a statement that the right of the company to do business in the State of Oregon has not lapsed or terminated.

[Use if they are not the owner of forest products to be hauled under the permit.]

You are not the owner of forest products to be hauled under the permit. The regulations at 43 CFR 2812.2-1 describes the nature of the O&C permit as:

. . . a non-exclusive license to transport forest products **owned by the permittee**. . . [Emphasis added].

Therefore, an applicant must own title to the forest products that will be hauled under the permit to be assigned and the applicant must provide documentation that they own the timber at the time of application. If you own the land and timber, a deed or verification of ownership

Illustration XIII-6

Sample Decision Denying an Assignment of Permit

Page 3 of 5

through the County assessor's office will suffice. If you are a contract purchaser of just the timber, you need to provide proof that you will own title to the timber at the time it will move over BLM lands or roads.

[Use if they refuse to grant rights to the U.S. if the AO determines it appears necessary.]

You own or control certain lands or rights-of-way over which the United States desires rights and you have refused to grant those rights. The regulations state:

43 CFR 2812.3-1 - Rights over lands controlled by applicant.

Where, in the judgment of the authorized officer, it appears necessary in order to carry out the policy set forth in § 2812.0-6, he may require the applicant, as a condition precedent to the issuance of the permit:

(a) To grant to the United States, for use by it and its licensees and permittees, right-of-way across lands in the O. and C. area directly controlled by the applicant; and as to lands in such area which are indirectly controlled by him, either to obtain such rights for the United States or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and to waive as to the United States, its licensees and permittees any exclusive or restricted right he may have to such lands as are indirectly controlled by him.

(b) In addition, to agree to permit the United States and its licensees, upon the payment of fair compensation as hereinafter provided, to use under the terms and conditions of this paragraph such portion as the applicant directly controls the road system and right-of-way which are an integral part of or may be added to the road system with which the right-of-way applied for will connect, and as to the portions of such road system or right-of-way as the applicant indirectly controls, either to obtain such rights for the United States and its licensees or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and, in such latter circumstance, to waive as to the United States and its licensees any exclusive or restricted right he may have in such portion of the road system and right-of-way.

[Use if the permit is not in compliance with current regulations and the assignee refuses to modify the permit to bring it current with regulations.]

You have refused to accept new terms and conditions in a coincidental amendment which would bring the permit into compliance with the current 43 CFR 2812 regulations. The authority for requiring a permit to be in compliance with the current with regulations prior to approval of an assignment is found in 43 CFR §2812.7:

Illustration XIII-6

Sample Decision Denying an Assignment of Permit

Page 4 of 5

. . . and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the permit and the applicable regulations of the Department of the Interior in force as of the date of such approval of the assignment. [Underline added.]

[provide rationale for how/why the permit is not in compliance with regulations.]

How to Appeal This Decision¹

If you believe this decision (or the Decision associated with the attached Categorical Exclusion Determination and Decision is in error, you may file an appeal with the Interior Board of Land Appeals (Board), Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4 within 30 days of your receipt of this decision. In deciding whether to file an appeal, you have the burden of showing this decision is in error.

If you decide to file an appeal, you must carefully follow the procedure described in the enclosed Form 1842-1. If you do not file your appeal at the locations specified on the form within 30 days, the Board may dismiss your appeal as untimely without considering its merits. Be sure to send a copy of your notice of appeal to each party named in this decision and to all of the addresses on the enclosed Form 1842-1.

How to Obtain a Stay of this Decision While Your Appeal is Pending.²

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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.

Illustration XIII-6
Sample Decision Denying an Assignment of Permit
Page 5 of 5

Please be aware that you may not legally carry out any proposed activities on public lands identified in the amendment without authorization and hauling with a permit is considered to be in trespass.

Sincerely,

Field Manager
_____ Resource Area

Attachments:

1 – “How to File an Appeal” Form 1842-1(2 pp)

cc: Lead Engineer

¹ 43 Code of Federal Regulations Parts 4 and 4.413

² 43 Code of Federal Regulations Parts 4.21 or 2804.1

Illustration XIII-7

Lands Decision Memorandum for Approval of Assignments

Page 1 of 2

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
_____ DISTRICT OFFICE

LANDS DECISION MEMORANDUM

[FULL] [PARTIAL] ASSIGNMENT OF O&C LOGGING ROAD RIGHT-OF-WAY
PERMIT NO. . _____, SERIAL NO. _____

Background: Ownership of a portion of the lands [or title to timber] served by O. and C. Logging Road Right-of-way Permit No. _____, (Serial No. OR _____) was conveyed to _____ (hereafter called Assignee) by _____ (Assignor). Assignee has requested approval of the [partial] [full] assignment of O. and C. Logging Road Right-of-way Permit No. _____..

Proposed Action: The proposed action is the approval of

[Use if partial assignment:]

the partial assignment of O. and C. Logging Road Right-of-way Permit No. _____, Serial No. OR _____ FD from _____, Assignor to _____, Assignee. This partial assignment will create a new permit which will be numbered as O. and C. Logging Road Right-of-Way Permit No. Permit No. _____ [suffix], and assigned a new Serial No. OR _____ FD. The lands conveyed to Assignee are described in the attached Schedule 2[suffix]. The U.S. lands and rights-of-way over which permit rights will be transferred to Assignee are described in the attached Schedule 1[suffix].

[Use if full assignment:]

a full assignment of all right, title and interest held in Permit No. _____, by _____ (Assignor) to _____ (Assignee).

Decision: It is my decision to approve the [partial] [full] assignment of O&C Logging Road Right-of-way Permit No. _____ from _____ (Assignor) to _____ (Assignee). Authority for such approval is 43 CFR §2812.7.

Rationale: The regulations at 43 CFR §2812.7 require two conditions to be met in order for an applicant to receive an assignment of an O&C Logging Road Right-of-Way Permit. Their application:

Illustration XIII-7
 Lands Decision Memorandum for Approval of Assignments
 Page 2 of 2

[1] [must be] accompanied by the same showing and undertaking by the assignee as is required of an applicant by §§ 2812.1-2 and 2812.3-1 to 2812.3-5,

[2] and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the permit

The Assignee has met the above two conditions: 1) They are a qualified applicant under the 43 CFR 2812 regulations, and 2) they have agreed to comply with and be bound by the terms and conditions of the permit. Further, the U.S. has determined that [no reciprocal rights are necessary] or [it appears reciprocal rights are necessary and the applicant has approved an amendment granting such rights to the U.S.].

The Regional Solicitor has determined that if the above two conditions are met, the BLM does not have discretion sufficient to support a NEPA analysis of the proposed assignment. Therefore, neither a Categorical Exclusion Review nor an Environmental Assessment is appropriate.

 Prepared by Date

APPROVED:

 Field Manager, Date
 _____ Resource Area

Illustration XIII-8

Notice of Non-Objection to Right-of-Way Plat--(ESA is Not one of Permit Reasons to Object)

Page 1 of 3

2812 (Org Code)

[Permit No.]/OR _____ FD

_____ : O&C LOGGING ROAD RIGHT-OF-WAY PERMIT
 _____ : [Permit No.]
 _____ : OR _____ FD
 _____ : Road No. _____

NOTICE OF NON-OBJECTION TO CONSTRUCTION PLAT

Dear _____:

On _____ we received your right-of-way plat for construction of a _____ by your company over public land in T._____, R._____, Section _____. We have determined that the lands underlying the plat are in Schedule 1 of your O&C Logging road Right-of-Way Permit No. _____, Serial No. OR _____ FD.

We have reviewed the plat to determine if there are grounds for objection based on any of the reasons found in Paragraph _____ of Exhibit B, of the Right-of-Way and Road Use Agreement No._____. This Exhibit B stipulation covers plats submitted by either the BLM or Permittee.

We have determined there are no grounds to object to this plat. Therefore, we are enclosing a signed copy of the plat. We have designated this road as No._____, Segment ____.

<p>[ESA - **Use the following if, based on known resource data, the action may affect a listed species (and include a cc copy to the regulatory agency).]</p> <p>While we have no grounds to object to your construction under the terms of the Permit, as we discussed informally, we believe if you proceed with the construction in its present location, your actions may affect a listed species based on the following information:</p> <p>[describe the specific reason their action may affect a listed species <u>based on the known resource data</u>]</p> <p>We are providing a copy of this letter to the [specify the regulatory agency—USFWS or NOAA- Fisheries].</p>

Illustration XIII-8

Notice of Non-Objection to Right-of-Way Plat--(ESA is Not one of Permit Reasons to Object)

Page 2 of 3

[CULTURAL RESOURCES: Use the following if (based on known resource data, there is a known cultural site):]

While we have no grounds to suspend operations under the permit based on cultural resources, as we have discussed with you, based on our known resource data, we believe that your construction may result in disturbance or destruction of a cultural site.

[describe the specifics of the potential disturbance based on the known resource data]

We are providing a copy of this letter to BLM law enforcement.

[Use the following if O&C right-of-way will need to be cut.]

The regulations (43 CFR §2812.5-1) require you to purchase any merchantable trees cut on BLM managed lands in connection with this right-of-way. Please have the trees that you will need removed flagged and contact _____ at (541) _____ - _____ to make arrangements to have the timber cruised and appraised and to arrange for payment under a small sales contract.

[If there are some optional items that the BLM cannot require but would like to request they voluntarily implement, use the following—usually construction specifications:]

The BLM would like you to consider the following design features for this right-of-way:

In-slope and surface (1 1/2" or 2" minus) approx. the first 100ft.

Drain water off road at top of first incline.

Install culvert at approx. sta. 5+00.

Propose moving culvert from 7+70 to approx. 8+50.

Construct rolling water dips every 200 to 300 feet as needed to aid in road drainage

The BLM would also like the road blocked to prevent motorized access after use

Illustration XIII-8

Notice of Non-Objection to Right-of-Way Plat--(ESA is Not one of Permit Reasons to Object)

Page 3 of 3

If you have any questions, please call _____, [Title], at (541)_____-_____.
Prior to beginning construction, please call _____, [Title], at (541)_____-_____.
Sincerely,

Field Manager
_____ Resource Area

1-Attachment:
1-Signed Plat (3 pp)

Enclosure

cc: [regulatory agency name and address]
ONLY IF ACTION MAY AFFECT A LISTED SPECIES
And the above starred **paragraph is used.]

cc: [BLM Law Enforcement] – ONLY IF THERE IS A KNOWN SITE BASED ON
AVAILABLE RESOURCE DATA.

Illustration XIII-9

Decision Objecting to Nondiscretionary Right-of-Way Plat

Page 1 of 4

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

_____ : O&C LOGGING ROAD RIGHT-OF-WAY PERMIT
 _____ : [Permit No.]
 _____ : OR _____ FD

DECISION
 OBJECTION TO NONDISCRETIONARY CONSTRUCTION PLAT

Dear _____:

This letter is to advise [Permittee Name or “you if individual”] that BLM objects to the proposed _____ construction plat submitted to this office. This letter also provides you with what your administrative appeal rights are if you disagree with our decision.

Background – Plat Filed

On _____, 20__, [company name of permittee or “you” if individual] submitted a right-of-way plat to this office for construction of a _____, under terms of your O&C Logging Road Right-of-Way Agreement No. _____, OR _____.

The plat described _____ linear feet of new spur road that you proposed to construct on public land located in T. _____, R. _____, Section _____, [subdivision] in order to reach your land and timber located in T. _____, R. _____, Section _____, [subdivision].

Provision No. _____ of Exhibit B to Right-of-Way and Road Use Agreement. __-_____, OR _____. States that:

[Make sure this matches the exact wording in the specific permit/agreement—only include the reasons for objection that are found in the permit—if they are not there, then delete them from the below paragraph]

Prior to the construction of a road on the lands of the other party, a map shall be filed with the landowner. Such map shall be prepared in accordance with 43 CFR §2812.1-2(c) and shall show the route and specifications of the road intended to be constructed. Construction may be commenced after the expiration of a 30-day period following the filing of such map unless in the intervening period the landowner shall object to such construction. The landowner may object to the

Illustration XIII-9

Decision Objecting to Nondiscretionary Right-of-Way Plat

Page 2 of 4

proposed construction only if: (1) it does not constitute the most reasonably direct route for the removal of forest products from the lands of the road builder, taking into account the topography of the area, the cost of road construction and the safety of use of such road; (2) the proposed road will substantially interfere with planned or existing facilities or improvements on the lands of the landowner; (3) would result in excessive erosion to lands of the landowner; (4) an existing road is available and suitable for removal of timber tributary to the proposed road; or (5) may affect a species listed as threatened or endangered under the Endangered Species Act. In the event an objection is made on the basis that a threatened or endangered species is affected, construction of the road will be delayed until consultation with: 1) the U.S. Fish and Wildlife Service (USFWS) or 2) the National Oceanic and Atmospheric Administration (NOAA) – Fisheries, under Section 7 of the Endangered Species Act has been completed on the proposed road. Based on the biological opinion received from the USFWS or NOAA Fisheries, the objection may be withdrawn, modified, conditioned, or continued.

Finding

A field review of the proposed spur road location was conducted by our interdisciplinary team on _____, 20____ and it was determined that there are grounds for BLM to object to your construction plat based on item No. ____ [excessive erosion, etc.] in the above Exhibit B provision.

[If objection is based on (1) “does not constitute the most reasonably direct route.”, use the following:]

We do not believe your right-of-way location constitutes the most reasonably direct route because [provide rationale].

[If objection is based on (2) “the proposed road will substantially interfere with planned or existing facilities or improvements on the lands of the landowner,” use the following:]

We believe your construction will “substantially interfere” with the following planned or existing facility or improvement of the U.S.: **[explain rationale here]**.

[If objection is based on (3) “would result in excessive erosion to lands of the landowner,” use the following:]

We believe your construction will result in excessive erosion to U.S... lands because **[explain reasons why here]**. **[Example:** Our Lead Engineer inspected the location of the proposed spur road on August 20, 2004. The road from station 5+00 to

Illustration XIII-9

Decision Objecting to Nondiscretionary Right-of-Way Plat

Page 3 of 4

station 9+25 is located in an area of unstable soil and is directly above the Trask River; a river containing anadromous fish. Building the road in this location would cause excessive erosion which would ultimately affect Trask River. A more stable location for the road in this area is approximately 250' southeast of the proposed alignment.].

[If objection based on ESA, include the following:]

We have determined that your action “may affect” **[species]** because **[provide details/rationale]**. We will promptly request consultation with [regulatory agency] under Sec. 7 of the Endangered Species Act (ESA). Construction may not proceed pending the completion of consultation. We will notify you when the consultation is complete and based on the outcome of the Biological Opinion or Letter of Concurrence we will make a decision on whether the objection may be withdrawn, modified, conditioned or continued.

[Note: In order to object for this reason, the “may affect determination” **MUST BE MADE, and the permittee notified, within the 30 days (or time in permit).**]

Decision

It is my decision to object to _____'s road construction plat as proposed. This decision represents the final decision of the Bureau of Land Management with respect to the issues addressed herein.

How to Appeal This Decision¹

If you believe this decision is in error, you may file an appeal with the Interior Board of Land Appeals (Board), Office of the Secretary, within 30 days of your receipt of this decision. In deciding whether to file an appeal, you have the burden of showing this decision is in error.

If you decide to file an appeal, you must carefully follow the procedure described on the enclosed Form 1842-1. If you don't file your appeal at the locations specified on the form within 30 days, the Board may dismiss your appeal as untimely without considering its merits. Be sure to send a copy of your notice of appeal to each party named in this decision and to all of the addresses on the enclosed Form 1842-1.

Illustration XIII-9

Decision Objecting to Nondiscretionary Right-of-Way Plat

Page 4 of 4

How to Obtain a Stay of This Decision While Your Appeal is Pending.²

You may also ask the Board to stay or suspend the effect of this decision while your appeal is pending. If you desire a stay, you must enclose your request for a stay with your notice of appeal. You have the burden of showing a stay is justified. The Board will grant a stay only if you provide sufficient justification based on the following standards:

- The relative harm to the parties if the Board grants or denies the stay,
- The likelihood of the success of your appeal on its merits,
- The likelihood of immediate and irreparable harm if the Board doesn't grant the stay, and
- Whether the public interest favors granting a stay.

If You Have Any Questions

If you have any questions about this decision, please contact _____, [title], at (5____)____-____. You may also write to me at the letterhead address.

Sincerely,

Field Manager
_____ Resource Area

1 Enclosure
1- Appeal Form 1842-1

¹ 43 Code of Federal Regulations Parts 4 and 4.413

² 43 Code of Federal Regulations Parts 4.21 or 2804.1

Illustration XIII-10
Conditional Decision Objecting to Nondiscretionary Right-of-Way Plat
Page 1 of 4

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

CONDITIONAL DECISION:
OBJECTION TO A
RIGHT-OF-WAY PLAT
FILED UNDER AN O&C LOGGING ROAD RIGHT-OF-WAY PERMIT
(43 CFR 2812)

Dear _____:

Background – Plat Filed

On _____, 20__, [company name of permittee or “you” if individual] submitted a right-of-way plat to this office for construction of a _____, under terms of your O&C Logging Road Right-of-Way Agreement No. _____, OR _____.

The plat described _____ linear feet of [new spur road, landing, etc.] that you proposed to construct on public land located in T. _____, R. _____, Section _____, [subdivision] in order to reach your land and timber located in T. _____, R. _____, Section _____, [subdivision].

Provision No. _____ of Exhibit B to Right-of-Way and Road Use Agreement. No. _____, Serial No. OR _____ FD, states that:

[Make sure the following matches the exact wording in the specific permit/agreement—only include the reasons for objection that are found in the permit—if the reasons is not in the specific permit, delete them from the below paragraph].

Prior to the construction of a road on the lands of the other party, a map shall be filed with the landowner. Such map shall be prepared in accordance with 43 CFR §2812.1-2(c) and shall show the route and specifications of the road intended to

Illustration XIII-10

Conditional Decision Objecting to Nondiscretionary Right-of-Way Plat

Page 2 of 4

be constructed. Construction may be commenced after the expiration of a thirty- (30) day period following the filing of such map unless in the intervening period the landowner shall object to such construction.

