

**U.S. Department of the Interior  
Bureau of Land Management  
Medford District Office  
Butte Falls Resource Area**

**Categorical Exclusion Determination and Decision Record  
for the issuance of a Right-of-Way Grant under  
Title V of the Federal Land Policy and Management Act (as Amended),  
P.L. 94-579, and the regulations at 43 CFR 2800  
Serial No. OR 065680  
CE #OR115-09-05**

**Location of Right-of-Way and Name of Applicant:**

T. 35 S., R. 1 E., Section(s): 7 NENE, Section 8 SWNW,  
Medford District, Butte Falls Resource Area, Jackson County  
(see Exhibit A Map attached).  
Applicant: Tony & Esther Reyes

**Description of Proposed Action**

The proposed action is the issuance of right-of-way grant to Tony & Esther Reyes (applicant), under the provisions at 43 CFR Part 2800, and Title V of P.L. 94-579; 90 Stat 2743. This has been serialized as case No. OR 065680.

The requested period of use is for a term of 30 years.

The proposed uses include:

The use and maintenance of existing roads (identified in the table below) for the purposes of ingress and egress to residential property owned by the applicant which is located in:

T. 35 S., R. 1 E., Sec. 8, Tax lots 3500 and 3600.

<b>BLM Roads to be included in Right-of-Way</b>			
<b>BLM Road/ Segment Number</b>	<b>Segment Length</b>	<b>Length to be Used</b>	<b>Present Surface Type</b>
35-1E-7.1	0.43	0.43	ASC

The affected roads and/or lands are located in Jackson County on BLM lands administered by the Butte Falls Resource area. The proposed right-of-way location is shown on the attached map labeled as Exhibit A.

### **Project Design Features**

See Exhibit B attached hereto.

### **Plan Conformance Review**

This proposed action is consistent with policy directed by the following:

- *Final Supplemental Environmental Impact Statement and Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl* (Northwest Forest Plan FSEIS, 1994 and ROD, 1994);
- *Final-Medford District Proposed Resource Management Plan/Environmental Impact Statement and Record of Decision* (EIS, 1994 and RMP/ROD, 1995);
- *Record of Decision To Remove the Survey and Manage Mitigation Measure Standards and Guidelines from the Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl* (USDI 2007); and
- *Medford District Integrated Weed Management Plan Environmental Assessment* (1998) and tiered to the *Final-Northwest Area Noxious Weed Control Program Environmental Impact Statement* (EIS, 1985).

The proposed action is in conformance with the direction given for the management of public lands in the Medford District by the Oregon and California Lands Act of 1937 (O&C Act), Federal Land Policy and Management Act of 1976 (FLPMA), the Endangered Species Act (ESA) of 1973, the Clean Water Act of 1987, Safe Drinking Water Act of 1974 (as amended 1986 and 1996), Clean Air Act, and the Archaeological Resources Protection Act of 1979.

This proposed action is consistent with management direction in the Medford District Resource Management Plan that directs the BLM to continue to make BLM-administered lands available for needed rights-of-way where consistent with local comprehensive plans, Oregon state-wide planning goals and rules, and the exclusion and avoidance areas identified in the Resource Management Plan (USDI 1995, p. 82).

### **Categorical Exclusion Determination**

This proposed action qualifies as a categorical exclusion as provided in United States Department of the Interior Departmental Manual 516 DM 11.9.E.16. This section allows for; “Acquisition of easements for an existing road or issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes.”

Before any action described in the list of categorical exclusions may be used, the “extraordinary circumstances,” included in 516 DM 2, Appendix 2, must be reviewed for applicability (See attached review). After review, the BLM determined no extraordinary circumstances exist that would cause the proposed action to have a significant environmental effect. The action will not require additional analysis.

**Contact Person**

For additional information concerning this project, contact Tanya Dent, (541) 618-2477.

**Prepared by:**

Tanya Dent

Tanya Dent  
Medford District, Right-of-Way Specialist

11/25/08

Date

**NEPA Compliance:**

Jean Williams

Jean Williams, Environmental Planner  
Butte Falls Resource Area

11/25/2008

Date

**Decision**

It is my decision to authorize right-of-way grant serial No. OR 065680 as described in the Proposed Action. The authorization will be effective immediately.

**Decision Rationale**

The proposed action has been reviewed by the Butte Falls Resource Area staff and appropriate Project Design Features, as specified above, will be incorporated into the proposal. Based on the attached NEPA (National Environmental Policy Act) Categorical Exclusion Review, I have determined the proposed action involves no significant impact to the environment and no further environmental analysis is required.

