



**Crook County Community Development
Planning Division**

300 NE 3rd Street, Room 12, Prineville Oregon 97754
541-447-3211

plan@crookcountyor.gov
www.co.crook.or.us

STAFF REPORT

APPEAL FILE NUMBERS 217-23-001641-01-PLNG (David)

And 217-23-001641-02-PLNG (Kentner)

APPELLING LAND PARTITION NUMBER 217-23-001641-PLNG (Barnhouse)

January 3, 2024

OWNER/APPLICANT

Dean Barnhouse
20832 Rorick Drive
Bend, OR 97701

APPLICANT'S SURVEYOR:

Greg Kelso
765 NW Third Street
Prineville, OR 97754

APPELLANTS:

| | |
|----------------------|--------------------------|
| James David | Daniel Kentner |
| PO Box 1283 | 14497 SE Wagon Wheel Ln. |
| Prineville, OR 97754 | Prineville, OR 97754 |

LOCATION:

The subject property is located at Prairie Schooner Road and Lazy Back Lane in Prineville. It is identified on the County Assessor's maps as 161720A002600 and 161720B008600. The two tax lots are Parcel 2 of Partition Plat 1991-25.

ZONING:

Recreation Residential Mobile— RR(M)5.

NEWSPAPER NOTICE:

December 19, 2023 – Central Oregonian

NEIGHBOR NOTICE:

December 21, 2023

HEARING DATE:

January 10, 2024

I. APPLICABLE CRITERIA

Title 17, Subdivisions

Chapter 17.24 Land Partitioning

| | |
|-----------|-------------------------------------|
| 17.24.020 | Filing Procedures and Requirements. |
| 17.24.030 | Requirements for Approval. |
| 17.24.060 | Final Map for Partitioning. |

Title 18, Zoning

Chapter 18.40 Recreational Residential Mobile

18.40.010 Uses permitted outright.

18.40.090 Lot size.

II. APPLICATION BACKGROUND

The Applicant proposes to divide the 95.47-acre property, composed of two tax lots, into three parcels. As shown on the Tentative Plan submitted with the application materials, Proposed Parcel 1 will be 57.77 acres, proposed Parcel 2 will be 31.20 acres and proposed Parcel 3 will be 6.50 acres.

Documentation of Ownership: MF 2009-234336, Recorded 05/01/2009.

Wastewater: The three proposed parcels have been evaluated for on-site systems. Proposed Parcel 1 – 217-23-000277-EVAL, proposed Parcel 2 – 217-23-000275-EVAL-01, proposed Parcel 3 – 217-23-000275.

Domestic Water: The application states that each parcel will be served by an individual well.

Irrigation Rights: The subject property has no irrigation water rights.

Fire Protection: The subject property is within the Crook County Fire Protection District.

Access: Access for the proposed parcels is from Prairie Schooner Road and Lazy Back Road.

III. APPEAL BACKGROUND

Administrative approval of the requested land partition was issued October 2, 2023, with an appeal period ending October 16, 2023. Notice of decision was mailed to neighbors within 250' on October 2, 2023. Appeal applications were timely received from Daniel Kentner on October 13, 2023, and James David on October 16, 2023.

Appellant's reasons for appeal:

1. **Kentner:** *"Prairie Schooner Road coming off Juniper Canyon is not legal. It goes across BLM land and is not a permanent legal ingress and egress easement. Dean Barnhouse bankrupted two families (I can provide names if needed) in Idleway Access problem off Juniper Canyon. Everyone in this 3 and 4 subdivision needs legal access off Juniper Canyon in the correct location. In fact, just before Dean Barnhouse started suing the neighbors, the county sold permits to Bob Griesen to put the road off Juniper Canyon Rd in the correct location instead of across BLM land, which is what we are doing now. The original dedicated spot should be on Dean Barnhouse property."*
David: *"Prairie Schooner Road accessing Juniper Canyon Rd is not legal. The above road goes across BLM land and is not a permanent legal ingress and egress easement. The original dedicated spot should be on Dean Barnhouse property."*

Staff Response: Appellants do not cite applicable approval criteria in regard to this argument. Staff interprets the Appellants' argument to relate to criteria requiring legal access to the proposed parcels. Additional response is provided below regarding CCC 17.24.020(7). If Appellants believe additional criteria apply, they should expand on this argument prior to, or at, the public hearing.

2. **Kentner:** "Water problems - on Dean Barnhouse property is a well that several homes use. There is not much water in this area. I, Dan Kentner, have drilled three wells in 30 years of owning my property drilling one or several more wells will affect our water. All of the neighbors have been dealing with water shortage issues and adding more wells is only going to make the water shortage worse."

David: "Water issues – wells in this area have been drying up and people are having issues with residential wells. Adding more wells is only going to make the water shortage worse."

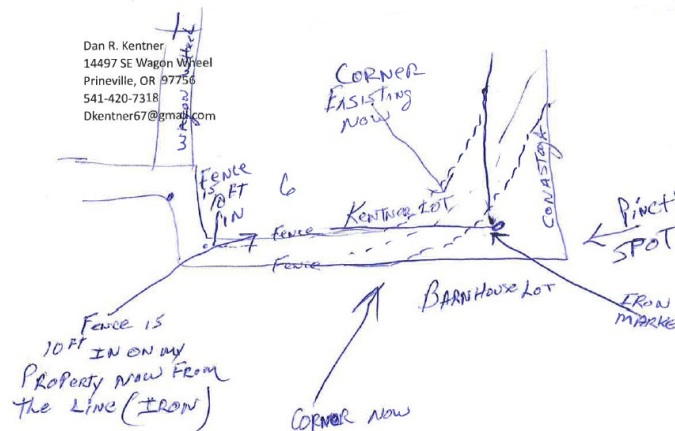
Staff Response: Appellants do not cite applicable approval criteria that relate to this argument. Crook County does not regulate domestic water. Water is regulated through Oregon Water Resources Department. CCC 17.24.020(4) requires a statement regarding "contemplated" water supply but does not require proof of a viable domestic water source at the time of tentative plan approval. Staff acknowledges the concern regarding potential impact to groundwater but does not believe appeal issue #2 relates to applicable approval criteria that can be the basis of approval or denial of the request. CCC 17.24.020(4) is discussed further below.