The landowner may object to the proposed construction only if: (1) it does not constitute the most reasonably direct route for the removal of forest products from the lands of the road builder, taking into account the topography of the area, the cost of road construction and the safety of use of such road; (2) the proposed road will substantially interfere with planned or existing facilities or improvements on the lands of the landowner; (3) would result in excessive erosion to lands of the landowner; (4) an existing road is available and suitable for removal of timber tributary to the proposed road; or (5) may affect a species listed as threatened or endangered under the Endangered Species Act. In the event an objection is made on the basis that a threatened or endangered species is affected, construction of the road will be delayed until consultation with the U.S. Fish and Wildlife Service (USFWS) or National Oceanic and Atmospheric Administration, Fisheries (NOAAA Fisheries) under Section 7 of the Endangered Species Act has been completed on the proposed road. Based on the Biological Opinion received from the Fish and Wildlife Service or National Marine Fisheries Service, the objection may be withdrawn, modified, conditioned, or continued.

Finding

A field review of the proposed spur road location was conducted by our interdisciplinary team on _____, 20____ and it was determined that there are grounds for BLM to object to your construction plat based on item No. ____ [excessive erosion, etc.] in the Exhibit B provision identified above.

FOR EXAMPLE - [If objection is based on (3) “would result in excessive erosion to lands of the landowner,” provide specific details to support the finding that there are grounds to object:]

We believe your construction will result in excessive erosion to U.S. lands because **[explain reasons why here]**. **[Example:** Our Lead Engineer inspected the location of the proposed spur road on August 20, 2004. The road from station 5+00 to station 9+25 is located in an area of unstable soil and is directly above the Trask River; a river containing anadromous fish. Building the road in this location would cause excessive erosion which would ultimately affect Trask River.

Illustration XIII-10

Conditional Decision Objecting to Nondiscretionary Right-of-Way Plat

Page 3 of 4

However, if you are willing to modify your proposal as follows, I am willing to withdraw my objection:

[list proposed modification that would be required in order for the objection to be withdrawn.]

Example: A more stable location for the road in this area is approximately 250' southeast of the proposed alignment.

If you are willing to modify the proposal by implementing the measures as stated above, please indicate so by signing on the bottom of this letter and returned a signed copy to me within [10] days.

If you return a signed copy of this letter within the time period specified above indicating you are willing to modify the proposal as outlined, my objection will be considered to be withdrawn and construction may commence. Please notify _____ at (____)____-____ when you intend on starting construction.

If I do not receive a copy of this letter signed by you within the [10 days] from your receipt of this letter, I will assume you are unwilling to modify your proposal and this decision will be determined to be final.

How to Appeal This Decision¹

If you believe this decision is in error, you may file an appeal with the Interior Board of Land Appeals (Board), Office of the Secretary, within 30 days of your receipt of this decision. In deciding whether to file an appeal, you have the burden of showing this decision is in error.

If you decide to file an appeal, you must carefully follow the procedure described on the enclosed Form 1842-1. If you don't file your appeal at the locations specified on the form within 30 days, the Board may dismiss your appeal as untimely without considering its merits. Be sure to send a copy of your notice of appeal to each party named in this decision and to all of the addresses on the enclosed Form 1842-1.

How to Obtain a Stay of This Decision While Your Appeal is Pending.²

You may also ask the Board to stay or suspend the effect of this decision while your appeal is pending. If you desire a stay, you must enclose your request for a stay with your notice of appeal. You have the burden of showing a stay is justified.

The Board will grant a stay only if you provide sufficient justification based on the following standards:

Illustration XIII-10
Conditional Decision Objecting to Nondiscretionary Right-of-Way Plat
Page 4 of 4

- The relative harm to the parties if the Board grants or denies the stay,
- The likelihood of the success of your appeal on its merits,
- The likelihood of immediate and irreparable harm if the Board doesn't grant the stay, and
- Whether the public interest favors granting a stay.

If You Have Any Questions

If you have any questions about this decision, please contact _____, [title], at (____)____-____. You may also write to me at the letterhead address.

Sincerely,

Field Manager
_____ Resource Area

1 Enclosure
[THE ENCLOSURE IS BUREAU FORM 1842-1

¹ 43 Code of Federal Regulations Parts 4 and 4.413
² 43 Code of Federal Regulations Parts 4.21 or 2804.1

CONCURRENCE:

[Name of Permittee] is willing to modify the proposal as indicated above.

Signature of Permittee Date

Illustration XIII-11

Lands Decision Memo – Add Newly Acquired U.S. Lands, Roads or Right-of-Way to Schedule 1

Page 1 of 3

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
_____ DISTRICT OFFICE
LANDS DECISION MEMORANDUM

AMENDMENT TO O&C LOGGING ROAD
RIGHT-OF-WAY PERMIT TO ADD RIGHTS FOR PERMITTEE
OVER NEWLY ACQUIRED U.S. LANDS

AMENDMENT NO. ____ TO M-____ (OR _____PT)

Background:

_____, Permittee, and the United States have entered the following O&C Logging Road Right-of-Way Permits and Road Use and Right-of-Way Agreement:

M-_____, OR _____ PT

The rights of the United States were acquired on _____ and recorded as [document No.] in the official records of _____ County, Oregon on _____.

[Use the following if new Lands (not roads or rights-of-way) were acquired by the U.S.]

Provision ____ of Exhibit B to the Road Use and Right-of-Way Agreement follows:

If either party to this agreement acquires any additional lands (shown on Exhibit C), it agrees to grant to the other party rights-of-way and rights of road use across such lands under the same terms and conditions as contained in this agreement.

[Use the following if new roads or rights-of-way (easements) were acquired by the United States since the time the Agreement was acquired.]

Provision ____ of Exhibit B to the Road Use and Right-of-Way Agreement follows:

Illustration XIII-11

Lands Decision Memo – Add Newly Acquired U.S. Lands, Roads or Right-of-Way to Schedule 1

Page 2 of 3

If either party to this agreement acquires the ownership or control of any roads or rights-of-way across lands of others (shown on Exhibit C), it will grant to the other party the right to use such roads or rights-of-way under the same terms and conditions as contained in this agreement, but subject to the terms and conditions contained in the instruments by which such ownership or control is obtained; provided, however, that in the negotiation for additional roads or rights-of-way, each party shall attempt in good faith to obtain rights that can be used by the other party.

[Validation of U.S. Lands, Roads or Right-of-Way as Newly Acquired].

On [date]. the U.S. acquired [fee title] [an exclusive easement] as follows: [list the legal description of fee title, or details on exclusive easement (Easement No., recording, information, etc., over the following described lands.)]

This acquisition occurred after the date the Road Use and Right-of-Way Agreement No. ____ was acquired by the United States.

In addition, the [lands, roads, or right-of-way] is within the [agreement area boundary if one exists] [Exhibit C map] of said Agreement ____.

Therefore, the [lands, roads or right-of-way] qualifies as newly acquired U.S. lands under terms of the Agreement.

Proposed Action: The proposed action is the approval of the Amendment ____ to the _____ reciprocal agreement and permit in order to add certain rights to Schedule 1 of the Permit and Agreement as described below:

[write description or say see Attached Schedule 1]

Decision: It is my decision to approve this amendment.

Rationale: The Regional Solicitor has determined that the above two stipulations mean that both parties have given up discretion in whether or not newly-acquired lands or rights-of-way are amended into the reciprocal agreement for use by the other party. When there is lack of agency discretion to deny an action, it is neither appropriate nor required to complete a new NEPA analysis. This action, then, is merely an administrative exercise.

Illustration XIII-12
 Lands Decision Memorandum for Consolidation Amendments
 Page 1 of 2

[List Permits being Consolidated here]

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 _____ DISTRICT OFFICE

O&C RECIPROCAL AGREEMENT AND PERMIT CONSOLIDATION AMENDMENT
 AMENDMENT NO. _____ TO ____-_____
 LANDS DECISION MEMORANDUM

Background:

Permittee [_____] and the United States have entered into the following O&C Logging Road Right-of-Way Permits and Road Use and Right-of-Way Agreements:

[Permit No. /Serial No.]

[Permit No. /Serial No.]

[Permit No. /Serial No.]

Administering multiple permits and agreements with one party creates administrative problems for both the United States and the Permittee.

Proposed Action: The proposed action is the approval of the Amendment ____ to the _____ reciprocal agreement and permit in order to restate and consolidate the rights of both the United States and the Permittee for ease of administration.

Decision: It is my decision to approve this amendment.

Rationale: All permits and agreements contain similarly worded provisions. This amendment does not confer any additional rights to either party (U.S. or _____), nor does it add any additional lands, roads or rights-of-way for use by either party. The action is merely an administrative action and paper exercise consolidating and restating the existing rights of _____ and the United States into one reciprocal agreement (_____), which will be the surviving permit and agreement. All other permits and agreements will be terminated or released.

Illustration XIII-12
Lands Decision Memorandum for Consolidation Amendments
Page 2 of 2

This is a routine administrative action, this action is already categorically excluded at the Dept. of Interior level from further NEPA documentation pursuant to 516 DM 2.3.A.2, Appendix 1-1.7. There are no extraordinary circumstances as listed in 516 DM2, Appendix 2.

Prepared by: _____
Signature

Title: _____

Date: _____

Approved:

Signature Date
Field Manager, _____ Resource Area

Illustration XIII-13

Lands Decision Memorandum for Amendment to Revise Administrative Terms or Accessory Documents

Page 1 of 2

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
DISTRICT OFFICE

LANDS DECISION MEMORANDUM
O&C RECIPROCAL AGREEMENT AND PERMIT
AMENDMENT NO. TO -
TO REVISE ADMINISTRATIVE TERMS OR ACCESSORY DOCUMENTS

Background: _____, Permittee and the United States have entered into the following O&C Logging Road Right-of-Way Permits and Road Use and Right-of-Way Agreements No. _____, Serial No. _____.

Both parties desire to [change one or more of the administrative terms] [replace the license agreement in the above-listed permits and agreements] [add administrative terms] as follows:

Both parties desire to increase the insurance requirements for either party's use by revising paragraph No. ___ of _____ and change the limitations to \$1,000,000 across the board (all insurance categories).

Both parties desire to replace the current version of the license agreement with a new version..

Proposed Action: The proposed action is the approval of Amendment _____ to the - _____ reciprocal agreement and permit in order to accomplish the above.

Decision: It is my decision to approve this amendment.

Rationale: This amendment does not confer any additional rights to either party (U.S. or _____), nor does it add any additional lands, roads or rights-of-way for use by either party. The action is merely an administrative action and paper exercise consolidating and restating the existing rights of _____ and the United States into one reciprocal agreement (- _____), which will be the surviving permit and agreement. All other permits and agreements will be terminated or released.

Illustration XIII-13

Lands Decision Memorandum for Amendment to Revise Administrative Terms or Accessory Documents

Page 2 of 2

Since this is a routine administrative action, this action is already categorically excluded at the Dept. of Interior level from further NEPA documentation pursuant to 516 DM 2.3.A.2, Appendix 1-1.7. There are no extraordinary circumstances as listed in 516 DM2, Appendix 2.

Prepared by:

Date_____

Approved:

, Field Manager, Resource Area

Illustration XIII-14
 Lands Decision Memo – Correct Error or Omission
 Page 1 of 2

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 _____ DISTRICT OFFICE

LANDS DECISION MEMORANDUM
 O&C RECIPROCAL AGREEMENT AND PERMIT
 AMENDMENT NO. _____ TO _____
 TO CORRECT AN ERROR AND/OR OMISSION

Background:

Permittee [_____] and the United States have entered into the following O&C Logging Road Right-of-Way Permits and Road Use and Right-of-Way Agreements No. _____, Serial No. _____.

A review of the Permit and Agreement revealed an [error in legal description] [omission of legal description from [Schedule _] or {Exhibit C map}].

The following legal description was included on the Schedule 1 but was not identified on the Exhibit C map with the cross-hatching legend to indicate the lands to be Schedule 1 lands.

The following legal description was contained on page ____ of [the original Agreement/Permit] or [Amendment No. ____]:
 [write out incorrect legal description].

The legal description should have been correct described as:
 [write out correct legal description].

Both the U.S. and permittee desire to correct this [error] or [omission].

Proposed Action: The proposed action is the approval of Amendment _____ to the _____ reciprocal agreement and permit in order to accomplish the above.

Decision: It is my decision to approve this amendment.

Illustration XIII-14
Lands Decision Memo – Correct Error or Omission
Page 2 of 2

Rationale: This amendment does not confer any additional rights to either party (U.S. or [permittee]), nor does it add any additional lands, roads or rights-of-way for use by either party. The action is merely an administrative action and paper exercise to [correct legal description] or [add to the {_____} rights that were already described in the [_____]] All other permits and agreements will be terminated or released.

Since this is a routine administrative action, this action is already categorically excluded at the Dept. of Interior level from further NEPA documentation pursuant to 516 DM 2.3.A.2, Appendix 1-1.7. There are no extraordinary circumstances as listed in 516 DM2, Appendix 2.

Prepared by: _____ Date _____

Approved:

, Field Manager, Resource Area

Illustration XIII-15
 Decision – Determination of Road Use Fees
 Page 1 of 3

2812(OR-112)
 [Permit]
 [Serial No.]

CERTIFIED MAIL-RETURN RECEIPT REQUESTED ()

DECISION
 DETERMINATION OF ROAD USE FEES

We Wanna Log II

Dear Burly Logger:

In connection with O&C Logging Road Right-of-Way Permit No. M- , serial No. OR , please find enclosed two copies each of approved road use fee calculations for your use of the following Bureau of Land Management (BLM) controlled roads in connection with your Project:

Road No.	Seg	Original or Improvement	Road Use Fee/MBF	Permittee Deficit Share

Paragraph ___ of Exhibit ___ of your permit states the following:

If the parties hereto cannot agree on the amount of the replacement cost within thirty (30) days after written notice from either party, computation thereof shall be made by the United States Bureau of Land Management and its decision shall be final,

Illustration XIII-15

Decision – Determination of Road Use Fees

Page 2 of 3

provided that the right of the Permittee to appeal pursuant to the provisions of 43 CFR Part 4 shall not be affected.

We have made several attempts to resolve the determination of roads use fees without fail. Therefore, this decision represents the final decision of the Bureau of Land Management with respect to the issues addressed herein.

If you Agree With the Road Use Fee Calculations

If you agree with the fee calculations enclosed, please sign as “accepted by” and return one copy each of an “accepted” copy to the _____ District Office at the above address, to the attention of _____. We will promptly post the road amortization records.

If You Disagree With the Fee Calculations

If you disagree with the fee calculations, you have the right to appeal.

How to Appeal This Decision¹

If you believe this decision is in error, you may file an appeal with the Interior Board of Land Appeals (Board), Office of the Secretary, within 30 days of your receipt of this decision. In deciding whether to file an appeal, you have the burden of showing this decision is in error.

If you decide to file an appeal, you must carefully follow the procedure described on the enclosed Form 1842-1. If you don't file your appeal at the locations specified on the form within 30 days, the Board may dismiss your appeal as untimely without considering its merits. Be sure to send a copy of your notice of appeal to each party named in this decision and to all of the addresses on the enclosed Form 1842-1.

How to Obtain a Stay of This Decision While Your Appeal is Pending²

You may also ask the Board to stay or suspend the effect of this decision while your appeal is pending. If you desire a stay, you must enclose your request for a stay with your notice of appeal. You have the burden of showing a stay is justified.

The Board will grant a stay only if you provide sufficient justification based on the following standards:

Illustration XIII-15

Decision – Determination of Road Use Fees

Page 3 of 3

- The relative harm to the parties if the Board grants or denies the stay,
- The likelihood of the success of your appeal on its merits,
- The likelihood of immediate and irreparable harm if the Board doesn't grant the stay,
- Whether the public interest favors granting a stay.

If You Have Any Questions

If you have any questions about this decision, please contact _____ at (541) _____ - _____. You may also write to us at our letterhead address.

Field Manager
Resource Area

Enclosures

¹ 43 Code of Federal Regulations Parts 4 and 4.413

² 43 Code of Federal Regulations Parts 4.21 or 2804.1

Illustration XIII-16
Lands Decision Memo – Add Rights for U.S. to Schedule 2
Page 1 of 2

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
_____ DISTRICT OFFICE
LANDS DECISION MEMORANDUM

O&C RECIPROCAL AGREEMENT AMENDMENT TO ADD RIGHTS FOR
THE UNITED STATES OVER PERMITTEE LANDS

AMENDMENT NO. _____ TO M-_____ (OR _____PT)

Background:

Permittee (_____) and the United States have entered into the following O&C Logging Road Right-of-Way Permits and Road Use and Right-of-Way Agreement:

M- , OR PT

The Permittee owns lands, roads or right-of-way over which the United States desires to have added to Schedule 2 of said Agreement No. _____. The Permittee has indicated a willingness to grant such rights.

Proposed Action: The proposed action is the approval of Amendment _____ to the M-_____ reciprocal right-of-way agreement and permit in order to add certain rights for the United States in the following locations:

See Attached Schedule 2

Decision: It is my decision to approve this amendment.

Rationale: The acquisition of these rights by the United States is merely a paper exercise granting legal rights to the United States at this time. When (and if) the United States exercises its rights through an on-the-ground project or contract, it will undertake an appropriate analysis of the proposed federal action under the National Environmental Policy Act (NEPA).

Illustration XIII-16

Lands Decision Memo – Add Rights for U.S. to Schedule 2

Page 2 of 2

The acquisition of rights by the United States is categorically excluded at the Department of Interior level from further analysis and environmental documentation pursuant to 516 DM 2.3A(2), Appendix 1(1.7). There are no extraordinary circumstances as listed in 516 DM2, Appendix 2. Further, the action is in conformance with the Record of Decision and Resource Management Plan for the Medford District (June 1995), page 84.

Prepared by:

Date_____

Title:

Approved:

Date_____

Field Manager , Resource Area

Illustration XIII-17

Administrative Remedy Language for Decisions & Notices of Decision
When NEPA Is Done with an EA or EIS

Page 1 of 3

Administrative Remedy Language
To be Included in all O&C Right-of-way Decisions
And/or Notice of Decision when Action
Has NEPA Compliance Done with an EA or EIS

EFFECTIVE DATE OF DECISION

This is a lands decision on a right-of-way action in accordance with BLM regulations at 43 CFR Subpart 2812. All BLM decisions under 43 CFR 2812 will become effective on the day after the expiration of the appeal period (30 days after publication of the legal notice of decision) where no petition for a stay is filed, or 45 days after the expiration of the appeal period where a timely petition for a stay is filed, unless the Director of the Office of Hearings and Appeals or an Appeals Board has determined otherwise in accordance with specified standards enumerated in 43 CFR 4.21(b).