David J. Hughes

David J. Hughes  
Acting Field Manager  
Butte Falls Resource Area

11/25/08

Date

**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 (a) – (c)). 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 that they have a "legally cognizable interest" and the decision on appeal has caused or is substantially likely to cause injury to that interest (See 43 CFR § 4.410(d)).

**EFFECTIVE DATE OF DECISION**

This is a land decision on a right-of-way application. All BLM decisions under 43 CFR Part 2800 remain in effect pending an appeal (See 43 CFR § 2801.10) unless the Secretary rules otherwise. Rights-of-Way decisions that remain in effect pending an appeal are considered as “in full force and effective immediately” upon issuance of a decision. **Thus, this decision is now in effect.**

## **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 (4:30 p.m.) not more than 30 days after the date of service. Only signed hard copies of a notice of appeal that are delivered to the following address will be accepted. Faxed or e-mailed appeals will not be considered:

*BUREAU OF LAND MANAGEMENT  
MEDFORD DISTRICT OFFICE  
3040 Biddle Road  
Medford, OR 97504*

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:

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.

A notice of appeal with petition for stay must be served upon the Board, the Regional Solicitor and Tony & Esther Reyes 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.

## **HOW TO FILE AN APPEAL**

See the attached Form 1842-1 for complete instructions on Filing an Appeal

## **CONTACT INFORMATION**

For additional information contact:

Christopher J. McAlear, Field Manager, Butte Falls Resource Area  
Medford District Office  
Bureau of Land Management  
3040 Biddle Road  
Medford, OR 97504  
(541)618-2260

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
- Tony & Esther Reyes  
PO Box 1173  
Eagle Point, OR 97524

Attachments:

Exhibit A Map

Exhibit B Project Design Features

Form 1842-1

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 *Notice of Appeal* 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 *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).
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- 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 *Notice of Appeal*, 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 *Notice of Appeal*, 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 9720
- 
- 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 *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).
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- 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(c)).
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- 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 *Notice of Appeal* (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 *Notice of Appeal* (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 *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 (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)

**43 CFR SUBPART 1821--GENERAL INFORMATION**

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska  
Arizona State Office ----- Arizona  
California State Office ----- California  
Colorado State Office ----- Colorado  
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri  
and, all States east of the Mississippi River  
Idaho State Office ----- Idaho  
Montana State Office ----- Montana, North Dakota and South Dakota  
Nevada State Office ----- Nevada  
New Mexico State Office --- New Mexico, Kansas, Oklahoma and Texas  
Oregon State Office ----- Oregon and Washington  
Utah State Office ----- Utah  
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

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(Form 1842-1, September 2006)

## NEPA Categorical Exclusion Review

**Proposed Action:** Issuance of right-of-way grant to Tony & Esther Reyes for the use and maintenance of existing road 35-1E-7.1 for the purposes of ingress and egress to residential property owned by the applicant which is located in: T. 35 S., R. 1 E., Sec. 8, Tax lots 3500 and 3600.

Department of the Interior Manual 516 DM 2, Appendix 2 provides for a review of the following criteria for categorical exclusion to determine if exceptions apply to the proposed action based on actions which may:

1. *Have significant impacts on public health or safety.*

Yes  No

Initial *QW* Remarks:

2. *Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resource; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.*

Yes  No

Initial *QW* Remarks:

3. *Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].*

Yes  No

Initial *QW* Remarks:

4. *Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.*

Yes  No

Initial *QW* Remarks:

5. *Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.*

Yes  No

Initial *QW* Remarks:

6. *Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.*

Yes  No

Initial *SL* Remarks:

7. *Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.*

Yes  No

Initial *(JN)* Remarks:

8. *Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.*

Plants  Yes  No Initial (mw) Remarks:

Animals  Yes  No Initial (RA) Remarks:

Fish  Yes  No Initial (SP) Remarks:

9. *Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.*

Yes  No

Initial (Q) Remarks:

10. *Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).*

Yes  No

Initial (Q) Remarks:

11. *Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).*

Yes  No

Initial (JEU) Remarks:

12. *Contribute to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).*

Yes  No

Initial (mw) Remarks:

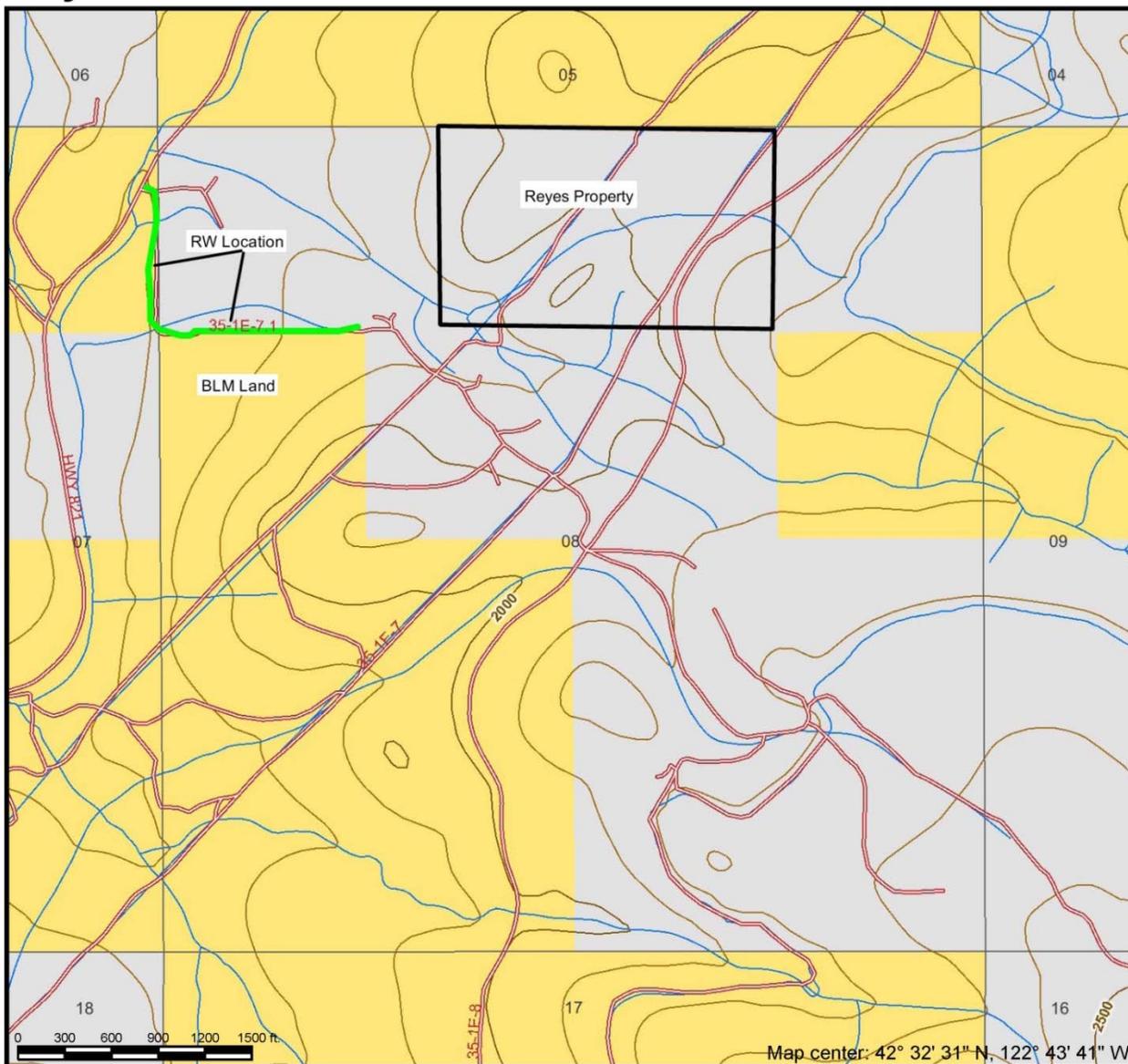
**Reviewers: Butte Falls Resource Area**

Name	Title	Date	Initials
Jean Williams	NEPA Coordinator	11/25/08	JW
Marcia Wineteer	Botanist	11/4/08	mw
Dave Roelofs	Wildlife Biologist	11/5/08	DR
Steve Liebhardt	Fisheries Biologist	11/17/08	SL
Ken Van Etten	Soil	11/17/08	KVE
Shawn Simpson	Hydrology	11/7/08	SLS
Trish Lindaman	Visual Resources/Recreation	11/6/08	TL
Jessica Buchanan	Fire/Fuels Specialist	11/6/08	JB
Randy Bryan	Engineering	11/11/08	RRB
John McNeel	Cultural Resources	11/25/08	JM

# EXHIBIT A

## Reyes OR 065680

## T35S - R1E Sec8



- |                             |          |          |
|-----------------------------|----------|----------|
| Forest Operations Inventory | Non BLM  | Highways |
| TPCC                        | Lakes    | Roads    |
| Township and Range          | Streams  | Trails   |
| Sections                    | Wetlands |          |