3. **Kentner:** "Parcel 3 that Dean Barnhouse is requesting 6.5 acres has an easement around it, which is actually my easement, and I do not give Dean Barnhouse permission to use or to abolish my easement. The easement is 20' wide starting from Lazy Back or Prairie Schooner back to Prairie Schooner. This issue must also be addressed prior to partition. When Dean changed the road, I did not sign on the new road change, nor did the neighbors, but somehow our signatures appeared on the road changes."

Staff Response: Appellant Kentner does not cite applicable approval criteria in support of this argument. Disputes regarding the intent and interpretation of private easements are civil matters. The Planning Department and Planning Commission generally do not have authority to declare the meaning or application of legal documents like easements. Based on the information provided to date, staff does not believe this issue is a valid ground for appeal.

4. **Kentner:** "The road along my property between Barnhouse and I (both lots) is not wide enough for the amount of vehicles coming in and out. The road needs to be at least a 40' wide easement, or a public road size easement."

5. **Kentner:** "At the end of Barnhouse property of Parcel 2 where my land borders Dean Barnhouse land, there is a corner and if I put a fence correct to the property (irons) lines, there is no way anyone can make it around that corner with trailers. If the easement was 40' wide, they could make the corner. My fence is 10' in from my property line now. See Diagram"



Staff Response: Appellant Kentner does not cite applicable approval criteria in support of these arguments. Under CCC 17.24.040(7), the Planning Commission can consider additional factors in approving or disapproving a partition plat, including the “need for additional setback, screening, landscaping, and other requirements relative to the protection of adjoining and area land use.” Staff notes, though, that the proposed parcels will likely take access to the new parcels prior to reaching the stretch of road Appellant Kentner appears to be referring to. Thus, the Planning Commission may want to consider whether the proposed residential parcels will or will not worsen the road conditions described by Appellant Kentner for adjoining and area land uses.

6. **Kentner:** “The culverts on the road in are not sufficient either. The drainage on the roads are real problem. Every time we have heavy rain it wipes the road out because there are no drainage culverts.”
David: “Culverts: there needs to be properly sized culverts installed on the access road.”
7. **David:** “Relief Ditches – there needs to be adequately spaced relief ditches installed along the main road to provide drainage.”

Staff Response: Appellants do not cite applicable approval criteria in support of these arguments. These arguments might link to CCC 17.24.040(7). As noted, per this code section, the Planning Commission may consider additional factors in approving or disapproving a partition plat, including the “need for additional setback, screening, landscaping, and other requirements relative to the protection of adjoining and area land use.” Staff understands the drainage concerns to be related to Prairie Schooner as it runs along the northern boundary of the Applicant’s property.

IV. FINDINGS OF FACT

Title 17, SUBDIVISIONS

Chapter 17.24 Land Partitioning

17.24.020 Filing procedures and requirements for land partitioning.

Any person proposing a land partitioning, or his authorized agent or representative, shall prepare and submit five copies of the tentative plan for the proposed partitioning together with an application for partitioning and the appropriate filing fee to the county planning department at least 30 days prior to the commission meeting at which consideration is desired, except as otherwise provided in this chapter.

The tentative plan for partitioning, when submitted, shall include the following:

- (1) A vicinity map locating the proposed partitioning in relation to adjacent subdivisions, roadways and adjoining land use and ownership patterns.*
- (2) A plan of the proposed partitioning showing tract boundaries and dimensions, the area of each tract or parcel, and the names, right-of-way widths, and improvement standards of existing roads.*
- (3) Names and addresses of the landowner, the partitioner, a mortgagee if applicable, and the engineer or surveyor employed or to be employed to make necessary surveys and prepare the legal descriptions of each parcel to be created.*

- (4) *A statement regarding contemplated water supply, sewage disposal, solid waste disposal, fire protection, access, etc.*
- (5) *North point, scale and date of map, and property identification by tax lot, section, township and range.*
- (6) *Statement regarding past, present and intended use of the parcel(s) to be created, or the use for which the parcel(s) are to be offered.*
- (7) *Where a tract of land is within the boundaries of an irrigation district, an application for partitioning of the tract shall be accompanied by a water rights division plan approved by the irrigation district or other water district holding the water rights, or when there is no such district, by the district watermaster or his representative serving the Crook County area.*
- (8) *Legal access to the proposed parcels.*

ORIGINAL FINDING: The vicinity map and application materials submitted included all the criterion identified in subsection (1)-(8) above. The Applicant states that the property will be used for future residential development. The property has no irrigation water rights. The request complies with requirements.

STAFF COMMENTS: Appeal issue no. 1, raised by both Appellants, alleges that access via Prairie Schooner is not legal. Staff included Attachment A with this Staff Report. It is a court order acknowledging the current location of Prairie Schooner, specifically as it crosses BLM land north of the Applicant's property, is a public way. Staff also includes Attachment B, which is a copy of the license agreement for that portion of Prairie Schooner as it crosses the BLM land north of the Applicant's property. The license agreement expires in October 2027.

As required by CCC 17.24.020(8), the tentative plan for a partition must show legal access. Thus, the question raised on appeal, as interpreted by staff, is whether the access from Juniper Canyon onto Prairie Schooner, as it crosses BLM land, constitutes "legal access" even though the license agreement might expire in 2027.

Title 17 defines "access" as "the right to cross between public and private property allowing pedestrians and vehicles to enter and leave the property." It does not expressly require that the access right to be perpetual or guaranteed for a certain period of time.

As noted above, the County Court found Prairie Schooner to be a public way and that it constitutes legal access (Att. A). That order has previously been used as support for finding properties along Prairie Schooner and in that area generally have legal access. See, e.g., 217-16-00020-PLNG.

While questions remain whether access is guaranteed, which may lead to concern with lenders, given past practice and the definition of access, staff believes there is legal access to the subject property and proposed parcels for the purpose of complying with this requirement as part of the tentative plan review.