RIGHT OF APPEAL

This decision may be appealed to the U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Board) by those who have a “legally cognizable interest” to which there is a substantial likelihood that the action authorized in this decision would cause injury, and who have established themselves as a “party to the case.” (See 43 CFR § 4.410). If an appeal is taken, a written notice of appeal must be filed with the BLM officer who made the decision in this office by close of business (*TIME* p.m.) not more than 30 days after publication of this decision in the [*FEDERAL REGISTER*] OR [30 DAYS FROM RECEIPT OF DECISION BY CERTIFIED MAIL] (DATE LAST PARTY RECEIVES if this notice is not published in the *Federal Register*). Only signed hard copies of a notice of appeal that are delivered to the [*NAME OFFICE*] will be accepted. Faxed or emailed appeals will not be considered.

In addition to the applicant, anyone who has participated in the National Environmental Policy Act process for this project by providing public comments on the environmental assessment will qualify as party to the case. (See 43 CFR § 4.410(b)). However, in order to qualify as an appellant, a “party to the case,” you also have the burden of showing possession of a “legally cognizable interest” that has a substantial likelihood of injury from the decision. (See 43 CFR § 4.410(d)). Furthermore, you may raise on appeal only those issues you raised in comments on the environmental assessment or that have arisen after the opportunity for comments closed. (See 43 CFR § 4.410(c)).

Illustration XIII-17

Administrative Remedy Language for Decisions & Notices of Decision

When NEPA Is Done with an EA or EIS

Page 2 of 3

The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR § 1.3. The appellant also has the burden of showing that the decision appealed from is in error. The appeal must clearly and concisely state which portion or element of the decision is being appealed and the reasons why the decision is believed to be in error. If your notice of appeal does not include a statement of reasons, such statement must be filed with this office and with the Board within 30 days after the notice of appeal was filed.

According to 43 CFR Part 4, you have the right to petition the Board to stay the implementation of the decision. Should you choose to file one, your stay request should accompany your notice of appeal. You must show standing and present reasons for requesting a stay of the decision. A petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

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

A notice of appeal with petition for stay must be served upon the Board, the Regional Solicitor and **[Insert the Right of Way applicant, and any other adverse party identified by name in the decision (e.g. other right of way users)]** at the same time such documents are served on the deciding official at this office. Service must be accomplished within fifteen (15) days after filing in order to be in compliance with appeal regulations. 43 CFR § 4.413(a). At the end of your notice of appeal you must sign a certification that service has been or will be made in accordance with the applicable rules (i.e., 43 CFR §§ 4.410(c) and 4.413) and specify the date and manner of such service.

The IBLA will review any petition for a stay and may grant or deny the stay. If the IBLA takes no action on the stay request within 45 days of the expiration of the time for filing a notice of appeal, you may deem the request for stay as denied, and the BLM decision will remain in full force and effect until IBLA makes a final ruling on the case.

Illustration XIII-17

Administrative Remedy Language for Decisions & Notices of Decision
When NEPA Is Done with an EA or EIS

Page 3 of 3

HOW TO FILE AN APPEAL

The attached Form 1842-1 provides the information for filing an appeal.

CONTACT INFORMATION

For additional information contact [_____, Field Manager, _____
Resource Area, ADDRESS; PHONE, or PROGRAM CONTACT at PHONE.]

Additional contact addresses include:

U.S. Department of the Interior,
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy Street, MS 300-QC
Arlington, Virginia 22203

Regional Solicitor
Pacific Northwest Region, U.S. Department of the Interior
500 N.E. Multnomah Street, Suite 607, Portland, Oregon 97232

**Right of Way Applicant
Address**

**Any Other Adverse Party
Address**

Attachment:

Bureau Form 1842-1 – How to File an Appeal

Illustration XIII-18

Administrative Remedy Language for Decisions & Notices of Decision
When NEPA Is Done with a CX

Page 1 of 3

Administrative Remedy Language
To be Included in all O&C Right-of-way Decisions
And/or Notice of Decision when Action
Has NEPA Compliance Completed with a Categorical Exclusion Determination (CX)

EFFECTIVE DATE OF DECISION

This is a lands decision on a right-of-way action in accordance with BLM regulations at 43 CFR Subpart 2812. All BLM decisions under 43 CFR 2812 will become effective on the day after the expiration of the appeal period (30 days after publication of the legal notice of decision) where no petition for a stay is filed, or 45 days after the expiration of the appeal period where a timely petition for a stay is filed, unless the Director of the Office of Hearings and Appeals or an Appeals Board has determined otherwise in accordance with specified standards enumerated in 43 CFR 4.21(b). For this action it starts with the date of service upon the proponent (or the later date of service to the proponent and other parties who were served a Notice of Decision).

RIGHT OF APPEAL

This decision may be appealed to the U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Board) by those who have a “legally cognizable interest” to which there is a substantial likelihood that the action authorized in this decision would cause injury, and who have established themselves as a “party to the case.” (See 43 CFR § 4.410). If an appeal is taken, a written notice of appeal must be filed with the BLM officer who made the decision in this office by close of business (**[time]** p.m.) not more than 30 days after the latest date of service of this decision upon the proponent and other affected parties. Only signed hard copies of a notice of appeal that are delivered to the **[District Office]** will be accepted. Faxed or emailed appeals will not be considered.

In addition to the applicant, anyone who has participated in the National Environmental Policy Act process for this project by providing public comments on the environmental assessment will qualify as party to the case. (See 43 CFR § 4.410(b)). However, in order to qualify as an appellant, a “party to the case,” you also have the burden of showing possession of a “legally cognizable interest” that has a substantial likelihood of injury from the decision. (See 43 CFR § 4.410(d)). Furthermore, you may raise on appeal only those issues you raised in comments on the environmental assessment or that have arisen after the opportunity for comments closed. (See 43 CFR § 4.410(c)).

Illustration XIII-18

Administrative Remedy Language for Decisions & Notices of Decision

When NEPA Is Done with a CX

Page 2 of 3

The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR § 1.3. The appellant also has the burden of showing that the decision appealed from is in error. The appeal must clearly and concisely state which portion or element of the decision is being appealed and the reasons why the decision is believed to be in error. If your notice of appeal does not include a statement of reasons, such statement must be filed with this office and with the Board within 30 days after the notice of appeal was filed.

According to 43 CFR Part 4, you have the right to petition the Board to stay the implementation of the decision. Should you choose to file one, your stay request should accompany your notice of appeal.

You must show standing and present reasons for requesting a stay of the decision. A petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

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

A notice of appeal with petition for stay must be served upon the Board, the Regional Solicitor and [Insert the Right of Way applicant, and any other adverse party identified by name in the decision (e.g. other right-of-way users)] at the same time such documents are served on the deciding official at this office. Service must be accomplished within fifteen (15) days after filing in order to be in compliance with appeal regulations, 43 CFR § 4.413(a). At the end of your notice of appeal you must sign a certification that service has been or will be made in accordance with the applicable rules (i.e., 43 CFR §§ 4.410(c) and 4.413) and specify the date and manner of such service.

The IBLA will review any petition for a stay and may grant or deny the stay. If the IBLA takes no action on the stay request within 45 days of the expiration of the time for filing a notice of appeal, you may deem the request for stay as denied, and the BLM decision will remain in full force and effect until IBLA makes a final ruling on the case.

I

Illustration XIII-18

Administrative Remedy Language for Decisions & Notices of Decision

When NEPA Is Done with a CX

Page 3 of 3

HOW TO FILE AN APPEAL

The attached Form 1842-1 provides the information for filing an appeal.

CONTACT INFORMATION

For additional information contact [_____, Field Manager, _____
Resource Area, ADDRESS; PHONE, or PROGRAM CONTACT at PHONE.]

Additional contact addresses include:

U.S. Department of the Interior,
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy Street, MS 300-QC
Arlington, Virginia 22203

Regional Solicitor
Pacific Northwest Region, U.S. Department of the Interior
500 N.E. Multnomah Street, Suite 607, Portland, Oregon 97232

**Right of Way Applicant
Address**

**Any Other Adverse Party
Address**

Attachment:

Bureau Form 1842-1 – How to File an Appeal

Illustration XIII-19

Standard Appeal Language for Decisions When There is No NEPA Involved

Page 1 of 1

The following language MUST be included in all lands decisions that are issued where there is no NEPA document involved.

How to Appeal This Decision ¹

If you believe this decision is in error, you may file an appeal with the Interior Board of Land Appeals (Board), Office of the Secretary, within 30 days of your receipt of this decision. In deciding whether to file an appeal, you have the burden of showing this decision is in error. If you decide to file an appeal, you must carefully follow the procedure described on the enclosed Form 1842-1. If you don't file your appeal at the locations specified on the form within 30 days, the Board may dismiss your appeal as untimely without considering its merits. Be sure to send a copy of your notice of appeal to each party named in this decision and to all of the addresses on the **enclosed form 1842-1**.

How to Obtain a Stay of This Decision While Your Appeal is Pending. ²

You may also ask the Board to stay or suspend the effect of this decision while your appeal is pending. If you desire a stay, you must enclose your request for a stay with your notice of appeal. You have the burden of showing a stay is justified.

The Board will grant a stay only if you provide sufficient justification based on the following standards:

The relative harm to the parties if the Board grants or denies the stay;

The likelihood of the success of your appeal on its merits;

The likelihood of immediate and irreparable harm if the Board doesn't grant the stay;
f the public interest favors granting a stay.

¹ 43 Code of Federal Regulations Parts 4 and 4.413

² 43 Code of Federal Regulations Parts 4.21 or 2804.1

Illustration XIII-20

Form 1842-1 – Information on Taking Appeals to the Interior Board of Land Appeals

Page 1 of 2

Form 1842-1
(September 2006)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
- AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL.....	A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the <i>Notice of Appeal</i> in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a <i>Notice of Appeal</i> in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).
2. WHERE TO FILE	
NOTICE OF APPEAL.....	U.S. Department of the Interior, Bureau of Land Management Medford District Office 3040 Biddle Road Medford, OR 97504
WITH COPY TO SOLICITOR....	U.S. Department of the Interior Office of the Regional Solicitor, Pacific Northwest Region 805 S.W. Broadway, Suite 600 Portland, OR 97205
3. STATEMENT OF REASONS	Within 30 days after filing the <i>Notice of Appeal</i> , file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the <i>Notice of Appeal</i> , no additional statement is necessary (43 CFR 4.412 and 4.413).
WITH COPY TO SOLICITOR.....	U.S. Department of the Interior Office of the Regional Solicitor, Pacific Northwest Region 805 S.W. Broadway, Suite 600 Portland, OR 97205
4. ADVERSE PARTIES.....	Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the <i>Notice of Appeal</i> , (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).
5. PROOF OF SERVICE.....	Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(e)).
6. REQUEST FOR STAY.....	Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a <i>Notice of Appeal</i> (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your <i>Notice of Appeal</i> (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the <i>Notice of Appeal</i> 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 appropriate Office of the Solicitor (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 regulations, 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.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that **all** communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

(Continued on page 2)

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XIV. ROAD USE Trespass

A. Purpose

This chapter identifies agency policies and procedures in preventing and resolving unauthorized road use associated with the removal of timber and other forest products over U.S. roads. Unauthorized commercial road use is considered to be a form of realty trespass and the procedures herein are taken from guidance for resolving realty trespass cases.

B. Authority

Federal Land Policy & Management Act of October 21, 1976, Sections 302, 303, 310 and 501 through 511 (43 U.S.C. 1732, 1733, 1740, 1761-1771).

Federal Claims Collection Act of 1966 as amended and supplemented (31 U.S.C. 3711).

Sustained Yield Act of August 28, 1937 (43 U.S.C. 1181a and 1181b)

43 Code of Federal Regulations Subpart 2812, Tramroads and Logging Roads over O. and C. and Coos Bay Revested Lands.

C. Responsibility

1. Bureau Employees

All BLM employees are required to report suspected trespass to the proper official. Field personnel must acquaint themselves with the location of lands under BLM jurisdiction and shall be observant for suspected violations of laws and regulations.

2. District Managers and Field Managers

District and Field Managers are responsible for carrying out an effective trespass control and abatement program.

3. Office of the Regional Solicitor

Provide legal review and advice for trespass issues.

4. Department of Justice

Only the Department of Justice has the authority to file suit on behalf of the United States for road trespass cases.

D. References

BLM Manual Section 9230 (Trespass)

BLM Manual Section 9232 (Realty Trespass Abatement)

BLM Manual Handbook H-9232-1 (Realty Trespass Abatement)

BLM Manual Section 1203 (Delegation of Authority)

Departmental Manual 600 DM 4 (Trespass on Public or Reserved Lands)

43 Code of Federal Regulations:

- Section 2812.1-3 (Unauthorized Use, Occupancy or Development)
- Subpart 2808 (Trespass)
- Section 9239.7 (Right-of-Way)
- Section 9239.1 (Penalty for Trespass)

E. Implementing Regulations Citations and Other Handbook References

The O&C regulations define trespass as follows:

43 CFR §2812.1-3:

Any use, occupancy or development of the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (O&C) lands (as defined in 43 CFR §2812.0-5(e)), for tramroads without an authorization pursuant to this subpart [43 CFR 2812], or which is beyond the scope and specific limitations of such an authorization, or that causes unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in 43 CFR §2808.10 of this chapter. [Underline bracketed added]

The O&C regulations refer to 43 CFR §2808.10(a) which defines trespass as:

. . . using, occupying, or developing the public lands or their resources without a required authorization or in a way that is beyond the scope

and terms and conditions of your authorization. Trespass is a prohibited act.

Road trespass cases are considered a realty trespass case type. The O&C regulations reference the 2800 regulations. The procedures herein established for road use trespass are based upon guidance in other trespass manuals and handbooks as follows:

- BLM Manual Section 9230 (Trespass)
- BLM Manual Section 9232 (Realty Trespass Abatement)
- BLM Manual Handbook H-9232-1 (Realty Trespass Abatement)

F. Policy

The established policy of BLM regarding the control and abatement of road use trespass includes the following:

- Prevent trespass;
- Take prompt and efficient action to discover and report trespass;
- Investigate suspected trespasses aggressively;
- Control trespass activities on BLM roads;
- Terminate unauthorized use;
- Ensure that BLM lands and roads damaged as a consequence of trespass activities are rehabilitated or stabilized to the condition that existed prior to the trespass as determined by the AO;
- Ensure that the U.S. collects all fees and penalties that may be due;
- Recover administrative costs incurred by BLM as a consequence of road use trespass;
- Report criminal action where applicable;
- Initiate appropriate civil action against trespasser when a trespass is not resolved in a timely manner; and
- Recover full compensation.

G. Definitions for Other Terms in This Chapter

An understanding of the following terms associated with trespass is important in resolving trespass situations:

administrative costs: all costs incurred by the U.S. as a consequence of a realty trespass. Administrative costs include labor, operation, and indirect administrative costs.

Indirect administrative costs: that part of administrative costs which include a portion of the costs for capitalized and non-capitalized equipment, space rental, telephone services, postage, personnel transfer costs, budget and program development, administrative and clerical support, training, safety management, public information inquiries and reports, cartography and basic series mapping, aviation management, telecommunications, maintenance of equipment and tools, and systems design and implementation.

non-willful trespass: trespass committed by mistake or inadvertence (43 CFR §2808.10(c)(2)).

trespass penalties: amounts assessed as a penalty in trespass cases which amounts are assessed in addition to fees and administrative cost reimbursement. In realty trespass cases the penalty is usually assessed based on land rent liability. For purpose of this chapter land rent liability also means the amount of road use, authorization, and maintenance charges. Trespass penalties may be imposed for a trespass which is not resolved in a timely manner. Penalties can be two or three times land rent liability (road fees). For non-willful trespass the penalty is equal to twice the total amount of road fees. For knowing and willful trespass the penalty is three times the land rent liability (or road fees).

use, authorization and maintenance charges: the fees charged for commercial use of a road owned or controlled by the U.S. These fees normally include road use (amortization) fees and maintenance fees (including surface replacement fees).

unnecessary or undue degradation: trespass acts or omissions causing unnecessary or undue degradation to the public lands or their resources. In determining whether such degradation is occurring, BLM may consider the effects of the activity on resources and land uses outside the area of the activity. (43 CFR §2808.10(b))

willful trespass: voluntary or conscious trespass that includes trespass committed with criminal or malicious intent. It involves a consistent pattern of actions taken with knowledge, even if those actions are taken in the belief that the conduct is reasonable or legal. (43 CFR §2808.10(c)(1))

H. Processing

Each trespass case discovered by BLM requires that certain actions be taken from initiation to case closure. Each action should be fully explained and documented in the case file in chronological order. Illustration XIV-1 is a table that summarizes the general processing steps for a typical road use trespass case and the identification of Bureau specialists or managers normally responsible for each step. Illustration XIV-2 contains general flow charts for trespass cases. Page 2 of illustration XIV-2 identifies the processing steps if informal resolution is unsuccessful.

Accurate and complete investigation and documentation is essential for successful trespass case processing and resolution. Any given trespass may be subject to judicial or Interior Board of Land Appeals (IBLA) review based solely on the BLM's administrative record. Therefore, it is essential that a complete and factual record be established and maintained from the point of discovery up to and including the final resolution.

The following steps outline the road use trespass process.

1. Initial Report of Unauthorized Use

A trespass case is first initiated upon the discovery of a possible trespass by a BLM employee. When an employee becomes aware of a potential incident of unauthorized road use, the first step is to complete Initial Report of Unauthorized Use (BLM Form 9230-10), included as Illustration XIV-3. The employee discovering the trespass should complete the BLM Form 9230-10 as soon as possible and forward it to the designated staff (usually Realty Specialist or Roads and Right-of-Way Specialist). The program specialist then confirms whether there is a suspected trespass by verifying: 1) whether if the activity in question is on U.S. land or roads, and 2) if so, whether or not the use has been authorized by the BLM.

Suspected trespass, for the purposes of this chapter, is defined as those cases where an Initial Report of Unauthorized Use has been prepared and public land/road status has been confirmed with available status data (i.e., Road Records, Master Title Plats (MTP), maps, aerial photographs, etc.). In addition it is confirmed there is no active permit.