Internal Use Only



United States Department of the Interior  
 Bureau of Land Management  
 Medford District Office  
 3040 Biddle Road  
 Medford, OR 97504

Printed: Sep 22, 2008 10:40:46 AM  
[http://web.maps.or.blm.gov/foj\\_section](http://web.maps.or.blm.gov/foj_section)

**Scale 1:12,000**  
 Universal Transverse Mercator  
 Zone 10, North American Datum of 1983

## EXHIBIT B

### Standard Rights-of-way/Lease/Permit Stipulations

The Holder shall comply with the applicable Federal and State laws and regulations concerning the use of pesticides (i.e., insecticides, herbicides, fungicides, rodenticides, and other similar substances) in all activities/ operations under this grant. The Holder shall obtain from the Authorized Officer approval of a written plan prior to the use of such substances. The plan must provide the type and quantity of material to be used; the pest, insect, fungus, etc. to be controlled; the method of application; the location for storage and disposal of containers; and other information that the Authorized Officer may require. The plan should be submitted no later than December 1 of any calendar year that covers the proposed activities for the next fiscal year (i.e., December 1, 1979, deadline for a fiscal year 1981 action). Emergency use of pesticides may occur. The use of substances on or near the right-of-way shall be in accordance with the approved plan. A pesticide shall not be used if the Secretary of the Interior has prohibited its use. A pesticide shall be used only in accordance with its registered uses and within other limitations if the Secretary has imposed limitations. Pesticides shall not be permanently stored on public lands authorized for use under this grant.

The Holder shall promptly remove and dispose of all waste caused by its activities as directed by the Authorized Officer. The term "waste" as used herein means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, petroleum products, ashes, and equipment.

The United States will not be held liable for any damage to the road caused by the general public or as a result of fire, wind, or other natural disasters or as a result of silvicultural practices, timber harvesting operations, or other actions stemming from the land management activities of the Bureau of Land Management.

Cultural and Paleontological Resources. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.

The Holder shall protect existing telephone, telegraph, and transmission lines, roads, trails, fences, ditches, and like improvements during operation and maintenance of the system. The Holder shall not obstruct any road or trail without the prior approval of the Authorized Officer. Damage caused by the Holder to public utilities and improvements shall be promptly repaired by the Holder to a condition which is satisfactory to the Authorized Officer.

Holder shall protect all survey monuments, witness corners, reference monuments, and bearing trees within this (right-of-way, permit) against disturbance during operation and maintenance. If any monuments, corners, or accessories are destroyed, obliterated, or damaged during operation or maintenance, Holder shall secure the services of a Registered Land Surveyor to restore the disturbed monuments, corners, or accessories, at the same location, using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands of the United States, latest edition. Holders shall record such survey in the appropriate county and shall send a copy to BLM Oregon State Office.

The Holder shall contact the Authorized Officer or his representative at least 15 days prior to the anticipated start of maintenance activities. The Authorized Officer is the BLM Butte Falls Field Manager and their representative is:

Butte Falls Lead Engineer  
3040 Biddle Road  
Medford, OR 97504  
(541)618-2200

The Holder shall not use dirt roads as access routes when such use would cause severe rutting or erosion, as determined by the Authorized Officer. Use, maintenance, and termination activities shall be suspended on public lands if soil condition warrants, as determined by the Authorized Officer.

No right-of-way clearing is allowed.

The Holder(s) shall not place signs, gates, or barricades on public land, its resources, or improvements without prior written approval from the Authorized Officer.

Whenever the Holder(s) intends to partition or subdivide his (or their) property for non-commercial use or whenever two or more persons (or organizations) not a part of the same nuclear family wish to obtain a right-of-way over a new or existing road for non-commercial use, this office will encourage the establishment of a property-owner's association. The association will be treated as a single entity, and a savings may therefore be realized by the members, who will be entitled to share the expenses involved in a single grant. To qualify, the association will be required to submit a copy of its charter. The Authorized Officer will provide, upon request, a list of the required charter elements.

The Holder shall be permitted to remove snow and ice from roads authorized for use under this grant only when prior approval has been secured from the Authorized Officer. The Holder shall submit a written request for permission to remove snow and ice in advance of the date operations are to begin. Upon receiving written authorization for the snow and ice removal, the Holder shall perform the work according to the conditions and equipment requirements set forth in the Authorization.

The holder will be responsible for all preventive and corrective access road maintenance from the beginning to completion of operations under this grant. This may include, but not be limited to, blading the roadway, cleaning the ditches and drainage facilities, dust abatement, or other requirements as directed by the Authorized Officer.