Staff notes, though, that per CCC 17.24.060(2)(c), a final plat cannot be approved unless "[a]ccess is guaranteed to each parcel." A condition of approval was included in the original approval requiring

compliance with the final plat requirements, including CCC 17.24.060(2)(c). This will be a requirement prior to the final plat being approved and recorded.

Appeal issue no. 2 relates to the impact on groundwater. The code only requires a “statement regarding contemplated water supply, sewage disposal, solid waste disposal, fire protection, access, etc.” It does not require proof that at the time of application is submitted that a water source be developed or that it will not otherwise impact groundwater in the area. The Appellants’ concern is legitimate but does not appear to apply to the request. The Applicant has stated his intent to develop domestic water wells, which complies with the applicable code provision.

17.24.030 Requirements for approval.

No application for partitioning shall be approved unless the following requirements are met:

- (1) Proposal is in compliance with the comprehensive plan.*
- (2) Proposal is in compliance with the applicable zoning.*
- (3) An approved water rights division plan.*

ORIGINAL FINDING: The proposed land partition complies with the Crook County Comprehensive Plan, which has identified the property for residential use. The proposed partition will result in three parcels that meet the five-acre minimum lot size established by the underlying zone. The properties are not within an identified irrigation district and thus no water rights division plan is required. The request complies.

STAFF COMMENT: These criteria are not raised on appeal.

17.24.040 Additional factors to be considered

In addition to the requirements set forth in CCC 17.24.030, the following factors may be considered by the commission for approval or disapproval of an application for land partitioning:

- (1) Placement and availability of utilities.*

FINDING: Utilities and services were identified within the tentative plan.

- (2) Safety from fire, flood, and other natural hazards.*

FINDING: Crook County Fire & Rescue District will provide services to the property. Access will be as shown on the tentative plan. This has been included as a Condition of Approval. The property is not located within an area of special flood hazard, or any other natural hazard areas.

- (3) Adequate provision of public facilities and services.*

FINDING: No public facilities are located in the area. Proposed development will comply with Onsite and Building Department requirements.

- (4) Possible effects on natural, scenic, and historical resources.*

FINDING: No natural, scenic, or historic resources are located within the vicinity of the proposed partition.

(5) *Need for on-site or off-site improvements.*

(6) *Need for additional setback, screening, landscaping, and other requirements relative to the protection of adjoining and area land uses.*

FINDING: Staff did not identify a need for on-site or off-site improvements, or a need for additional setback, screening, landscaping, or other requirements relative to the protection of adjoining and area land uses. The request complies.

STAFF COMMENTS: Based on the information provided by appellants, staff does not believe that there is sufficient information to require on- or off-site improvements or additional requirements. Staff recommends that the Appellants expand on appeal issues nos. 4-7, beyond what is stated in the appeal application. This will assist the Planning Commission in determining whether the proposed partition will result in a need for drainage improvements or other on- or off-site improvements. Staff recommends that the Planning Commission consider the location of the proposed parcels relative to the alleged need for improvements. If the proposed parcels will not impact the portions of the roads described by Appellants, staff does not believe there would be a sufficient link to the proposed development to include a condition of approval requiring an improvement.

17.24.060 Final map for partitioning

FINDING: The final map for partitioning will meet the requirements of 17.24.060.

Title 18, Zoning

Chapter 18.88 Rural Residential Zone, R-5

18.88.030 Lot Size

The minimum property size for a new parcel shall be five acres in size.

FINDING: Proposed Parcel 1 will be 57.77 acres; proposed Parcel 2 will be 31.20 acres and proposed Parcel 3 will be 6.50 acres. The request complies with the minimum lot size in the RR(M)5 zone.

STAFF COMMENTS: Two of the three proposed parcels are well in excess of the 5-acre minimum lot size in the RRM-5 zone. Thus, future development may occur on the parcels. Accordingly, staff recommends including a condition of approval that states:

Future division of Parcels 1 & 2 may trigger subdivision standards.

V. STAFF RECOMMENDATION

1. Deny the appeal and uphold the administrative decision as originally made.
2. Deny the appeal and approve the proposed partition, with amendments to the findings and conditions.
3. Approve the appeal and deny the proposed partition, based on specific grounds identified by the Planning Commission.

VI. PROPOSED CONDITIONS OF APPROVAL

1. The owner/applicant shall have two years from the expiration of the appeal period to file the final plat. The final plat shall be in conformance with the criteria in Section 17.24.60 of the Crook County Code.
2. All necessary taxes, fees, and assessments shall be paid before the final plat is filed.
3. Site plan approval is required prior to any development on proposed either parcel.
4. The location of the wells shall be identified on the final plat. If a shared well is developed, a shared well agreement shall be recorded with the Crook County Clerk prior to any development of either newly created parcel.
5. Access for the proposed parcels will be as shown on the tentative plan. No other access is approved with this decision.
6. *Future division of Parcels 1 & 2 may trigger subdivision standards.*

Respectfully submitted,

Will Van Vactor

Will Van Vactor, Director
Crook County Community Development

Hannah Elliott

Hannah Elliott, Associate Planner
Crook County Community Development

Attachment A: Order 2018-75
Attachment B: Document 2020-297710

Crook County Official Records **CJ2018-077**
Commissioners' Journal
No Fee **08/21/2018 2:00:11 PM**



2018-077

I, Cheryl Seely, County Clerk for Crook County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

Cheryl Seely - County Clerk



Crook County Official Records **2018-288866**
DEED-DOPR
Pgs=12 **08/21/18 01:59 PM**
This is a no fee document **NO FEE**



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I, Cheryl Seely, County Clerk for Crook County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

Cheryl Seely - County Clerk



IN THE COUNTY COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CROOK

IN THE MATTER OF ACKNOWLEDGING AND MEMORIALIZING LEGAL ACCESS THROUGH PRAIRIE SCHOONER ROAD TO JUNIPER CANYON ROAD)
)
) ORDER NO. 2018-75
)
)
)

WHEREAS, Prairie Schooner Road is located in Crook County, within Section 20 of Township 16 South, Range 17 East of the Willamette Meridian; and