2. Case File Established and Organization

Once a suspected trespass has been established, the following steps are followed to establish an official case file.

a. Serialize Case File and Data Entry into LR2000

Before a case file is established a serial No. needs to be established and the case entered into LR2000:

- Establish a Serial Register page for case type 281009. Use illustration XIV-4 (Lands Data Standards for case type 281009) to ensure the minimal case elements are entered.
- For the proprietor field, DO NOT enter the suspected trespasser's name in the serial register page at this point. The name is not entered until they acknowledge that they are a trespasser. BLM is entered instead as Code 22 (Admin. Agency).

b. Establish and Organize Case File

It is recommended that the case file be established with a six-way folder organized in the following way:

Flap 1: Serial Register Page (on top), MTP, etc.

Flap 2: Reimbursable Project Log, BLM Form 1323-1 (Illustration XIV-9).

A Reimbursable Project Log (Illustration XIV-9) is set up immediately upon opening an official case file and is attached to the outside of the case file for recording of BLM administrative costs associated with the case. All BLM administrative costs incurred in case processing must be properly accounted for. BLM administrative costs commence with the completion of an Initial Report of Unauthorized Use and include all costs associated with trespass investigation, documentation, and case processing (i.e., case closure).

It is extremely important that this log is maintained accurately since administrative costs assessed by the BLM are subject to review by the trespasser and may be subject to judicial and IBLA review.

Flap 3: Chronological Section.

All items are filed in chronological order with the oldest on the bottom, starting with the Initial Report of Unauthorized Use. The Chronological section also includes:

- Initial Report of Unauthorized Use and Unauthorized Use Investigation Report, (BLM Form 9230-24 - Illustration XIV-5) with their supporting documentation.

- notes from meetings with trespasser (why the trespass occurred, offers of settlement, attitude (cooperative versus uncooperative), BLM's position on settlement, etc.,
- notes from meetings or conversations with others,
- correspondence concerning the trespass,
- records and notes of interviews and telephone conversations, and
- correspondence – Informal letters, Trespass Notice, BLM Form 9230-1 (Illustration XIV-6 or letter version at Illustration IX-7), Trespass Decision (Illustration XIV-8), informal resolution actions (settlement letters, etc), transmittal memos to BLM Special Agent in Charge (SAC), including collection efforts.

Flap 4: Chronological section continued.

Flap 5: Financial (Accounting) Section.

The following items should be maintained in a separate accounting section:

- copies of bills,
- copies of demand letters,
- copies of bonds, and
- copies of receipts for payment.

3. Initial Investigation

After confirming the suspected trespass, an initial investigation is conducted to determine what happened and who is responsible.

a. If Criminal Activity Suspected

If criminal activity is suspected (timber theft, etc.), the AO should forward the case file to the BLM Special- Agent-in-Charge (SAC). **Once it goes to an SAC for criminal investigation, no further work is done administratively until the SAC hands the case file back to the assigned employee.**

b. If No Criminal Activity Suspected.

If no criminal activity is suspected, the AO should assign a qualified employee to further investigate the case.

Trespass investigation involves field examination and information collection from all necessary sources to provide a complete trespass record. Trespass investigation strives to answer the “who, what, why, where, when, and how much.” The investigation is documented in BLM Form 9230-24 -Unauthorized Use Investigation Report (Illustration XIV-5) and supporting documents.

For road use trespass cases, the initial evaluation is usually done by looking at aerial photos to compare older photos with the on-the-ground situation to see what land has recently been logged. Other sources include conversations with knowledgeable people.

Another source of data is the Oregon State Dept. of Forestry (ODF). Prior to severing timber on federal or private lands, the Oregon State Forest Practices Act requires operators to file a “Notification of Operation” in order to obtain a permit to operate power driven machinery. The notification and permit includes the legal description of the permittee land to be harvested. This information is available to the general public through the local ODF office and should be utilized by the BLM AO to verify that all volume and all roads used were reported accurately. This serves as a vital source of information. However, if the person hauling failed to report the hauling to BLM, there is a likelihood that they also failed to file with the State.

If a state permit was filed, it is important to conduct field exams and verify the information reported on the state permit against information gather in the field and aerial photo examinations. This information is important in determining the amount of damages.

An important aspect of the field exam is to determine the condition of the road and whether or not any damage occurred as a result of the unauthorized hauling.

Other sources of information available in the initial investigation include:

- BLM Master Title Plats, survey notes, location maps, and aerial photos,
- field notes, sketch maps, photographs,
- interviews conducted in conjunction with the trespass investigation,
- who made the discovery along with his/her address and phone number,
- a written statement from available eye witnesses,
- the truck owner's name, the number of trucks and number of loads hauled,
- pictures of use (include name of the photographer),

- legal description of land from which timber was removed,
- volume of timber removed, and
- damage to Federal property and/or resources, if any.

As facts are gathered and documents are prepared, they should be dated and placed in the trespass case file in chronological order and the name of the person who placed them in the file should be noted.

c. If Investigation Shows No Trespass Occurred

If, after completing the above investigation it is determined that no trespass occurred, the following actions should be completed:

- Make a written report for the AO (signed by the investigator), recommending the case be closed (with a concurrence block for signature by the AO. If the AO concurs and signs, close the case file.
- Update LR2000 as appropriate to close out case file.
- Report Unit of Accomplishment in MIS.

4. Determination of Trespasser Intent

Following the collection of all available facts in the investigation of a suspected road use trespass, the AO must make a determination of the type of trespass which has occurred (i.e., willful or non-willful). This determination will have a direct effect on the level of penalties and other trespass-related actions. Intent plays a major role in the determination of the course of action taken to resolve a trespass (i.e., administrative, civil, or criminal). Intent affects the extent of the trespasser's liability for the trespass action. However, where a willful trespasser cooperates with the U.S. to expedite resolution of the trespass action administratively, additional trespass or criminal penalties as provided in the trespass regulations may not be warranted. The proof of the willful or non-willful intent of the trespasser in committing the unauthorized act must be made from data derived from the investigation of the trespass. It is mandatory that investigations be carefully conducted and pertinent facts documented in the case file. This is especially true if civil court action or criminal prosecution of the trespasser is contemplated. Any determination of trespass made by the AO must be in writing.

5. Determination of Potential Trespass Liability and Penalties

The next step in the process is to determine the fees, penalties, reimbursement, or rehabilitation actions or costs that might be appropriate.

a. Fees and Penalties

In accordance with 43 CFR §2812.1-3, anyone determined by the AO to be in trespass shall be notified of such trespass in writing and shall be liable for all costs and payments determined in the same manner as set forth at 43 CFR §2808.11, including:

- Reimbursing the U.S. for all costs incurred in investigating and terminating the trespass (including direct and indirect administrative costs);
- Paying the cumulative value of the current road use (amortization) fee and maintenance fee (including surface replacement fee) for unauthorized use of any BLM administered road; and
- Rehabilitating and restoring any damaged lands or resources. If you do not rehabilitate and restore the lands and resources within the time set by BLM in the notice, you will be liable for the costs the U.S. incurs in rehabilitating and restoring the lands and resources.

In addition to the liabilities shown above, the AO may assess penalties as follows:

- For willful or repeated non-willful road use trespass, the penalty is two times the charges for road use, amortization, and maintenance which have accrued since the trespass began.
- For non-willful trespass which is not resolved by meeting one of the conditions identified in 43 CFR §9239.7–1 within 30 calendar days after receipt of the written notice of the trespass, the penalty is an amount equal to the charges for road use, amortization, and maintenance which have accrued since the trespass began.

The penalty will not be less than the fee for Processing Category 2 (see 43 CFR §2804.14) for non-willful trespass or less than three times this amount for willful or repeated non-willful trespass.

In addition to civil penalties identified above, the trespasser may be tried before a U.S. magistrate judge and fined no more than \$1,000, or imprisoned for no more than 12 months, or both, for a knowing and willful trespass, as provided at 43 CFR §9262.1 and 43 U.S.C. 1733(a).

The AO must determine the appropriate fees, penalties, etc. that will be included in any future correspondence with the suspected trespasser, prior to the time a decision letter is prepared.

b. Cancellation or Revocation of Use Authorizations

One potential punitive option to be considered by the AO is cancellation of any existing permits held by the trespasser. Under Title 4 CFR (Appendix 1, §102.6), agencies seeking collection of liability claims (i.e., trespass liability) are instructed to:

. . . give serious consideration to the suspension of licenses or other privileges for any inexcusable, prolonged, or repeated failure of a debtor to pay such a claim and the debtor will be so advised.

As an aid to resolving road use trespass claims, consideration may be given to cancellation of contract negotiations, leases, permits, or other BLM authorizations that are or will be held by a trespasser. The Office of the Regional Solicitor should be contacted prior to initiating a cancellation or revocation action against a trespasser. Other BLM District Offices and staff specialists in western Oregon should also be notified of pending actions against the trespasser.

In accordance with 43 CFR §9239.7-1, no new permit, license, authorization or grant of any kind shall be issued to a trespasser until:

- the trespass claim is fully satisfied, or
- the trespasser files a bond conditioned upon payment of the amount of damages determined to be due the U.S., or
- the AO determines in writing that there is a legitimate dispute as to the fact of the trespasser's liability or extent of liability and the trespasser files a bond in an amount sufficient to cover payment of a future court judgment in favor of the U.S..

6. Resolution

After the AO determines appropriate monetary charges and requirements for rehabilitation, the next step is to decide which approach to use to resolve the trespass. There are three approaches available to the AO:

a. Informal Administrative Resolution

Informal administrative resolution is the preferred methodology unless circumstances warrant more stringent measures and formal procedures. Informal resolution involves an agreed-upon settlement of the trespass and trespass liability without resorting to formal administrative procedures or legal action as outlined below.

In informal resolution, action may be initiated with an informal letter or may progress to the issuance of a Trespass Notice (BLM Form 9230-1 -- Illustration XIV-6). If the approved BLM Form 9230-10 is not used for the Trespass Notice, the typed notice should appear the same as the form (see Illustration XIV-7). During the informal stage the party is notified that there is an "alleged" trespass and provided informal resolution options. Informal administrative resolution may be successful when:

- The trespasser is willing to cooperate with the BLM in the timely resolution of the trespass.
- The trespass is clearly unintentional, accidental, a minor infraction of the BLM's regulations, or a technical violation.
- The trespass is minor in terms of size and impact and informal resolution would serve the best interests of all parties involved.
- The evidence does not exist or is not available to prove the full extent of the trespass liability in terms of previous use, time, and size (i.e., the BLM cannot prove the full amount due the U.S. as a consequence of the trespass).
- Acceptance of trespass liability payment and closing the case can be substantiated as a "reasoned judgment" on the part of the BLM. Document the case file accordingly.
- The BLM's trespass abatement policy in terms of deterrence and securing compliance (both present and future) would be adequately served by informal resolution.
- A suspected trespass cannot be confirmed as an actual trespass or the trespasser cannot be identified. Close the case and monitor the area.

During this stage the AO may negotiate a resolution agreeable to both parties. Note that in all trespass cases, including those settled informally, the 43 CFR Subpart 2808 regulations require BLM to collect 1) all use and maintenance fees due for unauthorized timber haul, 2) reimbursement of costs incurred in investigating and resolving the trespass, and 3) reimbursement of any costs incurred by BLM in rehabilitating and restoring any damaged lands or resources (if the trespasser does not satisfactorily complete the rehabilitation and restoration). **The AO has no authority to negotiate a settlement that does not meet these requirements.**

If during the informal stage the trespasser acknowledges the trespass and is willing to settle, a settlement letter should be sent (see Illustration XIV-10).

b. Formal Administrative Resolution

Failing resolution using an informal process, the next step is to institute formal administrative procedures. These are called for when:

- The trespasser is clearly uncooperative.
- The trespasser disputes the BLM's trespass liability claim and the BLM has evidence to substantiate the claim of trespass.
- The size and nature of the trespass cannot be excused as unintentional even though the BLM cannot prove knowing and willful intent.
- Formal collection action would enhance the BLM's trespass abatement program in terms of deterrence and resolution of other public land trespass in the area.
- The trespass cannot be proven as knowing and willful trespass.
- The BLM has expended significant sums of money (administrative costs) as a consequence of the trespass, and enforced collection action is necessary for full recovery;
- The trespasser has been positively identified, and evidence exists to support the identification; and/or
- Offers made by the trespasser to settle trespass liability, if any, cannot be justified as reasonable.

Once formal administrative resolution is initiated, the AO no longer has flexibility to negotiate resolution.

The formal administrative process is commenced with a Trespass Decision and a bill for payment of trespass liability. The Trespass Decision includes such things as:

- determination that they are in trespass (no longer alleged);
- determination of fees due;
- determination of penalties due;
- determination of other punitive decisions (such as cancellation of existing permits if trespass isn't resolved);
- determination of reimbursable costs; and

- bill for payment.

The Trespass Decision includes the rights of appeal. See Chapter XIII. for guidance on decisions and appeals for the O&C right-of-way program.

If payment is not made and the trespass resolved after the Trespass Notice and bill are sent, there may be a need to follow up with demand letters, referral to the Internal Revenue Service (IRS), debt collection contractors, and consumer credit agencies. See Illustration XIV-8 for sample formal Trespass Decision. See Illustration XIV-2 for steps to be taken in the formal process leading up to civil action as described below.

c. Civil Court Action Resolution

When all administrative remedies have been exhausted, the next option is a civil court action. Court action may also be initiated where successful outcome and follow-up publicity would assist the BLM in eliminating other trespass in a geographic region and deterring trespass in the future. Civil actions are reviewed for adequacy by the Office of the Regional Solicitor and initiated by the U.S. Attorney in U.S. District court. U.S. Magistrates, if designated, may hear pre-trial matters. Upon consent of the parties, a designated U.S. Magistrate may conduct all proceedings in a civil matter and order an entry of judgment in the case. A U.S. Magistrate's jurisdiction to hear a civil case depends on designation to do so from a U.S. District Court judge. Whether prosecution will be brought in a given case is determined by the U.S. Attorney. Finally, the U.S. government can pursue both civil and criminal remedies concurrently for the same offense. The fact that a trespasser is convicted of knowing and willful trespass does not preclude the BLM from recovering monetary liability and court costs from the trespasser due to the unauthorized activity.

Circumstances that may merit civil action on the part of the BLM to resolve a trespass and trespass liability include, but are not limited to, the following:

- The BLM has cause to believe that rehabilitation/stabilization of the roads in trespass would not be accomplished without a court order.
- Attempts at informal and formal administrative resolution have been unsuccessful.
- The BLM has adequate evidence (i.e., a preponderance of evidence) to substantiate its case.
- Criminal trespass cannot be substantiated (i.e., proof beyond a reasonable doubt).

- The BLM's trespass abatement program in terms of prevention, deterrence, and resolution would be enhanced by successful civil court action.
- Termination is required to resolve the trespass and a court order is required for this action.
- The trespasser's liability for the trespass is significant and successful court action and monetary recovery would serve as a deterrent to present and future trespassers.
- Circumstances are such that the BLM cannot accept a trespasser's liability settlement offer (if any) within the requirements of its debt collection procedures.

d. Injunctions

For road use trespass cases, injunctions are not usually applicable unless, after being served the Trespass Notice, the hauling continues on a willful basis and there is immediate threat of damage to public lands. If an injunction is sought, refer to BLM handbook H-9232-1 for procedures.

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CHAPTER XIV – Table of Illustrations

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Illustration XIV-1
 Trespass Resolution Process Summary
 Page 1 of 5

Office	Step	Action
Field Office	1.	<u>Initial Report of Unauthorized Use.</u> Complete BLM Form 9230-10 (Initial Report of Unauthorized Use) (Illustration XIV-3) and include the following: <ul style="list-style-type: none"> • who made discovery • address of person making discovery • telephone number • what was observed • who is suspected, etc. Attach written statements as necessary. Preserve private citizen confidentiality as appropriate.
Field Office	2.	<u>Case File Establish and Organization</u> (initial trespass documentation). <ul style="list-style-type: none"> • Record in LR 2000 (serialize, create initial SRP • Establish serialized case file. • Prepare maps. • Check road records, etc., to verify that the suspected trespass is definitely on BLM land and/or U.S. roads.
Field Office	3.	<u>Initial Investigation.</u> Forward the case file to AO)with brief report.
	3.a.	a. If criminal activity suspected: If criminal activity is suspected (knowing and willful trespass) forward through AO to the Special Agent in Charge (SAC). (Note: Once case goes to SAC, no further work is done administratively until SAC hands the case back to the assigned employee.
	3.b.	b. If No criminal activity suspected: Assign employee to investigate case (i.e., responsible employee). Responsible employees completes BLM Form 9230-24 (Unauthorized Use Investigation Report (Illustration XIV-5) by including the following:
Field Office		Obtain additional information from person reporting trespass. Obtain written statement if necessary or possible.
Field Office		Visit trespass area. Take pictures, measurements and make detailed notes.

Illustration XIV-1
 Trespass Resolution Process Summary
 Page 2 of 5

Office	Step	Action
Field Office		Request survey and/or enforcement personnel if necessary. If no trespass,
		c. If no trespass: Make written report for file and close case. <ul style="list-style-type: none"> • Update LR 2000 and report unit of accomplishment in MIS.
Field Office	9.	Identify the trespasser if possible. If identity of trespasser cannot be confirmed, complete Statement of Diligent Search and Inquiry and arrange for rehabilitation/stabilization of the trespass area. Close case, update LR 2000, and report unit of accomplishment In MIS.
Field Office	10.	Determine preferred resolution option: <ul style="list-style-type: none"> • Informal Administrative Resolution • Formal Administrative Resolution • Civil Court Action Criminal Court Action
Field Office	11.	Estimate trespass liability. Calculate: <ul style="list-style-type: none"> • current and past years' road use liability • resource damages • rehabilitation/stabilization costs administrative costs

Illustration XIV-1
 Trespass Resolution Process Summary
 Page 3 of 5

Office	Step	Action
Field Office	12.	Advise trespasser by letter (Illustration XIV-6 or 7) of the trespass and request a meeting. DO NOT BILL OR REVEAL THE ESTIMATE OF TRESPASS LIABILITY. If no response, may send Notice of Trespass Illustration XIV-6 or XIV-10).
Field Office	13.	Begin negotiations. AO may negotiate informally to resolve the trespass and recover trespass liability and avoid formal administrative or civil resolution and collection processes. If trespasser is clearly uncooperative or unwilling to informally resolve the trespass, go to step 15.
Field Office	14.	If the trespasser presents new factual data, and/or makes settlement offer, AO evaluates offer and any additional information presented. If acceptable, and resolution action is still at the informal level, simultaneously accepts payment and issues bill (paid) for the amount agreed upon. Payment should include administrative and rehabilitation/stabilization costs as appropriate.
Field Office		Document the case file to indicate that settlement is based on a reasoned judgment on the part of the Bureau. Close case. Update LR 2000.
Field Office	15.	If unable to agree on trespass liability, note case file and send notice of trespass letter (Illustration XIV-7). Contact the State Office prior to sending a trespass notice to the trespasser. The State Office will work with the Regional Solicitor and U.S. Attorney to develop an action plan.

Illustration XIV-1
 Trespass Resolution Process Summary
 Page 4 of 5

Office	Step	Action
Field Office	16.	If payment of liability results, accept payment, close case and note LR 2000. If no response, or negative response, send Trespass Decision (Illustration XIV-8) or Trespass Decision/Notice to Remove and bill for collection of trespass liability including administrative and rehabilitation/ stabilization costs. NOTE: Assessment of trespass penalties should be considered at this point (i.e., road use liability times one or two). NOTE: penalty is in addition to trespass liability.
Field Office	17.	If Trespass Decision (Illustration XIV-7) or Trespass Decision/Notice to Remove results in appeal to IBLA, suspend action on case until IBLA issues a decision. If no IBLA appeal and no payment of liability, send appropriate demand letters (Illustrations 8, 9, and 10). NOTE: Once a bill and three demand letters are sent, without payment, the Bureau is locked into formal administrative collection procedures established by the Service Center (BC-615).
Field Office	18.	If payment is received in full, arrange for rehabilitation/stabilization or authorization, close case, note LR 2000, and report unit of accomplishment in MIS.
Field Office	19.	If no reply to the third demand letter and the bill is not paid or a compromise offer is not received, send file to BC-621 through the State Office with recommendation to write-off, demand full payment or initiate civil action. NOTE: Prior to sending the case file to the SC, compromise offers may be accepted by the State Director with concurrence of the appropriate Field or Regional Solicitor.

Illustration XIV-1
 Trespass Resolution Process Summary
 Page 5 of 5

Office	Step	Action
BC-615	20.	Turn claim over to a collection agency. Agency works the claim for 6 months. If unsuccessful, agency returns claim to the SC with recommendation for write-off, compromise or civil action. The BC-615 works with the Denver Regional Solicitor in recommending final resolution action.
State Office	21.	After BC-615 action, the case file is returned to the State Director with BC/Solicitor recommendation (i.e., civil action, compromise or write-off). If recommendation is acceptable, implement; if not acceptable, consult with Solicitor to arrive at an acceptable resolution. Return case to originating office.
Originating Office	22.	Notes LR 2000, close case, and report as unit of accomplishment. Monitor following closure to insure satisfactory rehabilitation or stabilization, payment of liability, penalties, compliance, etc.

Illustration XIV-2
 Flow Charts for Trespass Resolution
 Page 1 of 2

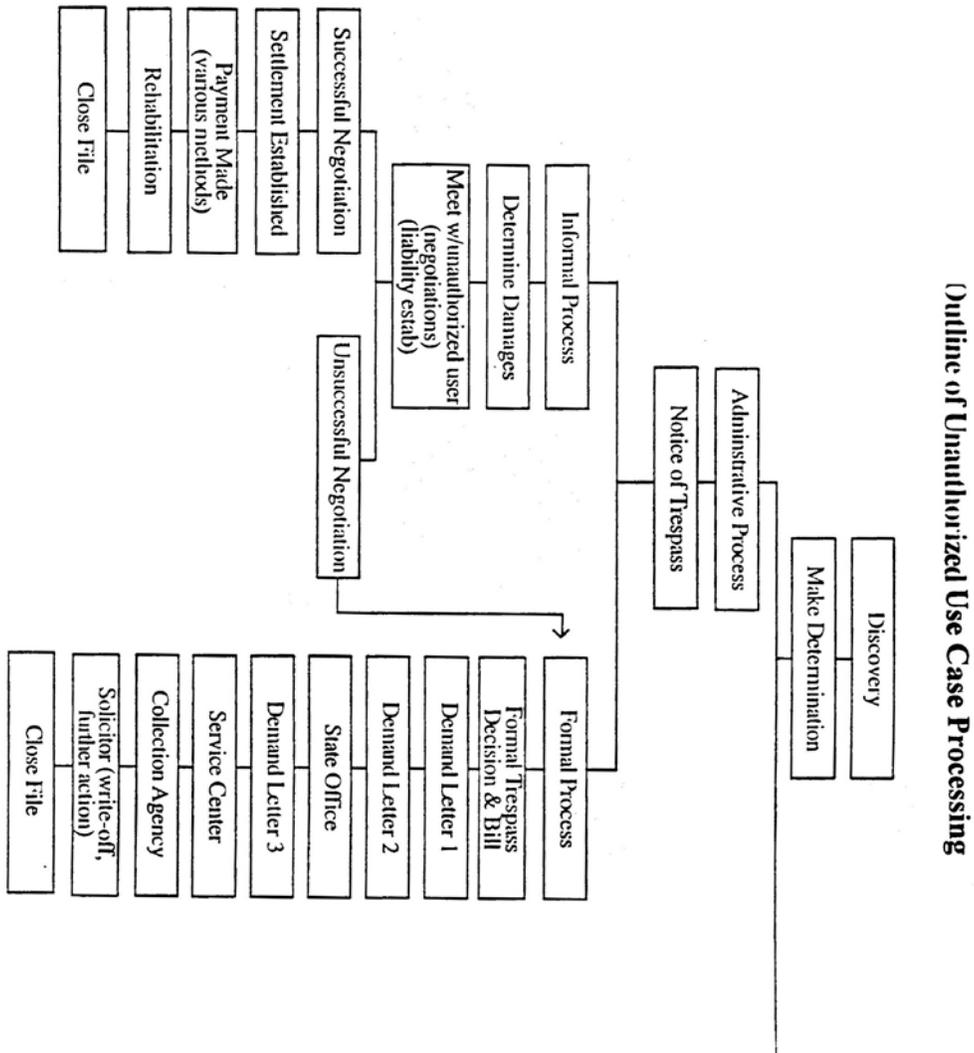


Illustration XIV-2
Flow Charts for Trespass Resolution
Page 2 of 2

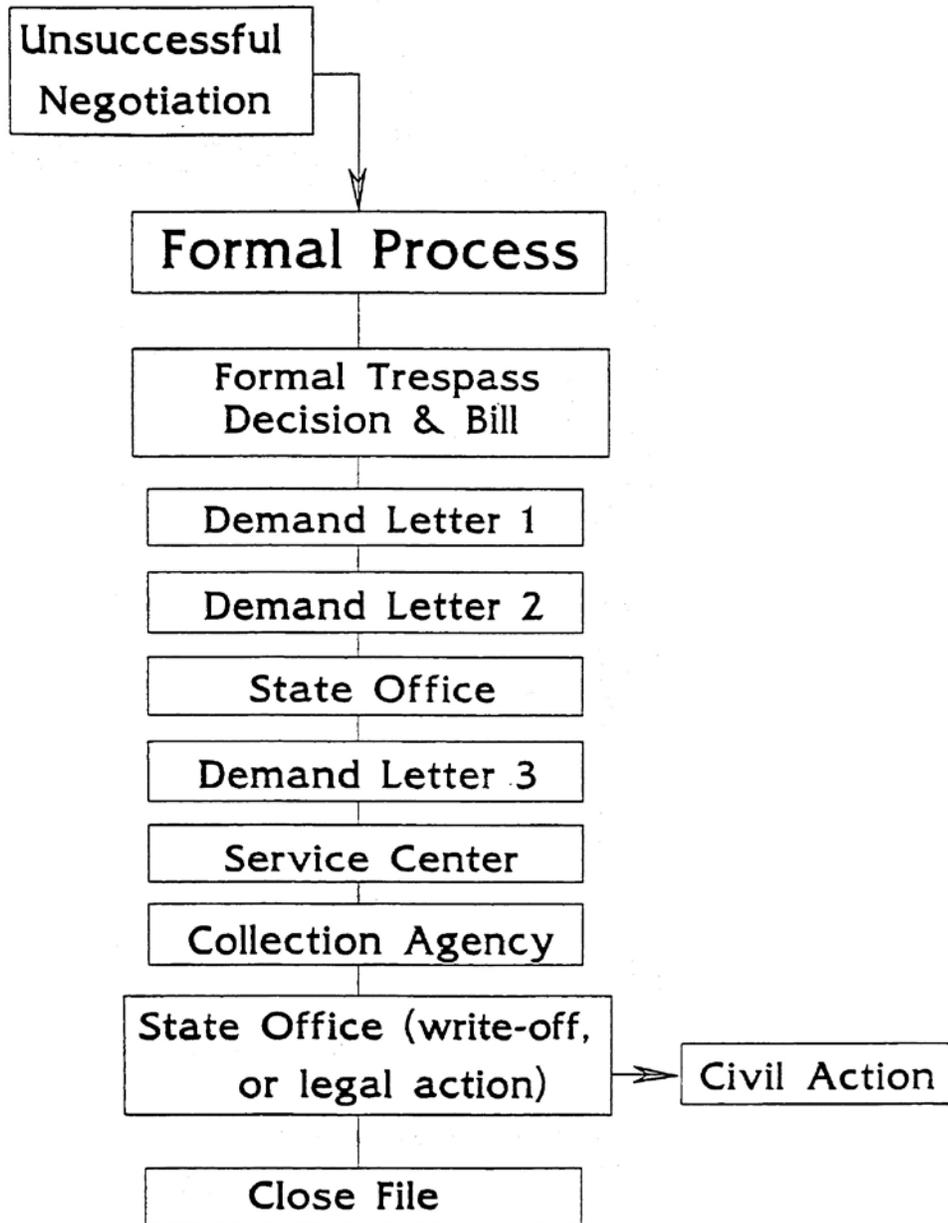


Illustration XIV-3
 Initial Report of Unauthorized Use (Form 9230-10)
 Page 1 of 1

Form 9230-10
 (March 1986)

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

Number

State

District

Date

INITIAL REPORT OF UNAUTHORIZED USE

1. Name of person reporting violation*		Address (include zip code)	
2. Occupation and title			
3. DATE		4. Type of unauthorized use	
a. Reported (month, day, year)	b. Discovered (month, day, year)		
5. LOCATION			
Section	Township	Range	Subdivision
Meridian	County		State
6. How was the unauthorized use discovered?			
7. What does unauthorized use appear to be? (Check one) <input type="checkbox"/> Criminal <input type="checkbox"/> Civil in nature		8. What is the recommendation? (Check one) <input type="checkbox"/> Report immediately to BLM Special Agent <input type="checkbox"/> Investigate further	
Name of reporting officer		Title	
Comments and recommendations (include name and address of suspected unauthorized user, if known)			

(Signature of Reporting Officer)

*Informant's name may be held confidential at his request

Illustration XIV-4
 Lands Data Standards for Case Type 2810-09
 Page 1 of 1

LANDS DATA STANDARDS

Illustration 40

43 CFR 2920 TRESPASS
 43 CFR 2800 TRESPASS (95% Data Accuracy)

Original data standards issued under WO IM No. 88-466, dated June 3, 1988.

ENTRY REQUIREMENTS: Enter all cases active or pending on 6/3/1988. Enter each case in accordance with the following data standards, with the following **EXCEPTIONS:** The following action codes must be used only if applicable to the case type. For example, if it is determined that no trespass occurred, ACs 167, 017, 106, and 392, would not be used, but AC 018 (or 244 for ORCA) would be used.

RECORD NUMBER: Serial number

PROPRIETOR: Trespasser. **NOTE:** Enter BLM until the trespasser has acknowledged that the trespass has occurred.

CASE TYPE: The applicable case from the 28 case group or 2928 case group

COMMODITY CODES: 969, 970, or 971 for the 28 case group; 865 through 887 as applicable for the 2928 case group

INTEREST-RELATIONSHIP: 12 (party in interest)

I. RESOLVED: Cases where the trespass is resolved or no trespass occurred.

<u>Date</u>	<u>A/C</u>	<u>Remarks</u>
Enter date Form 9230-10 is received.	387	CASE ESTABLISHED. Note: Trespass cases are <u>not</u> public information.
Enter date negotiation began	167	ADM NEGOTIATION
Enter date notice sent	017	TRESPASS NOTICE SENT
Enter date monies requested	106	MONIES REQUESTED
Enter date monies received	392	MONIES RECEIVED. Enter \$ amount in action remarks. EX: \$1400;
Enter date of resolution	018	TRESPASS RESOLVED
Enter date of actual term.	244	TERMINATED (for ORCA only)
Enter date closed	970	CASE CLOSED

II. UNRESOLVED: Cases where trespasser cannot be found or statute of limitation has expired.

<u>Date</u>	<u>A/C</u>	<u>Remarks</u>
Enter date Form 9230-10 is received.	387	CASE ESTABLISHED. Note: Trespass cases are <u>not</u> public information.
Enter date determination is	402	TRESPASS UNRESOLVED
Enter date of actual term.	244	TERMINATED
Enter date closed	970	CASE CLOSED

EXPIRES 09/30/96

Attachment 1-116
 Changed 11/94

Illustration XIV-5
 Form 9230-24 – Unauthorized Use Investigation Report
 Page 1 of 1

Form 9230-24 (March 1985)	UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT	Unauthorized Use Number _____ DATE _____ Reported _____ Investigated _____ This Report _____
UNAUTHORIZED USE INVESTIGATION REPORT GENERAL		
1. UNAUTHORIZED USER		PHONE NO.
Name	Address (include zip code)	
Name	Address (include zip code)	
2. Give location and area of unauthorized use. (Legal description, name or number of road, or reference to known locations.)		
3. Describe unauthorized use		
4. DAMAGES CLAIMED		5. Sketch area of unauthorized use and show land status
ITEM	VALUES	<div style="border: 1px solid black; width: 100%; height: 100%; position: relative;"> <div style="position: absolute; top: 50%; left: 50%; transform: translate(-50%, -50%); border: 1px solid black; width: 80%; height: 80%;"></div> </div> <p style="text-align: center; margin-top: 10px;">Scale: 1" =</p>
	\$	
TOTAL	\$	
6. Violation. (Cite regulation, law, permit, or lease, etc.)		

(See reverse for additional reporting items)

Illustration XIV-6
Form 9230-1 – Trespass Notice
Page 1 of 2

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

TRESPASS NOTICE

Number
State
District
Date

YOU ARE HEREBY NOTIFIED That the Bureau of Land Management has made an investigation and evidence tends to show that you are in trespass. We allege that you are violating may have violated have violated the law(s) specified below and the regulation(s) approved by the Secretary of the Interior pursuant to the authority vested in him by said law. Therefore, it is our opinion that you:

Have committed the following act(s):

Are in violation of the following law(s):

And are in violation of the following regulation(s):

On the following-described land (describe the area by legal subdivision if surveyed, or if unsurveyed, by concise reference to such natural landmarks as will clearly identify the area):

Form 9230-1 (July 1988)

Illustration XIV-6
Form 9230-1 – Trespass Notice
Page 2 of 2

<p>1. <input type="checkbox"/> Violations, if continuing, <i>must</i> stop immediately.</p> <p>2. <input type="checkbox"/> You are allowed _____ days from receipt of this notice to cease the alleged trespass operation.</p> <p>3. <input type="checkbox"/> If you have evidence or information which tends to show you are not a trespasser as we have alleged, you are allowed _____ days from receipt of this notice to present such evidence or information at the Bureau of Land Management office shown on the front of this form.</p> <p>You are allowed _____ days from receipt of this notice to appear at the Bureau of Land Management office shown</p>	<p>on the front of this form to effect a settlement for trespass damages.</p> <p>Failure to comply with this notice will result in further action to protect the interests of the United States. You are further advised that the authorized officer may refuse to issue a permit, lease, or license to a trespasser who has failed to make satisfactory arrangements to satisfy his liability to the United States, as provided in 43 CFR 4150.3e and 4170.1-1. The officer may also refuse to sell timber or materials as provided in 43 CFR 9239.0-9.</p>
<p>_____ (Signature)</p>	<p>_____ (Title)</p>

CERTIFICATE OF SERVICE

I,
 CERTIFY That on the _____ day of _____, 19____, I served written notice
 on
 of
 the party's address of record, by a true copy of the within notice by personal service certified mail. If by
 certified mail, the envelope containing said notice bears registry stamp number _____ and return
 receipt marked "for addressee only" has been requested.

(Signature of Server)

(Title)

*U. S. GPO: 1988-201-964/84766

Illustration XIV-7
Letter Version of Trespass Notice
Page 1 of 3

9232(Org Code)
[Serial No.]

Mr. Trace Pasor : TRESPASS NOTICE
Lotta Truck Lane : [AND CEASE AND DESIST NOTICE]
Littletown, OR _____ : [Serial No.]

Dear Mr. Pasor:

You are hereby notified that the Bureau of land Management has made an investigation and evidence tends to show that you are in trespass. We allege that you [are violating] [have violated] the law(s) specified below and the regulations(s) approved by the Secretary of the Interior pursuant to the authority vested in him by said law. Therefore, it is our opinion that you:

Have committed the following acts:

Unauthorized use: Commercial hauling of timber over U.S. roads without a permit.

Damage to Public Lands:

- o oil contamination
- o logging debris left on road surfaces and drainage compromised
- o damage to the surface of roads (BLM road Nos. _____)
- o fence enclosure of public lands

Are in violation of the following law(s):

Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733 and 1740), and the Act of August 28, 1937 (43 U.S.C. 1181a and 1181b), providing for the conservation and management of the Oregon and California lands and the Coos Bay Wagon Road lands and authorize the Secretary of the Interior to issue regulations providing for the use, occupancy, and development of the public lands through permits and rights-of-ways.

Illustration XIV-7
 Letter Version of Trespass Notice
 Page 2 of 3

And are in violation of the following regulation(s):

43 CFR §2812.1-3: “Any use, occupancy, or development of the Revested Oregon and California lands and the Coos Bay Wagon Road Grant Lands (O&C) lands (as is defined in 43 CFR §2812.0-5(e)), for tramroads without an authorization pursuant to this subpart, or which is beyond the scope and specific limitations of such an authorization, or that cause unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in § 2808.10 of this chapter. Anyone determined by the authorized officer to be in violation of this section shall be notified of such trespass in writing and shall be liable to the United States for all costs and payments determined in the same manner as set forth in subpart 2808 of this chapter.

43 CFR §2808.10(a): Trespass is using, occupying or developing the public lands or their resources without a required authorization or in a way that is beyond the scope and terms and conditions of your authorization. Trespass is a prohibited act.