WHEREAS, in 1997, the Bureau of Land Management (BLM) approved Right of Way Grant # 53360 in favor of Crook County, for the right to construct, operate, maintain, and terminate a road right of way. This instrument terminates in 30 years (2027) but may be renewed; and

WHEREAS, in 2006, at the County's request BLM agreed to amend ROW Grant # 53360 "to include the portion of Prairie Schooner Road" for the purpose of "provid[ing] legal access to the individuals who own property east of this block of public lands;" and

WHEREAS, in 2007, the County Court adopted Order 2007-45, which included an express acknowledgment that Prairie Schooner Road is a public way. Prairie Schooner Road has been recognized and operated as a public way since at least that time; and

WHEREAS, in 2010, Crook County adopted Order 2010-24, which vacated a public easement in reliance of the existence of the legal access provided by amended Right of Way Grant # 53360; and

WHEREAS, in order to ensure that there is a record of these transactions, the County Court adopts this Order 2018-75 to memorialize that there is legal access through Prairie Schooner Road to Juniper Canyon Road, including over the right of way granted by Amended Right of Way Grant # 53360.

NOW, THEREFORE, the Crook County Court ORDERS and DIRECTS, based upon the above recitals, that:

Section 1. The Crook County Court adopts the recitals above as its Findings of Fact.

Section 2. The County Court of Crook County acknowledges that Amendment Right of Way Grant # 53360, issued by the Bureau of Land Management, provides legal access through Prairie Schooner Road to connect to Juniper Canyon Road.

Section 3. Prairie Schooner Road is acknowledged as a public way. On or about November 8, 2006, Crook County formally accepted the grant from BLM in favor of the public.

Section 4. The following documents are attached to and made a part of this Order 2018-75: (a) Crook County Court order 2007-45, dated June 20, 2007; (b) the amendment

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to BLM ROW Grant # 53360, dated November 8, 2006; and (c) BLM ROW Grant # 53360, dated October 2, 1997.

DATED this 21st day of August, 2018.

CROOK COUNTY COURT

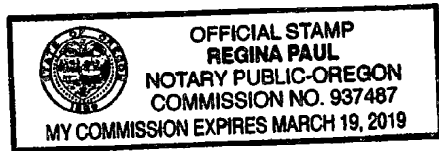
Seth Crawford
Judge Seth Crawford

Jerry Brummer
Commissioner Jerry Brummer

Brian Barney
Commissioner Brian Barney

State of Oregon)
) ss.
County of Crook)

Personally appeared this 21st day of August, 2018, the above named Seth Crawford, Jerry Brummer, and Brian Barney, and acknowledged the foregoing instrument to be their voluntary act and deed.



Regina Paul
Notary Public for Oregon
My Commission expires: 3-19-19

| <u>Vote:</u> | Aye | Nay | Abstain | Excused |
|---------------|-----|-----|---------|---------|
| Seth Crawford | ___ | ___ | ___ | ___ |
| Jerry Brummer | ___ | ___ | ___ | ___ |
| Brian Barney | ___ | ___ | ___ | ___ |



STATE OF OREGON } es 2007073
 COUNTY OF CROOK }
 I CERTIFY THAT THE WITHIN INSTRUMENT WAS
 RECEIVED FOR RECORD ON THE 21st DAY OF
June, 202007, AT 10:15 A.M.
 AND RECORDED IN CJRM
 RECORDS OF SAID COUNTY MF NO. 2007-073
 DEANNA E. BERMAN, CROOK COUNTY CLERK
 BY (10110) SAU/MAR DEPUTY *n/c*

IN THE COUNTY COURT OF THE STATE OF OREGON
 FOR THE COUNTY OF CROOK COUNTY

In the Matter of Prairie Schooner Road)
 Access Alignment Correction Directing the) Order No. 2007-45
 County Road Department to Perform)
 Construction of said One Time Access Alignment.)

WHEREAS, Prairie Schooner Road is not an Accepted Maintained Road of the Crook County Road Department but is a public way; and

WHEREAS, the County is authorized to perform such work in the event that the public use of the road justifies the expenditure proposed; and the county governing body enacts an Order or Resolution and authorizing the work and designating the work to be a single project. ORS 368.031(2)(b)(c); and

WHEREAS, multiple property owners to the east and southeast of the Juniper Canyon Road/Prairie Schooner Road intersection use the road for access to their properties and the Crook County Roadmaster recommends the access realignment;

NOW, THEREFORE, this 20 day of June 07 the Crook County Court, finds that the public use of Prairie Schooner Road justifies utilization of County forces and equipment to realign the access of said road on a one time only basis; and directs the Crook County Road Department to construct the alignment access correction within the BLM right-of-way as a single project.

DATED this 20 day of June, 2007.

CROOK COUNTY COURT

Scott R. Cooper
 Judge Scott R. Cooper

Mike McCabe
 Commissioner Mike McCabe

Lynn Lundquist
 Commissioner Lynn Lundquist

4/20/07



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Prineville District Office
3050 N.E. 3rd Street
Prineville, Oregon 97754

IN REPLY REFER TO:

OR 53360 (056)
281001

NOV 8 2006

Hand del: correct 11/08/06
Certified Mail Number
7003 2260 0000 1987 6146

DECISION

Crook County Road Department : Amendment for Right-of-Way Grant,
1306 N. Main Street : Serial Number OR 53360
Prineville, OR 97754 :

Amendment Approved

On September 5, 2006 an amendment was requested to include the portion of Prairie Schooner Road, on public lands that intersects with Juniper Canyon Road be added to the Crook County right-of-way (OR-53360). The legal description for this amendment is as follows;

T. 16 S., R. 17 E.,
Sec 17, W1/2SW1/4;
Willamette Meridian, Crook County, Oregon

Approximately 650 feet in length, 60 feet in width, and 1.0 acres, more or less.

This action is to provide legal access to the individuals who own property east of this block of public lands, maintenance will be completed by a homeowners association established in the area for Prairie Schooner Road.

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.