On the following described land [describe the area by legal subdivision if surveyed, or if unsurveyed, by concise reference to such natural landmarks as will clearly identify the area.

Road No. _____,
 located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
 Section __, T. __ S., R. ____,
 Willamette Meridian, _____ County, Oregon

-
1. [] Violations, if continuing, *must* stop immediately.
 2. [] You are allowed 30 days from the receipt of this notice to cease the alleged trespass operation.
 3. [] If you have evidence or information which tends to show you are not a trespasser as we have alleged, you are allowed 30 days from receipt of this notice to present such evidence or information at the Bureau of Land Management office shown on the front of this form.
- You are allowed ___ days from receipt of this notice to appear at the Bureau of Land Management office shown on front of this form to effect a settlement for trespass damages.

Illustration XIV-7
Letter Version of Trespass Notice
Page 3 of 3

Failure to comply with this notice will result in further action to protect the interests of the United States. You are further advised that the authorized officer may refuse to issue a permit, lease, or license to a trespasser who has failed to make satisfactory arrangements to satisfy his liability to the United States, as provided in 43 CFR §4150.3e and §4170.1-1. The officer may also refuse to sell timber or materials as provided in 43 CFR §9239.0-9.

Sincerely,

Field Manager
_____ Resource Area

CERTIFICATE OF SERVICE

I, _____ [BLM Ranger, etc.], certify That on the ____ day of _____, I served written notice on _____, of [address]_____

The party's address of record, by a true copy of this within notice by: [] personal service, or [] certified mail. (If by certified mail the envelope containing said notice bears registry stamp number _____ and return receipt marked "for addressee only" has been requested.)

Signature of Server.

Title: _____

Illustration XIV-8
 Formal Trespass Decision
 Page 1 of 2



United States Department of the Interior
 BUREAU OF LAND MANAGEMENT
 Salem District Office
 1717 Fabry Rd SE
 Salem, Oregon 97306
www.or.blm.gov/salem

IN REPLY REFER TO:
 2812 (082)
 OR123456

CERTIFIED MAIL 420 2000 0513 2001 0428
 RETURN RECEIPT REQUESTED

April 20, 2000

Mr. Trace Pasor
 840 S. Main Street
 Somewhere, OR 97362

DECISION
O&C Road Use Trespass
 Serial No. OR123456

Dear _____:

You are hereby notified that the United States of America, through the Bureau of Land Management, has instituted trespass proceedings against you for the unauthorized use of public land pursuant to Title 43 CFR 2812.1-3 under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)

We have made an investigation that discloses that you have utilized BLM Road No*s. * for log hauling purposes without having first obtained a permit pursuant to 43 CFR Subpart 2812. The subject roads are controlled by the United States pursuant to * and BLM land ownership. The regulations at 43 CFR Subpart 2812 require that a permit be obtained prior to using a road controlled by the United States for log hauling purposes. Without first having obtained an O&C road permit from the Bureau of Land Management, you have not had and do not now have any legal authority to utilize these roads for log hauling purposes.

Our investigation indicates that you have hauled * MBF of timber over the subject road*s. Since such timber hauling requires a permit issued pursuant to the regulations of 43 CFR Subpart 2812 and you have not obtained such a permit, this commercial use of BLM Road No*s. * is a violation of the regulations at 43 CFR 2812.1-3.

The following is an explanation of why these fees are being assessed:

The enclosed bill is based upon the volume of timber * that has been hauled over the subject road without authorization to date. If you have credible proof of a different volume hauled, we are

Illustration XIV-8
 Formal Trespass Decision
 Page 2 of 2

certainly willing to examine that proof and adjust the amount of fees and penalty due if judged appropriate.

Your unauthorized use of the subject road*s creates a liability pursuant to Title 43 CFR 2812.1-3, 43 CFR 2808.10 and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) for the payment of road use and maintenance fees that have accrued since the inception of the trespass and the reimbursement of administrative costs incurred by BLM in investigating and resolving the trespass.

Failure to settle this trespass or appeal this Decision within thirty (30) days of your receipt of this letter, will result in the addition of a penalty of \$* (equivalent to two times the charges for the road use and maintenance fees that have accrued since the inception of the trespass) in accordance with the regulations at 43 CFR 2801.3(c)(2). This decision represents the final decision of the Bureau of Land Management with respect to the issues addressed herein.

How to Appeal This Decision ¹

If you believe this decision is in error, you may file an appeal with the Interior Board of Land Appeals (Board), Office of the Secretary, within 30 days of your receipt of this decision. In deciding whether to file an appeal, you have the burden of showing this decision is in error.

If you decide to file an appeal, you must carefully follow the procedure described on the enclosed form 1842-1. If you don't file your appeal at the locations specified on the form within 30 days, the Board may dismiss your appeal as untimely without considering its merits. Be sure to send a copy of your notice of appeal to each party named in this decision and to all of the addresses on the enclosed form 1842-1.

How to Obtain a Stay of This Decision While Your Appeal is Pending. ²

You may also ask the Board to stay or suspend the effect of this decision while your appeal is pending. If you desire a stay, you must enclose your request for a stay with your notice of appeal. You have the burden of showing a stay is justified.

The Board will grant a stay only if you provide sufficient justification based on the following standards:

- The relative harm to the parties if the Board grants or denies the stay,
- The likelihood of the success of your appeal on its merits,
- The likelihood of immediate and irreparable harm if the Board doesn't grant the stay, and
- Whether the public interest favors granting a stay.

If You Have Any Questions

If you have any questions about this decision, please contact Salem District Realty Specialist _____ at (503) ____-____. You may also write to us at our letterhead address.

Sincerely,

_____, Field Manager
 _____ Resource Area

Illustration XIV-9
Reimbursable Project Log (Form 1323-1)
Page 2 of 2

INSTRUCTIONS

Submit completed logs to the project Authorized Officer (AO) at the end of each pay period.

The AO must review the entries and indicate approval by signing the log in the space provided.

PROJECT SEGMENT OR COMPONENT – Give name or number of segment, spread, or project component. If work pertains to entire project enter "entire project."

DESCRIPTION OF WORK DONE – Use as many lines as necessary to describe work accomplished. Describe mode, destination, and purpose of travel. Include names or persons contacted and topic of discussions. *(Attach additional sheet, if necessary.)*

Use separate sheet for each project.

Record only time spent on reimbursable project (5100 subactivity).

Fill out daily, or more frequently if type of work changes or work is done on more than one project.

• U.S. GPO: 1989-673-016/95018

Illustration XIV-10
 Sample Informal Settlement Letter
 Page 1 of 2

2810 (ORG CODE)
 OR _____

Mr. Trace Pasor

Dear Mr. Pasor:

In connection with trespass case No. _____, this letter is to confirm in writing the offer of informal trespass settlement as shown below.

We have completed our review of your hauling of timber over Bureau of Land Management (BLM) controlled road number _____. We accept your statement of volume (supported by your certified scale reports) in the amount of 1629.27 MBF.

To close out this case, we are hereby requesting payment of road use and surface replacement fees for road 33-1-8.02 and reimbursement of administrative costs incurred by BLM in investigation and resolving the situation. A statement of the monies due is listed below. The road use and surface replacement fees are calculated as follows:

Road 33-1-8.02		
Road Use:	1629.27 MBF x \$0.22/MBF	\$ 716.88
Surface replacement:	1629.27 MBF x \$0.13/MBF/Mi.	\$ 423.61
Administrative costs		<u>\$2,408.55</u>
Total Due for Full Settlement		<u>\$3,549.04</u>

Illustration XIV-10
Sample Informal Settlement Letter
Page 2 of 2

We would appreciate payment in full by _____. Checks should be made payable to the Department of Interior – BLM. If you have any further questions about this matter, please contact _____ at (541)____-____. Your cooperation in resolving this issue is appreciated.

Sincerely,

Field Manager
_____ Resource Area

- 1 Attachment:
1 – Itemized Administration Costs (2 pp)
2 - Bill

cc:
Accounting Tech (OR-____)
Lead Engineer (OR-____)

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XV. TRANSPORTATION MANAGEMENT

A. Purpose

The purpose of this chapter is to provide an understanding of western Oregon transportation management and the road maintenance provisions and responsibilities in reciprocal right-of-way agreements and unilateral permits. How BLM manages the current road network has a direct impact on permittees and other authorized users of BLM roads.

B. Western Oregon Transportation Management Plan

In response to the requirements of the Northwest Forest Plan, the BLM developed a Western Oregon Transportation Management Plan (TMP) which was approved in June of 1996 and updated in 2002. The TMP provides goals, objectives, and guidelines for managing the BLM's road system in western Oregon. The purpose of TMP is to ensure that BLM's transportation system will be developed and maintained to serve the needs of users in an environmentally sound manner and consistent with BLM's resource management documents and current governing regulations. The goals and objectives of the TMP include the following:

1. Access Goals and Objectives

The goals and objectives of the reciprocal right-of-way agreement program are to:

- Provide access to and through BLM managed lands by utilizing reciprocal right-of-way agreements for legal access;
- Allow use of the BLM transportation system and managed lands by adjacent private landowners by using reciprocal right-of-way agreements, unilateral permits, FLPMA grants, or BLM's casual use policy; and
- Coordinate with potentially affected permittees on any decisions involving changes in the BLM's Transportation Management Objectives (TMO's).

2. Resource Management Goals and Objectives

The resource management goals and objectives are to:

- Maintain or improve water quality by using watershed analysis and Transportation Management Objectives (TMO's) to prioritize roads for restoration, limited access, decommissioning, or obliteration;
- Provide for no net gain in road miles in key watersheds; and
- Consult with permittees: 1) to improve or stabilize permittee roads, and 2) prior to closing a BLM road that is included in a reciprocal right-of-way agreement.

3. Fire Goals and Objectives

The fire goals and objectives are to:

- Maintain suitable access for fire management by considering fire management needs on BLM lands as well as adjacent public and private lands in road access decisions; and
- Coordinate with the Oregon Department of Forestry, fire districts, and adjacent landowners on changes in road access.

4. Public Involvement Goals and Objectives

The public involvement goals and objectives include consideration of the transportation needs of cooperators that may depend on the BLM transportation system by developing partnerships or cooperative agreements to increase monitoring and maintenance efficiency in operations. While the TMP should be responsive to public concerns, it must also be consistent with policies, budgets, access agreements, BLM policy and manual directives, the BLM districts Resource Management Plans (RMP's), and governing regulatory documents.

5. Economic Goals and Objectives

The economic goals and objectives are to:

- Provide and maintain a cost-effective transportation system by sharing improvement and maintenance costs of district transportation systems with primary users, whenever possible, through cost-share agreements; and
- Place a high priority on monitoring and verification of road use relating to the collection of road use and maintenance fees.

6. Transportation Management Objectives – TMOs

Each western Oregon BLM district's Record of Decision and Resource Management Plan required that Transportation Management Objectives (TMO) be developed for all existing BLM-controlled roads, including BLM constructed roads on private lands. TMOs recommend one or several management actions for each Bureau-controlled road and identify:

- current and future use and constraints,
- maintenance level,
- improvement and maintenance needs,
- roads that may be closed, and
- continuity with overall transportation network.

TMOs are developed by BLM through an interdisciplinary team. The team identifies the needs and objective of each segment, including private land access, fire suppression, road stability, erosion potential, recreational needs, and specific resource concerns. Although TMOs are not required for permittee-constructed roads on BLM land, the information may be beneficial in the evaluation of right-of-way plat requests from permittees.

a. Road Maintenance Plans and Responsibilities

Requirements for maintenance of BLM roads are prescribed in Section 502 of FLPMA and the O&C regulations at 43 CFR 2812. The BLM 9113 Engineering Manual also provides policy and guidance on use and maintenance of BLM roads and roads constructed on public lands. To fulfill the requirements of law and regulation, standard road maintenance provisions have been developed and used in the O&C Logging Road Right-of-Way program. These provisions are generally applicable to both parties and are contained in Exhibit B of a semi-detailed reciprocal right-of-way agreement.

Each western Oregon BLM district is also required to prepare an annual Road Maintenance Operating Plan (RMOP) which contains a list of roads to be maintained by the BLM's maintenance organization in the current year. The RMOP considers resource operational needs for commercial haul and management access for silvicultural activities and fuel treatment/fire suppression as well as commitments under reciprocal right-of-way agreements. The RMOP also includes site-specific maintenance restrictions to mitigate the spread of forest diseases or for threatened and endangered species.

Many reciprocal right-of-way agreements include a provision which requires an annual meeting to discuss and develop a road maintenance program for the upcoming year. This arrangement provides both the BLM and the permittee an opportunity to determine what maintenance work is needed, who will do it, and the method by which the party doing the maintenance can collect its pro rata share of the costs involved from other users.

1) Party Who Owns the Road has First Opportunity to Maintain

Under terms of a reciprocal right-of-way agreement, the party that constructs a road over the other party's land "owns" the road for the purposes of collecting fees, and along with that right is the first opportunity to maintain the road in order to protect the investment.

When a party requests terms and conditions for the use of a road owned by the other party, the road owner is given the first opportunity to maintain the road. For permittee-owned roads, this election is generally made by way of a license agreement wherein the permittee indicates whether BLM's licensee will pay a maintenance fee or be required to maintain the permittee road(s). For U.S.-owned or controlled roads, this election is generally made when the permittee requests terms and conditions of use in advance of hauling operations. See Chapter VIII. for detailed guidance regarding license agreements.

If a party fails to or elects not to maintain a road which they own after the proper request, the road user is responsible for maintenance of the road or roads. If the party that owns the road then makes use of the road, that party must pay their pro rata share of the maintenance expense. The party maintaining the road is also entitled to receive pro rata maintenance payments from other parties who are using that road or roads for commercial purposes.

2) Reserved

b. Road Maintenance and Use Standards

The BLM is responsible for maintaining roads under its control to standards set forth in the BLM 9100 Series Manuals and best management practices in BLM Resource Management Plans.

Road maintenance activities generally include, but are not limited to, cleaning out slides and ditches, brushing, replacing culverts and minor bridges, blading and restoration of surfacing materials.

It is the intent and expectation of both parties to reciprocal right-of-way agreements that the roads are left in “at least as good condition as existed prior to commencement of use.”

The regulations at 43 CFR §2812.6-2(b)(2) require permittees to leave U.S. roads in “at least as good condition as existed prior to the commencement of his use.” The license agreement format found in Form OR 2812-16—Illustration V-2) (Paragraph 13, Page 43) states: “. . . that when Licensee is performing the maintenance, it shall leave the road in as good of a condition as when it first began to maintain it.”

When one party’s road is maintained by the other party, the following items are reasonable expectations the road owner expects of the using party:

- Existing shoulders are maintained during blading;
- Debris and materials caused by its logging operations are removed from slopes, ditches, water courses, and the running surface of the road;
- Existing berms are maintained to the same condition as adjacent sections and intersections;
- Drainage structures, culverts and catch basins are kept clean;
- Established grasses or other plants are not removed in excess of what is necessary to provide drainage away from traveled surfaces;
- Back slopes are not undercut during blading; and
- Snowplowing is as approved by the road owner.

1) Catastrophic Maintenance and Capital Improvements

Occasionally, a party may be requested to maintain a road to a condition which far exceeds that at the time of use. This stems from maintenance being deferred by the road owner with the result that the road's condition has deteriorated to the point that additional expense is necessary to bring the road up to a usable standard. It is to be expected that any road which has not been used over a period of time might require rehabilitation which may be considered an accumulation of maintenance items normally performed as the need occurred or prior to the beginning of use by either party. The performance of these maintenance items does not remove them from the maintenance category and establish them as capital expenditure.

While the using party is responsible for leaving the road in at least as good a condition as what existed prior to their use. However, there is a difference between neglect caused by the using party (damage to culverts, logging debris left in road, etc.) and road maintenance.

Some limited deferred maintenance may be appropriate, but, catastrophic maintenance work should be considered as a capital expenditure and shared by the parties. Distinctions are drawn between the terms "road maintenance," "road improvement," "capital expenditure," and "catastrophic maintenance" in definitions located in the glossary.

2) Traffic Regulations Set by Party Who Owns the Road

The terms of semi-detailed reciprocal right-of-way agreements provide that the party who owns a road (see glossary) may issue reasonable traffic regulations for the use of the road. Such regulations are uniformly applicable to all users of the road, including the party who owns the road. Adequate notification in advance of hauling is important to allow for the identification of road maintenance responsibility and reasonable traffic regulations. Traffic regulations (road rules) must be applied consistently to all users of the road (including the road owner.)

Traffic regulations (road rules) govern the use of roads and may include but not be limited to the following:

- seasonal use restrictions based on road design,
- use restrictions based on fire, public health and safety. etc.,
- snow plowing standards and requirements during winter use,
- road damage assessments – during and post hauling,
- load limits on bridges – posted amounts and overloads,
- speed limits, and
- weight restrictions.

When the BLM requires a permittee to maintain BLM roads, a compliance inspection should be conducted at the conclusion of the permittee's hauling activities prior to resuming maintenance responsibility.

C. Party Who Performs Maintenance Entitled to Pro-Rata Maintenance Fees

Under reciprocal right-of-way agreements, the party who performs the road maintenance is entitled to recover pro rata maintenance expense from other users who use the road for the removal of forest products. Road maintenance expenses are shared by the road users in one of three ways: (1) user maintenance, (2) pro rata maintenance payments, or (3) maintenance fee payments based upon current BLM Oregon/Washington Road Maintenance Fee Schedule.

The regulations in 43 CFR §2812.6–2(b)(1) and (2) requires that a permittee must maintain BLM roads in an adequate and satisfactory manner and leave the road in as good a condition as prior to the commencement of use. If the U.S. performs the maintenance of a road owned or controlled by the U.S. and the permittee pays the U.S., that permittee shall be relieved of the maintenance requirements of 43 CFR §2812.6–2(b)(1) and (2). However, this does not relieve a permittee of the responsibility to repair damage above and beyond normal maintenance.

When the pro rata maintenance method is used, special maintenance accounts are set up for each road. The party performing the road maintenance must keep accurate records of maintenance work performed and the amount of commercial use which has occurred over a particular road or segment. Three to five years of records are needed to provide reasonable averages for a pro rata maintenance fee determination. Users then pay their pro rata share of the maintenance cost based on their proportionate share of commercial use, i.e. timber hauling, which has occurred over the road or segment during a calendar year. An "empty-truck" fee may also be included. If the party that maintains the road is the sole user of the road, then that party alone must bear the full cost of maintenance for that year. The obligation to pay a pro rata maintenance fee attaches only when and if the road is used for the transportation of forest products. A pro rata account should not be established on a road if the party who owns or controls the road was not given the "first opportunity to perform maintenance."