If you wish to file a petition (request) (pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the 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

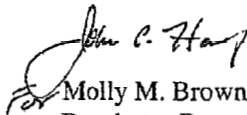
Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (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.

Please note, however, that under the regulations in 43 CFR 2804.1(b), this decision is effective even if an appeal is filed.

If you have any questions, please call Suzanne Wiley at (541) 416-6783.

Sincerely,



Molly M. Brown
Deschutes Resources Area Field Manager

Attachment

1 - Form 1842-1 (2 pp)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
RIGHT-OF-WAY GRANT
SERIAL NUMBER OR 53360

1. A right-of-way is hereby granted pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).
2. Nature of Interest:
 - a. By this instrument, the holder:

Crook County
300 East Third
Prineville, Oregon 97754

receives a right to construct, operate, maintain, and terminate a road right-of-way (OR 53360), on public lands described as follows:

T. 17 S., R. 16 E., Willamette Meridian, Oregon
Section 20: E2E2SE,
Section 21: W2W2SW,
Section 28: W2W2NW
 - b. The right-of-way granted herein is 50 feet wide, 2640 feet long and contains 4.5 acres, more or less. In Section 28 the width is 25 feet.
 - c. This instrument shall terminate on 30 years from its effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.
 - d. This instrument may be renewed. If renewed, the right-of-way shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.
 - e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. Rental:

No Rental.

4. Terms and Conditions:

- a. This grant is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800.
- b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within 90 days, or otherwise disposed of as provided in paragraph (4) (d) or as directed by the authorized officer.
- c. The right-of-way granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The stipulations, plans, maps, or designs set forth in Exhibits A through C, attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.
- e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant shall constitute grounds for suspension or termination thereof.
- f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant.

Norman Thompson
(Signature of Holder)

Roadmaster
(Title)

9-29-97
(Date)

[Signature]
(Signature of Authorized Officer)

Area Manager
(Title)

10/2/97
(Effective Date of Grant)

Stopk Tank

T. 17 S., R. 16 E

Exhibit A

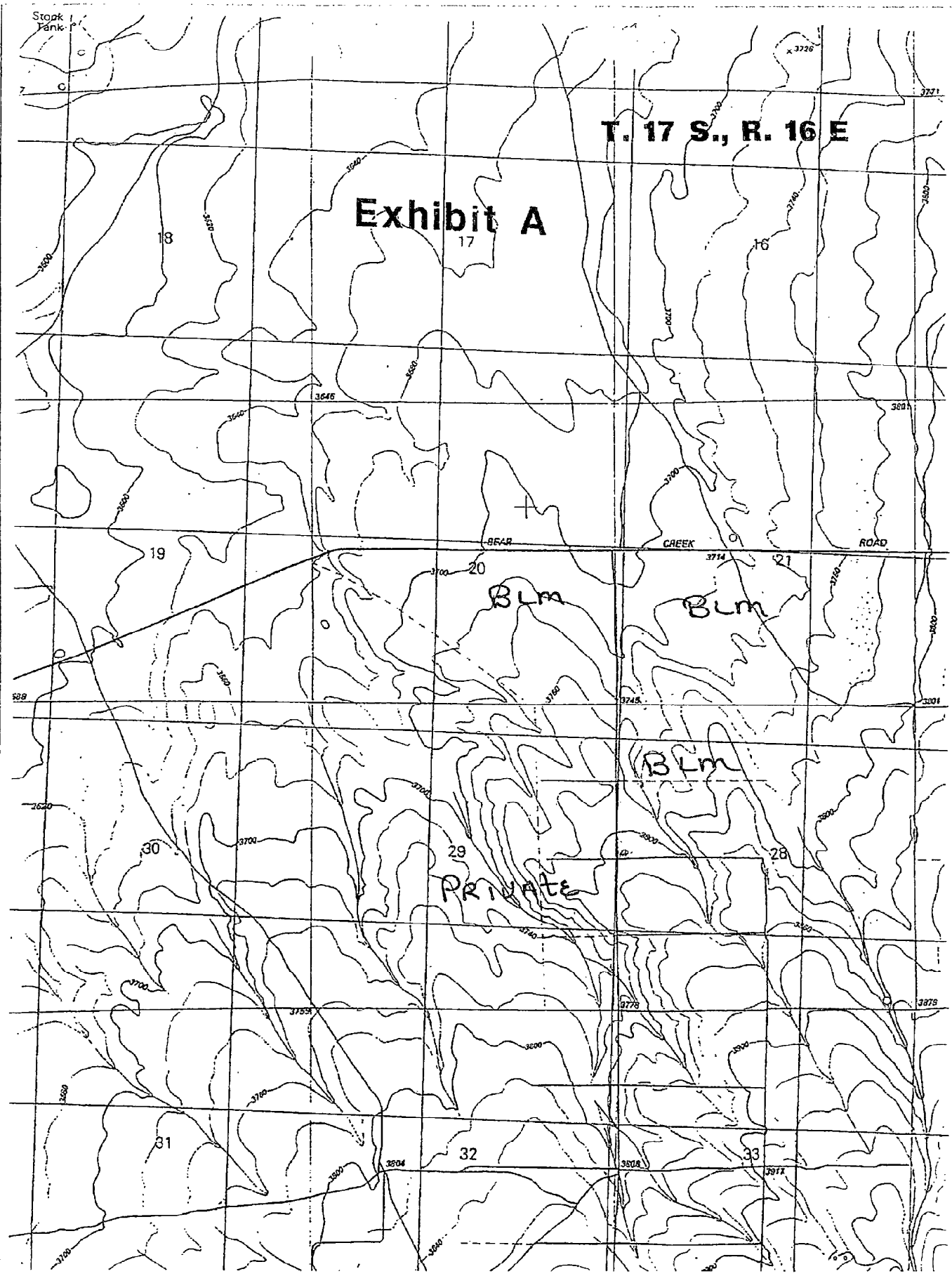


Exhibit C

- 1) The Holder shall limit the width of the roadbed to 30 feet while this road is called a public way. If the County determines to designate this road as a county road, then the road width will be maximized to the 50 feet in accordance with this grant.
- 2) The Holder shall rehabilitate all disturbed areas involving the previous road alignment. Rehabilitation also includes Luthey Way. ~~*~~
- 3) The Holder shall seed all disturbed areas, using the seed mixture listed below. The seed must be broadcast and lightly raked to insure coverage with 1/4 inch of soil. Level areas of exposed soils shall be ripped to break up the compaction and seeded.

The prescribed seed mixture consists of the following:

12 lbs./acre of Nezpar Indian Rice Grass
12 lbs./acre of Idaho Fescue or Secar Bluebunch Wheatgrass

- 4) BLM is not responsible for maintaining the road.
- 5) The Holder shall grade the road to mitigate excessive degradation of the roadway.
- 6) The Holder will install the cattleguard provided by the County. Installation of the cattleguard must meet county specifications.
- 7) Any human remains, cultural and/or paleontological resource (historic or prehistoric or vertebrate fossil site or object) discovered by the Holder, or any person working on his behalf, on public or Federal land shall be immediately reported by telephone to the authorized officer. The Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The Holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the Holder. In some cases it may be necessary to suspend authorized operations in the area of the discovery for as much as 30 days.
- 8) The holder shall cut small evasive juniper and scatter them out over abandoned segments of the old roadbed.

- 9) The holder shall protect all survey monuments found within the right-of-way. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the authorized officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands in the United States, latest edition. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.
- 10) The holder shall trim trees in preference to cutting trees and shall cut trees in preference to bulldozing them as directed by the authorized officer.
- 11) A personal firewood permit will be obtained from the Holder or it's designee for any wood retained.
- 12) The holder shall not clear trees to allow passage of equipment.
- 13) The Holder shall limit excavation to the areas of construction. No borrow areas for fill material will be permitted on the site. All waste material resulting from construction or use of the site by holder shall be removed from the site.
- 14) The holder shall provide for the safety of the public entering the right-of-way. This includes, but is not limited to, barricades for open trenches and flagmen/women with communication systems for single-lane roads without intervisible turnouts.
- 15) During conditions of extreme fire danger, operations shall be limited or suspended in specific areas, or additional measures may be required by the authorized officer.
- 16) Construction sites shall be maintained in a sanitary condition at all times; waste materials at those sites shall be disposed of promptly at an appropriate waste disposal site. "Waste" means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and equipment.
- 17) Failure to construct and use the road right-of-way as indicated will be grounds for termination of the right-of-way.



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I, Cheryl Seely, County Clerk for Crook County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

Cheryl Seely - County Clerk



RECORDING COVER SHEET

Any errors in this cover sheet DO NOT affect the transaction(s) contained in the instrument itself.

AFTER RECORDING, RETURN TO:

Crook County Legal Dept.

Attn: Regi

Our File No.:

NAME OF TRANSACTION

**Right of Way Grant / Temporary Use Permit re Legal Access on
Prairie Schooner Road**

GRANTOR: BLM

GRANTEE: CROOK COUNTY

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Issuing Office
Prineville BLM 3050 NE 3rd St, 97754

Serial Number
OROR 069896

RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT

1. A (right-of-way) (permit) is hereby granted pursuant to:

- a. Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);
- b. Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185);
- c. Other (describe) _____

2. Nature of Interest:

a. By this instrument, the holder Crook County, 300 NE 3rd St., Prineville, OR 97754 receives a right to construct, operate, maintain, and terminate a Road on public lands (or Federal land for MLA Rights-of-Way) described as follows:

Willamette Meridian, Oregon

**T. 16 S., R. 17 E.,
sec 17 W1/2SW1/4.**

- b. The right-of-way or permit area granted herein is 60 feet wide, 650 feet long and contains 1 acres, more or less. If a site type facility, the facility contains N/A acres.
- c. This instrument shall terminate on October 1, 2027 years from its effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.
- d. This instrument may may not be renewed. If renewed, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.
- e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

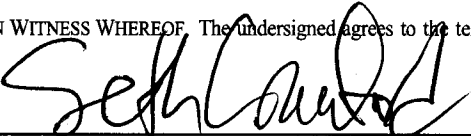
3. Rental:

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

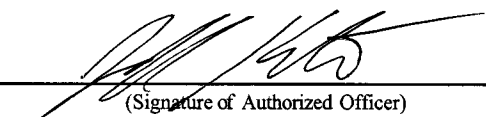
4. Terms and Conditions:

- a. This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations parts 2800 and 2880.
- b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within 30 days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.
- c. Each grant issued pursuant to the authority of paragraph (1)(a) for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The stipulations, plans, maps, or designs set forth in Exhibit(s) A, dated 11/01/2019, attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.
- e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.
- f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant or permit.



 (Signature of Holder)



 (Signature of Authorized Officer)

Crook County Judge

 (Title)

FIELD MANAGER

 (Title)

12-18-19

 (Date)

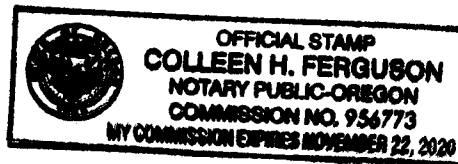
1/10/20

 (Effective Date of Grant)

STATE OF OREGON, County of **Crook**) ss.

Subscribed before me on this 15th day of DECEMBER, 2019, by SETH Crawford, Crook County Judge, personally known to me or known by ID, to be the person(s) whose name(s) are subscribed to this document entitled Right-of-Way Grant/Temporary Use Permit; Serial Number OROR 069896, and acknowledged that they/he/she executed the same.

Colleen H. Ferguson
Notary Public – State of Oregon
Comm. Ex 11-22-2020



STATE OF OREGON, County of **Crook**) ss.

Subscribed before me on this 10th day of January, 2020, by Jeffrey Kitchens, personally known to me or known by ID, to be the person(s) whose name(s) are subscribed to this document entitled Right-of-Way Grant/Temporary Use Permit; Serial Number OROR 069896, and acknowledged that they/he/she executed the same.