Where the use of pro rata maintenance procedures may not be desirable or feasible, the BLM Oregon/Washington Road Maintenance Fee Schedule can be considered as pro rata. In the past, the BLM and permittees in western Oregon agreed to charge each other for road maintenance based on the schedule unless the parties wished to have pro rata maintenance accounts. An important distinction between pro rata maintenance and the use of statewide maintenance fees is that there is no annual road expense accounting records when using the statewide fees.

Reporting and payment of road use and maintenance fees is an integral part of the administration of reciprocal right-of-way agreements. Refer to Chapter VIII. for information on road maintenance and use fee billing and collection procedures.

D. Maintenance Allocation for Recreation

Prior to 1982, the BLM implemented a road maintenance allocation for non-logging generated road maintenance expenses, recognizing that BLM roads may be subject to uses other than those associated with timber hauling. Maintenance allocation is not a road-by-road calculation. The allocation results in a reduction in the average state-wide maintenance fees on BLM roads which are legally open to recreational traffic. This recreation allocation is subject to periodic recalculation. Recreation allocation is applied to the same road segments as is the replacement cost allocation for non-logging traffic.

The Oregon/Washington Road Maintenance Fee Schedule contains different rates for “allocated” roads in order to provide for this reduction. This is tied to the formal designation in FAMS regarding whether a road has public access and is considered allocated. In determining allocation status, if a road segment that is controlled by the U.S. is “blocked” by a lower segment without public access, all segments beyond the non-allocated segment are considered to be non-allocated as well.

E. Use of Railroad Car Bridges

The BLM has established the following policy regarding the use of railroad car bridges for the transportation of timber.

1. BLM Owned or Controlled Railroad Car Bridges on BLM or Private Lands

BLM policy for Bureau-owned or controlled railroad car bridges is included in the 9112 Manual on Bridges and Major Culverts, Release 9-307, dated November 6, 1990, Paragraph .06H, and states:

Bridge superstructures are not to be constructed from railroad cars. The difficulty for railroad cars to meet the standard design requirements for highway bridges as published by the American Association of State Highway Officials (AASHTO) creates serious potential liabilities for the Bureau due to the risk of failure and collapse.

2. Privately Owned or Controlled Railroad Car Bridges on BLM Lands

BLM right-of-way regulations (43 CFR §2812.1-2(c)) require an applicant or holder of a right-of-way authorization to identify the type of construction and estimated capacity of any bridge proposed for installation on public lands. These regulations are applicable to all rights-of-way, including reciprocal right-of-way agreements in western Oregon. Bridge designs shall follow, as appropriate, BLM Manuals 9112 and 9113, the American Association of State Highway and Transportation Officials (AASHTO) standards, and other applicable standards for major roads and facilities.

Failure to provide this information (estimated capacity) will constitute grounds for rejection of the right-of-way request. Railroad car bridges cannot be load rated, therefore, it is highly unlikely that a permittee could provide the “estimated capacity” of any railroad car bridge they plan on using. Without this information, the AO should not approve the placement of any railroad car bridges on public lands.

Steps should be taken to remove any existing railroad car bridges on public lands or substantiate that they meet BLM policy for bridges.

3. Use by BLM and Its Licensees of Permittee Owned Railroad Car Bridges (on Permittee Land)

The use of railroad car bridges owned by permittees on permittee land by BLM and its licensees (timber sale purchasers) is set forth in BLM Oregon Instruction Memorandum No. OR-91-361, dated June 19, 1991. The Regional Solicitor was consulted and recommended railroad car bridges not be used by BLM licensees. If the use of these railroad car bridges absolutely cannot be avoided, in order to reduce liability, while allowing the use under timber sale contracts, the following language should be incorporated into timber sale contracts or other contracts where BLM is allowing use of these types of bridges:

The Bureau does not guarantee the load bearing capability of the railroad car bridge located at _____. This bridge should be examined by the user in light of his equipment needs before hauling.

F. Public Access

There is a difference in public access over U.S. roads on U.S. lands versus U.S. roads on private lands. These differences are discussed below.

1. Public and Recreational Use of U.S.-Controlled Roads on Permittee Land (Currently Not Authorized)

The following regulations address public recreation use under reciprocal right-of-way agreements:

§ 2812.6-2 Terms and conditions of permit.

(a) As to all permits: Every permittee shall agree:

(1) To comply with the applicable regulations in effect as of the time when the permit is issued and, as to the permittee's roads as to which the United States has received rights under §§ 2812.3-1 to 2812.3-5 with such additional regulations as may be issued from time to time relating to the use of roads for the purpose of access by properly licensed hunters and fishermen and by other recreationalists to lands of the United States in the O. and C. area which are suitable for such recreational purposes, where such use will not unreasonably interfere with the use of the road by the permittee for the transportation of forest products or unduly enhance the risk of fire, collision, or other hazards on such road and on lands in the vicinity thereof. [Underline added.]

With the wording above stating, “with such additional regulations as may be issued,” the U.S. cannot authorize public recreational use under reciprocal Agreements, until such time as the additional regulations are issued. Thus far, no regulations for recreational or public use under the 2812 regulations have been promulgated. Therefore, any third party permits issued by the U.S. over roads the U.S. builds on permittee lands under a reciprocal Agreement, cannot include public access or recreational use and the public has no rights across the permittee lands until regulations are promulgated.

2. Public Use of U.S. Roads on U.S. Lands (or Over Exclusive Easements)

Public use of U.S. roads on public lands is established by BLM policy in the RMP's. Most BLM roads are not public roads and are best described as "private government roads." BLM roads generally do not fit the criteria for public roads as established by the U.S. Secretary of Transportation.

However, BLM may allow public use of the U.S. roads on U.S. lands (and roads controlled by the U.S. under exclusive easements) at the discretion of the BLM AO.

G. Road and Trail Closures and Travel Use Restrictions

There are times that the BLM AO determines that, for various reasons (safety, resource protection, etc.), a road closure (or travel restriction) may be warranted. The objectives of road closures are to reduce sedimentation, restore hydrological processes, reduce total road maintenance costs, and reduce impacts to fish or wildlife habitat, biological resources, or special areas. The following identifies the necessary steps to complete the work.

1. Determine BLM's Rights of Control and Public Access Rights

Once a list of roads has been identified for potential closure or travel restriction, the BLM AO must assess whether the U.S. has sufficient rights of control to accomplish the proposed objectives.

Roads controlled by the U.S. through various means: 1) the roads are built by the U.S. on U.S. lands, 2) the U.S. acquired an exclusive easement giving right of control to the BLM, 3) the U.S. acquired a non-exclusive easement where the rights of control stay with the private landowner (the public has no rights), and 4) the U.S. built the road on a permittee's lands under terms of a reciprocal Agreement. In this case, the BLM owns and controls the road, but the rights of the U.S. are limited to the management and removal of timber and forest products by the U.S., its licensees and permittees. See Illustration VIII-1 (Road Ownership and Control Matrix).

Because of the varying level of control and public access, the AO needs to be cognizant of the rights of others and limitations of BLM's rights in order that a road is not inadvertently closed that would affect another's rights.

There are several sources of information available to determine if BLM has sufficient rights to unilaterally close or decommission a road:

- BLM road record files,
- FAMS data base,
- GIS Map Layers (GTRN),
- reciprocal right-of-way agreement files (right-of-way construction supplements), and
- easement files.

The BLM engineers and realty staff should be able to provide assistance in determining the U.S. ownership and control as well as identification of third party

rights. Even if a road is a U.S. road on U.S. land, the BLM cannot arbitrarily close or limit use if permittees have rights over that road without going through the notification (and/or concurrence) process identified in 3. below. It should never be assumed that just because a road is on U.S. land that it is owned by the U.S. If a road was built by an O&C permittee on U.S. land, it is “owned” by the permittee. The U.S. authorizes third parties to use the road subject to the constructing permittee’s right to establish road rules. (See “road ownership” in the glossary.)

2. Determine Potential Category of Closure or Restriction

An interdisciplinary team process is used to recommend the specific category of road closure or travel restriction for each road (based on the categories shown below). If there are private rights over any of the identified roads, the interdisciplinary team recommendations should be preliminary (without a lot of staff field work expended) until the proper permissions are secured from third parties and the BLM AO is assured that the road closure will not impact third party existing rights. The four categories of road closures are:

a. Temporary, Seasonal, or Limited Access

Temporary/Seasonal/Limited Access generally involves closing the road by a gate or barrier to maintain the road in order to minimize resource damage. BLM has jurisdiction to gate roads controlled by the U.S. in order to limit access. However, both the BLM and permittees should notify the other party prior to installing gates or barriers on roads within a reciprocal right-of-way agreement or unilateral permit. BLM must provide a key or keep the road open for permittee commercial activities if a permittee has rights over a particular road. Permittees cannot gate their road on BLM land without BLM’s approval. Conversely, if BLM wants to gate a road it controls on permittee land, it should seek permission from the permittee prior to gate placement.

b. Long-Term Decommission (> 5 years)

For Decommissioning (long-term > 5 years), prior to closure, the road will be left in an “erosion-resistant” condition to minimize drainage problems and sedimentation delivery into streams. Generally this closure is accomplished with an earthen berm, or equivalent item. Roads that access permittee lands within the right-of-way agreement area shall not be decommissioned without concurrence by permittees.

c. Full Decommission (Permanent)

In a Full Decommission (permanent), roads no longer needed for resource management activities may be scarified and replanted, stream culverts removed,

surface water bars constructed, and closed with an earthen barrier or equivalent. No future maintenance is required. As with the other level of decommissioning, roads that access permittee lands within the reciprocal right-of-way agreement area shall not be decommissioned without concurrence by permittees. See Chapter XII., Sections I.-K., for information and requirements for processing formal release of rights in roads by either the U.S. or the permittee.

d. Obliteration (Full Site Restoration--Permanent)

Obliteration is a full site restoration and is permanent. It is done in unstable areas where no future management activities are needed. All drainage structures are removed. The road prism is re-contoured (top of cut, to toe of fill), and re-vegetated with trees or other native vegetation. See Chapter XII., Sections I.-K., for information and requirements for processing formal release of rights in roads by either the U.S. or the permittee.

3. Written Notification to Third Parties

There are written notifications that are required before final decisions are made on road closures.

a. Association of O&C Counties

Illustration XV-1 is Information Bulletin (IB) No. OR 2007-026 that implements an MOU with O&C Counties requiring a written e-mail notification to the Executive Director of the Association of O&C Counties of any:

- road closures,
- trail closures,
- travel use restrictions, or
- decommissioning.

The O&C Counties Executive Director will contact the appropriate county government official and will, within 15 days, get back with the BLM if they want to hold additional discussions on the proposed land management action.

The IB contains the required notification form to be sent by e-mail.

b. O&C Permittees

If any of the following road status situations exist, the permittees must be notified as early as possible in the planning process if the BLM is considering travel restrictions or closures:

- The permittee has rights under a reciprocal Permit or unilateral permit to use the road for management and removal of forest products. If the lands themselves (and not the specific road), or only the road, is included in Schedule 1, the permittee has rights;
- The permittee constructed the road on U.S. land;
- The U.S. built the road on permittee land; or
- The U.S. acquired an exclusive easement over private land (and the U.S. controls the road), and rights over the easement road have been granted to a permittee in a unilateral permit or in Schedule 1 of a reciprocal Permit.

The BLM district offices will coordinate with potentially affected right-of-way permittees on decisions that change road access status. Illustration XV-2 is to be used as a first notification to permittees for proposed road closures.

If the permittees are willing to consider the closure, see Chapter XII. for guidance on processing release documents. If the permittees do not concur, the proposal must be dropped. Or the AO may seek advice from the Oregon State Office regarding any options such as condemnation.

c. Public Notifications

Additional public notification requirements, including a *Federal Register* publication, may be applicable. Consult the Oregon/Washington State Office and/or BLM law enforcement personnel for further guidance on public notification requirements.

H. Road Numbering and Segmentation

BLM road numbering system consists of four elements for each numbered road segment as described below. Note that a leading “zero” is added to some elements, as that is the data entry convention when entering roads into FAMS:

- Element 1 - Township No. The first element of a road number represents the township within which the road commences. For example, the first two digits of a road number that starts in Township 32 South (or T. 32 S.)

- would be “32S”, followed by a dash. If the Township lays north of the Base Line the letter suffix "N" would be added to distinguish it from a “South” township. For example, the first element of a road that commences in Township 3 North (or T. 3 N.) would read as: “03N”, followed by a dash.
- Element 2 - Range No. The second element of a road number represents the “Range” number within which a road commences. For example, a road that commences in Range 3 West (R. 3 W.) would be represented by “03W” followed by a dash. If the Range lays east of the Meridian the letter suffix "E" is used instead of “W.” For example, a road that starts in Range 4 West (or R. 4 W.) would be represented by “04W”, followed by a dash.
- Element 3 - Section No. The third element of a road number represents the “Section” within which a road commences. The section designations are generally four digits with the two-digit section number followed by a decimal and two digits. The first road in the section would have “.00”, the second road built in a section would have “.01”, the third road built in a section would have “.02”, etc. For example, the first road built in Section 23 would be designated as “23.00,” the second road would be designated as “23.01”; the third road would be designated as “23.02”, etc. It is important to include the leading zero after the decimal because when the road is entered into FAMS, that digit will be required.
- Element No. 4 – Segment No. The fourth element of a road number is an alpha letter used to break a particular road down into segments. Segment designations are done for several reasons: 1) change in jurisdiction (control), 2) change in land ownership, 3) change in surfacing type, 4) road use fee calculations, etc. These segment numbers are assigned alphabetically starting at the point of origin of a road. For example, the first segment would be “A”, the second would be “B”, the third would be “C,” etc.
- Sub-segmenting. A particular road segment could further be “sub-segmented” for various reasons: 1) when another road is constructed from a point in the segment, 2) for fee calculations purposes (a permittee won’t be using the entire segment, or 3) when there is a change in surfacing type. The first level of sub-segmenting would merely add a numeric suffix to the alpha Segment letter. For example, Segment A would be sub-segmented into three sub-segments as: A1, A2, A3, etc.
- Second Level Sub-segment. There might be a situation where a sub segment such as A1 must be further sub-segmented. In such a case, this would be accomplished by adding a decimal and a number after the

numeric sub-segment. For example, Segment A1 would be further divided as A1.1, A1.2, A1.3, etc. Usually sub-segmenting does not extend beyond this second level.

The minute sub-segmentation of roads should be held to a minimum. Sub-segmenting or the creating of an additional segment, should be done only for the following reasons:

- When ownership of the road changes. New segments are not created each time the road crosses a section line or a property line, unless the jurisdiction (control) of the road changes;
- At existing major road junctions. "Major" in this context refers to points where timber hauling may enter upon or leave a base road; and
- When the last segment of a road is evaluated and a road use fee calculation has been done and a deficit share established, and that road is later extended. The extension in that case may have a new segment designation. This is only true if a share calculation has been made for the existing piece of road.
- When a permittee needs to have a deficit share established for only a portion of the segment. In this case, some districts will create a sub-segment only for fee calculation purposes and amortization records, but will maintain the original segment designations in FAMS.

The Lead Engineer in a resource area should establish some system for assigning official record and segment road numbers to avoid assigning more than one number to the same road segment. A register of assigned road numbers minimizes that difficulty.

1. Summary and Samples of Road Numbering

Using the above as guidance, the following is provided as samples of road numbers.

The first Road in T. 34 S., R. 5 W., Section 10, would be designated as follows:

34S-05W-10.00.

The first segment of that road would be:

34S-05W-10.00, Segment A

The second segment of that road would be:

34S-05W-10.00, Segment B

The second road in T. 34 S., R. 5 W., Section 10, would be designated as follows:

34S-05W-10.01

The third road in T. 34 S., R. 5 W., Section 10 would be designated as follows;

34S-05W-10.02

2. Reserved

I. Cooperative Road Maintenance Agreements

Due to intermingled land ownership and road segments, problems are sometimes encountered in getting entire road systems maintained. Some of the problems encountered when each party maintains its own road segments include: 1) two parties are maintaining roads at the same time with dual sets of equipment on the ground; 2) roads will have some segments maintained while other segments in between are left in poor condition; and 3) similar roads or segments are being maintained to different levels or standards, depending on the interpretation of need by the controlling party.

The development of cooperative agreements for specific roads or areas may accomplish a more logical maintenance program. It is suggested that the following items be considered when drafting a cooperative road maintenance agreement:

- Tying the document to the original reciprocal right-of-way agreement, and specifying which, if any, roads in the original reciprocal right-of-way agreement are not included in the maintenance agreement;
- Specifying standards or levels of maintenance, including adequate widths, prescribed surfacing, and protection from weather; and
- Listing the roads included or amount of work to be done, so as to assure that each party is contributing its fair share.

BLM can accomplish maintenance on the roads it agrees to maintain either by using BLM MO crews or by contracting out the maintenance as a procurement item. A third alternative is a “cooperative maintenance agreement” between a permittee and the BLM where both parties either: 1) contribute funds for the work to be accomplished by a third party, or 2) agree to maintain an equal

amount of work on each other's roads over a specified period of time. An example of a cooperative preventative road maintenance agreement is included in Illustration XV-3.

J. Mineral Hauling

In the past, the BLM had entered into a mutually agreed-upon arrangement with some road cooperators (reciprocal right-of-way agreement permittees, federal, state, and local government agencies) where road maintenance and/or surface replacement fees for mineral haul (e.g. crushed aggregate, stone, etc.) on each other's roads related to timber harvest and other forest management activities were waived. This practice was acceptable so long as the proportion of mineral haul and associated timber harvest by both parties were relatively equal. In some situations, this may no longer be the case, and axle damage and wear to both private and BLM-controlled roads may occur from mineral hauling without the recovery of expenses for maintenance and repair.