Regina Lee Paul
Notary Public – State of Oregon



Exhibit A

Stipulations for Crook County OROR 069896 November 1, 2019

1.0 Definitions

- 1.1 The Deschutes Field Manager or designated representative is the Authorized Officer (AO), as defined by 43 CFR 2920.0-5(a).
- 1.2 "Grantee" means Crook County, and any and all assignees that may be of record, including all agents, contractors, subcontractors, and employees.
- 1.3 "Grant" means the license, lease, permit, or other permission granted by the United States to the grantee for the use of public lands and resources.

2.0 General

- 2.1 The grantee will address all matters to the Deschutes Field Manager, 3050 NE 3rd St., Prineville, Oregon 97754.
- 2.2 In case of change of address, the grantee shall immediately notify the AO.
- 2.3 Any modifications to the proposed activities must be approved in writing by the AO.
- 2.4 This grant is subject to all prior valid and existing rights, and the United States makes no representations or warranties whatever, either expressed or implied, as to the existence, or nature of such valid existing rights.
- 2.5 The right to grant additional rights-of-way or permits for compatible use on, over, under, or adjacent to the land involved in this grant is reserved to the AO.
- 2.6 It is the responsibility of the grantee to ensure that field party members are familiar with and adhere to these stipulations.
- 2.7 The holder, in exercising the privileges granted under this grant shall comply with the regulations of the Department of the Interior and all Federal, State, Borough and Municipal laws, ordinances, or regulations, which are applicable to the area or operations covered by this grant.
- 2.8 This grant may be terminated if the BLM determines that the grantee is manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense a controlled substance on the public lands described herein in violation of the Controlled Substances Act of 1970, 21 U.S.C. § 801 *et seq.*
- 2.9 In the advent of a disagreement of the interpretation or implementation of these stipulations the grantee agrees that the AO shall have the final say in how these stipulations are interpreted and implemented.

- 2.10 This grant may not be encumbered, hypothecated, assigned, subleased, or transferred without prior written approval by the AO.
- 2.11 The AO may revoke or terminate this grant in whole, or in part, upon a determination by the AO that the terms, conditions, or stipulations of the grant have been violated, or by determination by the AO that the grantee's actions pose a threat to human health or safety, or irreparable harm to the surrounding environment.
- 2.12 The grantee shall not enclose or obstruct in any manner, or erect or maintain any signs or structures on roads or trails commonly used for public travel or access to public lands surrounding the grant.
- 2.13 This grant does not authorize the permittee to take from the public lands any mineral or vegetative material, including timber, without securing authorization under 30 USC 601 et seq.
- 2.14 This grant does not authorize any other use of the public lands or improvements belonging to the US Government.
- 2.15 Grantee shall comply with Title VI of Civil Rights Act of 1964 (42 U.S.C. 2000 et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto.

3.0 Environmental

- 3.1 Grantee will not intentionally harass or harm migratory birds or interfere with their nesting and brood rearing activities.
- 3.2 All activities shall be conducted so as to avoid or minimize disturbance to vegetation. If it becomes necessary to remove vegetation, prior approval by the AO is required.
- 3.3 All operations shall be conducted with due regard for good resource management and in such a manner as not to block any stream, or drainage system, or cause the pollution or siltation of any stream or lake.
- 3.4 Use of pesticides or herbicides shall comply with the applicable Federal and State laws. Pesticides or herbicides shall be used in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides or herbicides, the grantee shall obtain from the AO written approval of a plan showing the type and quantity of materials to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the AO. Emergency use of pesticides or herbicides shall be approved in writing by the AO prior to such use.
- 3.5 The grantee shall conduct all activities associated with the construction, operation, and termination of the right-of-way within the authorized limits of the right-of-way. If any scarring or damage occurs outside of approved areas as a result of the holder's operations, the areas shall be repaired and reseeded, or otherwise corrected as necessary to the satisfaction of the Authorized Officer.

- 3.6 The grantee will do everything reasonable, both independently and/or upon request of the authorized officer to prevent and suppress fires on or near the lands occupied under the right-of-way.
- 3.7 Petroleum products or by-products shall not be used for dust suppression.
- 3.8 Any revegetation will be with native species only.