The BLM is responsible for maintaining roads under its control at standards set forth in BLM 9100 Series Manuals and the Best Management Practices as listed in each District's approved Resource Management Plan. The right-of-way provisions in Section 502 of FLPMA authorizes the Secretary of the Interior to provide for the maintenance of roads within and near the public lands and perform that work, in part, by cooperative financing with other public agencies and with private agencies and persons in proportion to their use. Provisions in reciprocal right-of-way agreements provide that the party who performs the maintenance on a road shall be entitled to recover pro rata maintenance expenses from others who use the road for the removal of forest products. The O&C regulations include the following related to road maintenance and fee collections:

43 CFR §2812.6-2 Terms and conditions of permit.

(b) As to permits for the use of an existing road: In addition, every permittee to whom a permit is issued for the use of an existing road is required to agree:

(1) To maintain such a road in an adequate and satisfactory condition or to arrange therefore with the other users of the road. In the absence of satisfactory performance, the Authorized Officer may have such maintenance work performed as may be necessary in his judgment, determine the proportionate share allocable to each user, and collect the cost thereof from the parties or the sureties on the bonds furnished by said parties.

The “share allocable to each user” as identified in the (b)(1) above is based on conversion rates between log truck timber volume and rock truck cubic yard or tonnage established by the Oregon State Office, Branch of Engineering.

The hauling of mineral materials is an integral part of the maintenance and construction of roads used for the transportation of timber and other forest products in western Oregon. Authorization to haul mineral materials over BLM-controlled roads is provided through reciprocal right-of-way agreements and permits under the regulations in 43 CFR 2812. The regulations authorize the BLM to recover expenses for the maintenance of BLM roads during periods of use either through: 1) collecting pro rata maintenance fees, 2) operator maintenance/rock replacement in lieu of fees, or 3) a combination of 1 and 2.

1. Current Mineral Haul Policy

The following procedures will be implemented to ensure adequate maintenance on BLM roads during permittee mineral haul:

Beginning August 1, 2006, the permittees were notified by BLM districts to begin reporting mineral hauling activities on BLM-controlled roads. Starting the same period, BLM was required to report volume of mineral haul as well. Both parties are required to report mineral haul for two hauling periods, 1) from January 1st to June 30th and 2) for the period of July 1st through December 31st of each year, with the parties reporting no later than 30 days after the end of the reporting period.

It is anticipated that the current mineral haul policy will be superseded by an alternative road maintenance fee model (which will incorporate mineral haul use into the timber haul fees) to be implemented on or before December 31, 2010, at which time the interim Oregon/Washington road maintenance fee schedule will expire. Until the policy is superseded, the procedures found in this handbook establish the interim policy for mineral haul.

a. Permittee Mineral Haul Reporting

Permittees will use the current Report of Road Use, Form OR 2812-6, to report their mineral hauling activities to the BLM. Form OR 2812-6 provides for the reporting of mineral materials; the mineral hauled will be recorded in **estimated** truck volume of cubic yards. Permittees will be required to report all qualifying mineral haul on BLM-controlled roads regardless of road maintenance responsibility. The AO will either: 1) charge maintenance (and/or surface replacement fees), or 2) require the permittee to place surface rock and/or perform maintenance in lieu of fees

Where a permittee is responsible to maintain BLM roads for mineral hauling, the BLM will inspect the roads in advance and after use to ensure that adequate road maintenance is being performed. Where multiple users are hauling on the same BLM-controlled road, the BLM should elect to perform maintenance and collect current road maintenance fees for mineral haul from all permittees using that road.

b. BLM Report of Mineral Haul

For BLM timber sale purchasers, reporting occurs when the terms and conditions of use of permittee roads is requested and the mineral haul volumes for the timber sale are placed in the license agreements. See Chapter VIII. for BLM timber sale administrator responsibilities regarding ensuring that mineral haul by BLM licensees is included in the license agreement.

For mineral haul over permittee roads (other than for timber sales) BLM will report mineral haul to permittees with the use of Form OR 2812-20 (Illustration VIII-5). This reporting may include haul by the MO or by contracts such as ERFO, Title II projects, etc. Whomever is responsible for signing and transmitting the mineral haul reports to permittees should coordinate with the MO and all contract administrators (non-timber sale) to ensure that the BLM does not under-report its mineral volume.

Where BLM is responsible to maintain permittee roads for mineral hauling, the permittee will inspect the roads in advance and after use to ensure that adequate road maintenance is being performed. Where multiple users are hauling on the same permittee-controlled road, the BLM should elect to pay the current road maintenance fee for mineral haul on that road.

Beginning August 1, 2006, the Authorized Officer will make allowances and include provisions in all new (unadvertised) BLM timber sale contracts for purchaser payment of maintenance and/or surface replacement fees involved with mineral haul related to the timber sale over permittee and BLM maintained roads, and purchaser payment of surface replacement fees involved with mineral haul related to the timber sale over purchaser-maintained roads. The BLM timber sale contract administrator should ensure that all license agreements display the quantities of mineral haul over permittee roads along with the associated maintenance fees for such hauling.

c. Exemptions from Mineral Haul Reporting

All mineral haul is to be reported by both parties, except road maintenance rock quantities associated with mineral material haul used for patch rock, pothole repair, culvert replacement, and bridge renovation and replacement will be exempt from this reporting requirement.

2. Commercial Mineral Haul and Haul of Locatable Minerals are Not Legitimate Uses under the 2812 Regulations

Chapter VIII., Section B.1., provides guidance in what constitutes legitimate mineral haul under the 2812 regulations. The determination of whether the mineral haul use can be authorized under the 2812 regulations is tied to the definition of tramroads (see glossary) and whether the mineral haul is “in connection with logging and the manufacturing of lumber”. Since the removal of locatable minerals and other commercial rock for delivery to the marketplace is not being hauled “in connection with logging and the manufacturing of lumber,” these uses cannot be authorized under 43 CFR 2812. This use would have to be authorized under Title V of FLPMA or some other authority.

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CHAPTER XV – Table of Illustrations

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Illustration XV-1

IB OR-2007-026 – Notification to O&C Counties of Road Closures, Etc.

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United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Oregon State Office
P.O. Box 2965
Portland, Oregon 97208



In Reply Refer to:
2812 (OR-931) P

December 1, 2006

EMS TRANSMISSION 12/04/06
Information Bulletin No. OR-2007-026

To: District Managers: Coos Bay, Eugene, Lakeview, Medford, Roseburg, Salem
From: Deputy State Director for Resource Planning, Use, and Protection
Subject: Implementation of Memorandum of Agreement with Association of O&C Counties Regarding Consultation on Road and Trail Closures, Travel Use Restrictions, and Decommissioning

The Association of O&C Counties and Bureau of Land Management (BLM) have executed a Memorandum of Agreement (MOA) (MOU-BLM-2006-10) that establishes the process for consultation among BLM Districts, O&C County governing bodies, and the Association, regarding BLM management proposals that would result in possible road or trail closures, travel use restrictions, or decommissioning.

Copies of the MOA and notification form are attached. The MOA was executed on August 9, 2006, and has taken effect.

Districts with Unions are reminded to notify their unions of this Information Bulletin and satisfy any bargaining obligations before implementation. Your servicing Human Resources Office or Labor Relations Specialist can provide you assistance in this matter.

Signed by
Cathy L. Harris (Acting)

Authenticated by
Rita Wallberg
Records Section

2 Attachment(s)
1 – [MOA](#) (1p)
2 – [Notification Form](#) (1p)

Distribution
WO-250 (302 LS)

Illustration XV-1

IB OR-2007-026 – Notification to O&C Counties of Road Closures, Etc.

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MOU-BLM-OR930-0610

**MEMORANDUM OF AGREEMENT BETWEEN THE
U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT'S FIVE WESTERN OREGON DISTRICTS
and Klamath Falls Resource Area of the Lakeview District,
AND THE ASSOCIATION OF O&C COUNTIES
Representing Its Member Counties,
REGARDING CONSULTATION ON ROAD AND TRAIL CLOSURES, TRAVEL USE
RESTRICTIONS, OR DECOMMISSIONING**

The purpose of this Agreement is to establish the process for consultation among Bureau of Land Management (BLM) Districts, O&C County governing bodies, and the Association of O&C Counties to ensure communication as early as possible, and to minimize misunderstandings and potential conflicts regarding management proposals that would result in possible road or trail closures, travel use restrictions, or decommissioning.

It is agreed that:

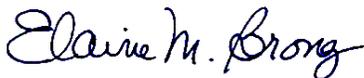
When any land management action is contemplated on the Revested O&C Grant Lands, Reconveyed Coos Bay Wagon Road Lands, or Public Domain Lands on the BLM Districts or Resource Area mentioned above, involving possible road or trail closures, travel use restrictions, or decommissioning, the BLM contact will notify the Executive Director of the Association of O&C Counties via e-mail, using the format attached. The O&C Executive Director will then notify the appropriate County Government Official of the proposed land management action. Within fifteen (15) working days of BLM's notification e-mail, either the Executive Director or the appropriate County Government Official will notify the BLM contact if the Association of O&C Counties or the affected County wants to hold additional discussions on the proposed land management action.

The BLM contact, the Executive Director of the Association of O&C Counties, and an individual O&C County representative can mutually agree on an additional notification process.

This Agreement shall become effective on the date last executed below and may be revised at any time by mutual agreement. Changes to the e-mail notification form may be made at any time at the request of either party in consultation with the other party.

U.S. Department of the Interior
Bureau of Land Management

Association of O&C Counties



Elaine M. Brong
State Director, Oregon/Washington



Doug Robertson
President

Date: **AUG 07 2006**

Date: **8-9-06**

1 Attachment
1 - Notification to Assoc. of O&C Counties of Proposed Road/Trail Mgmt. Action

Illustration XV-1

IB OR-2007-026 – Notification to O&C Counties of Road Closures, Etc.

Page 3 of 3

**Notification to Association of O&C Counties
of Proposed Road/Trail Management Action**

[Send e-mail to: Rocky McVay, Executive Director (rocky@blupac.com) (541-412-1624)]

Date of this Notice:
BLM Contact:
Telephone Number:

E-mail Address:

Where is action proposed?

District Office:	Field Office:	County:
Location: T R	Section(s)	
Road/Trail Number:		
Road/Trail Segment(s):		
General Vicinity Name (stream, watershed, etc):		
Common or Local Name:		
Length and Road/Trail Type Description:		

What action is proposed?

Objective(s) of Road/Trail Mgmt Action:

- | | | |
|--|-----|----|
| • Road/trail no longer needed | Yes | No |
| • Identify other access available (describe) | | |
| • Reduce sedimentation to streams | Yes | No |
| • Reduce maintenance costs | Yes | No |
| • Reduce chronic road damage | Yes | No |
| • Improve wildlife habitat | Yes | No |
| • Reduce human disturbance to wildlife | Yes | No |
| • Other (describe) | | |

Type(s) of Road Management Action:

- | | | |
|-----------------------------|-----|----|
| • Obliterate and re-contour | Yes | No |
| • Rip, waterbar, seed | Yes | No |
| • Pull culverts | Yes | No |
| • Install gate | Yes | No |
| • Install log/berm barrier | Yes | No |

Road/trail attributes:

Constructed prior to 1983?	Yes	No	
Provides legal public access to affected Public Lands?	Yes	No	
Provides legal access to private residences?	Yes	No	
Provides access to private timberlands?	Yes	No	
Access is codified in a Reciprocal ROW Agreement?	Yes	No	
Provides access for fire protection?	Yes	No	
What category of Public Lands?	O&C	CBWR	PD

ROW - right-of-way; O&C - Oregon & California; CBWR - Coos Bay Wagon Road; PD - Public Domain

Other Comments:

Illustration XV-2
 Notification to Permittees of Potential Road Closure
 Page 1 of 3

2812 (OR 112)
 [Permit No.]
 [Serial No.]

We Wanna Log II	:	[Permit No/] [OR _____]
	:	Proposed Road Closures
	:	
	:	
	:	

Dear Ms. Permit Manager:

The Bureau of Land Management is in the initial planning stages for some potential road closures. Our records indicate that you have rights under your O&C Logging Road Right-of-Way Permit No. _____, serial No. _____ over certain roads being considered for closure. In order that we do not inadvertently close roads over which you have rights, we are writing to obtain your feedback on our potential plans.

For your information, we have attached a one-page summary describing what constitutes the different levels of road closures referenced below.

The roads being considered for closure (and over which you have rights) are shown in the table below (and identified on the attached map). We have indicated the proposed level of closure (corresponding with the categories shown on the enclosure) for each road segment.

Road No.	Segment	Category of Closure Anticipated	Remarks/Details

Please contact _____ at (____) _____ within the next 30 days, if possible, to let us know if you are willing to consider the above actions. I would

Illustration XV-2
Notification to Permittees of Potential Road Closure
Page 2 of 3

appreciate your signature below indicating your willingness or objection to our proposed actions. Or, you may write to me at the above address. If you are willing to consider any of the above proposed actions, we can discuss the details and any issues of release or rights, compensation (if any) to which you may be entitled, etc. In addition, if you have no objections, we can start drafting any release documents to share with you.

Sincerely,

Field Manger
_____ Resource Area

PERMITTEE CONCURRENCE OR OBJECTION:

[] I am willing to consider the above proposals for the following roads:

but I would like to discuss the details.

[] I object to the proposed actions on all of the above roads.

[] I object to the proposed actions on the following roads:
_____.

Signature Date
Title: _____

NOTE: The Enclosures are the Category of Road Closure Descriptions and the project map.

Illustration XV-2
Notification to Permittees of Potential Road Closure
Page 3 of 3

BLM CATEGORIES OF ROAD CLOSURES

I. Temporary/Seasonal/Limited Access

Temporary/Seasonal/Limited Access generally involves closing the road by a gate or barrier in order to maintain road to minimize resource damage

II. Decommission (long-term > 5 years)

For Decommissioning (long-term > 5 years), prior to closure, the road will be left in an “erosion-resistant” condition to minimize drainage problems and sedimentation delivery into streams. Generally, the road is closed with an earthen berm or equivalent.

III. Full Decommission (Permanent)

In a Full Decommission (permanent), roads no longer needed for resource management activities may be subsoiled and replanted, stream culverts removed, surface water bars constructed, and closed with an earthen barrier or equivalent. No future maintenance is required.

IV. Obliteration (Full Site Restoration/Permanent)

An obliteration is a full site restoration and is permanent. It is done in unstable areas where no future management activities are needed. All drainage structures are removed. The road prism is re-contoured (top of cut, to toe of fill), and re-vegetated with trees or other native vegetation.

Illustration XV-3

Sample Cooperative Road Maintenance Agreement

Page 1 of 3

COOPERATIVE PREVENTATIVE ROAD MAINTENANCE AGREEMENT
 Between the
 UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 AND
 [Permittee Name]

In accordance with the provisions of O. and C. Logging Road Right-of-Way Permit and Right-of-Way and Road Use Agreement No. ____ (hereinafter called the Agreement) between [Name of Permittee] (hereafter called _____) and the UNITED STATES OF AMERICA), acting by and through its Department of the Interior, Bureau of Land Management (hereafter called BLM), the controlling party has the first opportunity to maintain its roads. This agreement provides for separate maintenance provisions for certain roads identified on Exhibits B and C (attached hereto and made a part hereof), which assign maintenance responsibility to the non-controlling party..

The following maintenance plan for all roads identified on Exhibits B and C has been formulated for the current year. Maintenance of all other roads shall fall under the terms of the ____ agreement or as agreed to in separate correspondence or written agreements.

1. _____ agrees to maintain the roads or road improvements owned or controlled by the BLM shown on Exhibit A and listed on Exhibit B.
2. The BLM agrees to maintain the roads owned or controlled by _____ as shown on Exhibit A and listed on Exhibit C.
3. It is the intent of this agreement to provide for adequate preventative maintenance of the roads specified during periods in which they are not being used for commercial hauling of forest products. If at any time any road or roads shown on Exhibit A shall be used for commercial hauling of more than 1 MMBF, said road or roads shall be deleted from the maintenance requirements specified in this agreement and maintenance shall be assumed by the hauling party during the commercial hauling period. If a road is deleted from these requirements because of commercial hauling, the controlling party may substitute a road or roads having an equivalent length and maintenance level. If commercial hauling occurs on any road after maintenance is accomplished under terms of this agreement, no substitution will be allowed.

Illustration XV-3

Sample Cooperative Road Maintenance Agreement

Page 2 of 3

4. Each party to this agreement is to supply all labor, supervision and equipment necessary to perform the required maintenance in a timely and workmanship-like manner.
5. Each expenditure made by either _____ or the BLM must meet the following tests: (1) it must not be a capital expenditure as defined in the _____ agreement, and (2) it must be reasonably necessary to provide preventative maintenance for management purposes (as defined in 43 2812.0-5(G)).
6. Road maintenance shall consist of all measures needed to keep the road surfaces, shoulders, ditches, cut and fill slopes, drainage structures and other roadway appurtenances in a serviceable condition and to prevent their deterioration. Both parties agree to maintain the roads for which they are responsible to the maintenance levels identified on Exhibits B and C according to the “Standards of Maintenance by Level” handbook established by the Rogue River National Forest (Appendix 1).
7. In the event that either party to this agreement shall fail to comply with the terms herein, the Authorized Officers of the BLM or _____ shall give written notification thereof to the non-complying party. The non-complying party shall promptly take appropriate steps to remedy such non-compliance. If a satisfactory resolution is not reached within 30 days of such notice, the failure of performance may be considered grounds for termination of this agreement. If the agreement is terminated for the above reason, the party failing to perform shall be liable for reimbursing the other party for any road maintenance work performed on its roads.
8. Each party to this agreement shall submit a Work Completion Report to the other party at the close of each fiscal year. Such report shall show the road name, number, miles and summary of work accomplished. During the course of the year, each party agrees to notify the other informally as work is performed.

THIS AGREEMENT is entered into by and between the BLM and _____ and shall be effective as of the date signed. This agreement is renewable annually by consent of both parties. The work lists and maintenance areas may be changed annually by modifying Exhibits A, B and C. Either party may

Illustration XV-3

Sample Cooperative Road Maintenance Agreement

Page 3 of 3

terminate this agreement by giving written notice thereof to the other part not less than 30 days in advance of the effective date of termination. However, before the agreement can be terminated a balance of work completed investigation will be made and appropriate credits given.

Nothing in this agreement shall be construed as binding either BLM or _____ to perform beyond the respective legal authority of each, or to require either party to assume or expend any such sum in excess of appropriations available.

APPROVALS:

BLM

PERMITTEE

Signature

Signature

Date

Title

Title

Date

Attest Signature

Date

Title

Attachments:

Exhibit A – Maintenance Agreement Area Map

Exhibit B – Road Listing - Permittee Maintenance Responsibility for BLM Roads

Exhibit C – Road Listing – BLM Maintenance Responsibility Permittee Roads)

Appendix 1 – Standards of Maintenance by Level

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