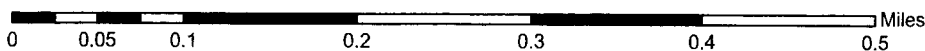
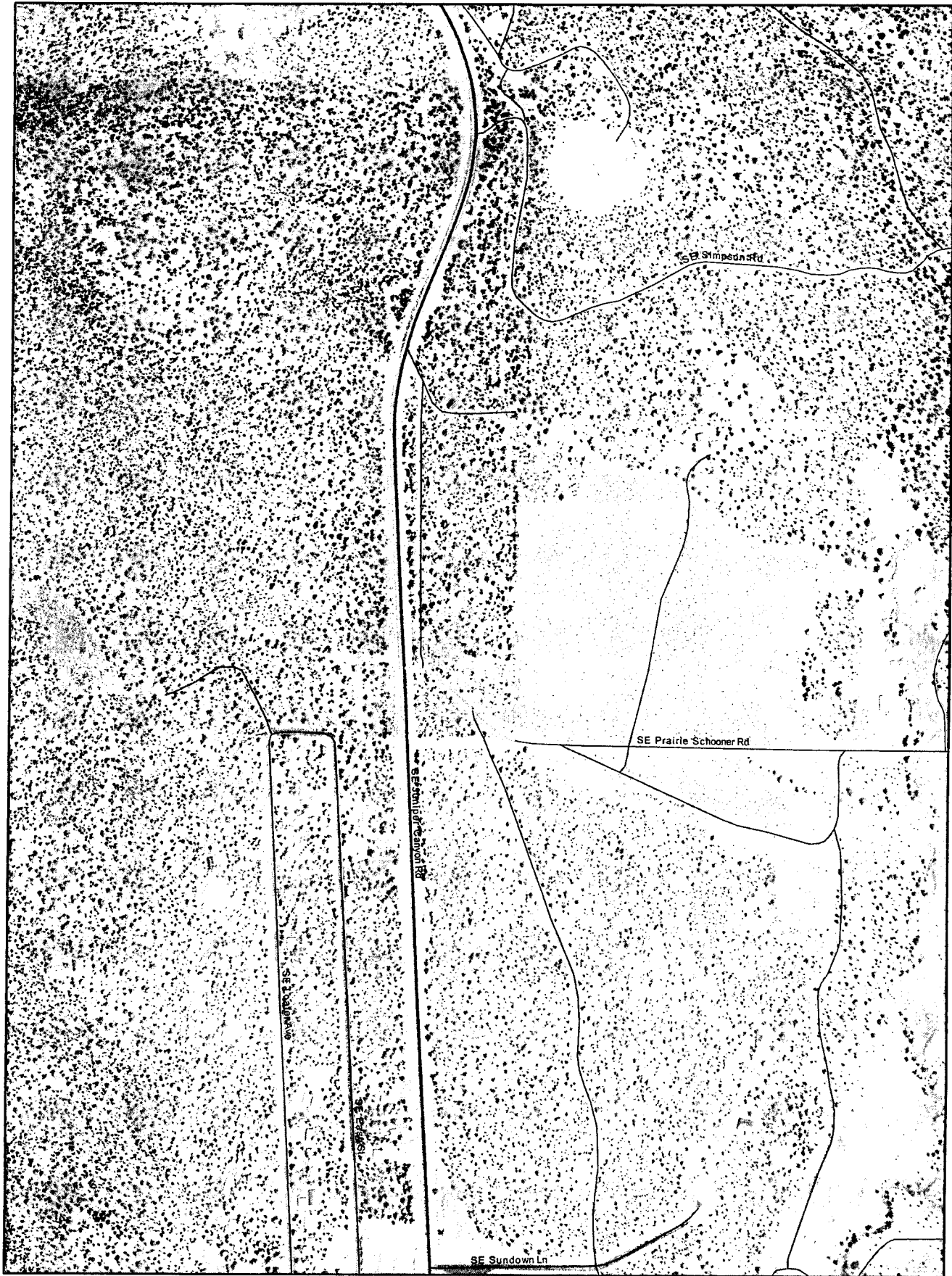
4.0 Operational

- 4.1 There shall be no disturbance of any archaeological or historical sites, including graves and remains of cabins, and no collection of any artifacts whatsoever. Also, collection of vertebrate fossils, including mammoths and mastodon bones, tusks etc., is strictly prohibited. If historic resources are encountered then all artifacts will be respectfully left in place and the Prineville Field Office's cultural resources staff will be notified immediately.
- 4.2 Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the Grantee, or any person working on his behalf, on public or Federal lands shall be immediately reported to the Authorized Officer. Grantee shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery will be made by the AO to determine appropriate actions to prevent the loss of significant cultural or scientific values. The Grantee will be responsible for the cost of evaluation and the Authorized Officer will make any decision as to proper mitigation measures after consulting with the Grantee.
- 4.3 All waste generated during operation, maintenance, and termination activities under this authorization shall be removed or otherwise disposed of as required by state and federal law. In this case the waste must be dumped in a Department of Environmental Quality (DEQ) approved landfill site. Waste in this sub-paragraph means all discarded matter, including but not limited to, human waste, trash garbage, refuse, and oil drums, petroleum products, ashes and discarded equipment.
- 4.4 Areas of operation shall be left clean of all unauthorized foreign objects. This shall include, but is not limited to, wires, pins, flags and reflectors.
- 4.5 All fuel or lubricant spills will be cleaned up immediately, taking precedence over all other matters, except the health and safety of personnel. Spills will be cleaned up utilizing absorbent pads or other Oregon State DEQ approved methods. Any such spill sites will be documented so that they can be located during the compliance check.
- 4.6 Recovered spill fluids will be removed and either incinerated in approved receptacles or in accordance with appropriate laws and regulations.
- 4.7 As soon as possible, but not later than 24 hours, notice of any such discharge, will be given to the AO and any other Federal and State Officials as are required by law.
- 4.8 The grantee shall protect all Survey Monuments. In the advent of obliteration or disturbance of a survey monument, the grantee shall immediately notify the AO. The grantee will be financially responsible to re-establish the survey monuments to the Bureau standards.
- 4.9 No hazardous materials shall be transported or disposed within the area of authorized use.

- 4.10 Prior to abandonment of any portion of the facilities authorized by this grant, the grantee shall contact the Authorized Officer, and if the situation warrants, to arrange a joint inspection of the right-of-way. The inspection will be held to agree on an acceptable rehabilitation plan. The Authorized Officer must approve the plan in writing prior to the grantee commencing any abandonment and/or rehabilitation activities.
- 4.11 Any further ground disturbance will be done after approval by the Authorized Officer.
- 4.12 Grantee shall inform and ensure compliance of the grant and its stipulations by his/her agents, contractors, subcontractors, employees, and guests.
- 4.13 No new access trails or roads are authorized without written authorization from the Bureau of Land Management.
- 4.14 The site must be kept clean. All waste generated during the operation and termination activities of this lease shall be removed and disposed of as required by state and federal laws. As defined in this paragraph "waste" means all discarded matter, including but not limited to human waste, trash, garbage, litter, oil drums, petroleum, ashes, and discarded equipment.
- 4.15 This authorization does not relieve the lessee from securing any other permits, licenses, or other authorizations required by federal, state, or local law.
- 4.16 Within 180 days prior to termination of the right-of-way the holder shall contact the authorized officer to arrange a joint inspection of the right-of-way. This inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, or seeding. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.

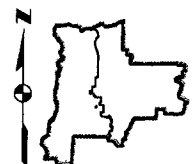

Permittee Signature

12-18-19
Date



Legend

- Major Highways
- Arterial Road
- Collector Road
- Local or Resource Road
- - - Trails
- Bureau of Land Management
- Private/Unknown
- Right of Way



Disclaimer: No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual or aggregate use with other data. Original data were compiled from various sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification. The information displayed on this map should be used for graphic display only. For official land status information, refer to Cadastral Survey plats, Master Title Plats, and land status case-files.