UNITED STATES OF AMERICA

DEPARTMENT OF INTERIEOR
BUREAU OF LAND MANAGEMENT
MEDFORD DISTRICT OFFICE
GRANTS PASS RESOURCE AREA

Categorical Exclusion Determination and Decision Record
for Right-of-Way Grant to be Issued
Under Title V of the Federal Land Policy and Management Act
LL Boyd Properties, Inc. and Jerry E. Michael
(Case Serial No. OR 064727).
CE-OR-117-08-16

Description of Proposed Action

The proposed action is the issuance of right-of-way grant to LL Boyd Properties Inc. and Jerry E. Michael(applicant), under the provisions of 43 CFR Part 2800, and Title V of P.L. 94-579; 90 Stat 2743. This has been serialized as case No. OR 064727.

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. 35S, R. 5W, Sec. 4, SE 1/4.

BLM Roads to be Included in Right-of-Way			
BLM Road/Segment No.	Segment Length	Length to be Used	Present Surface Type
35-5-9.1, unnamed	0.61	0.61	ABC

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

Project Design Features

The proposed right-of-way project design features must conform to those delineated on the attached Exhibit B.

Plan Conformance Review

This proposal is consistent with policy directed by the following:

- the *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);
- the *Final-Medford District Proposed Resource Management Plan/Environmental Impact Statement* and *Record of Decision* (EIS, 1994 and RMP/ROD, 1995);
- the *Final Supplemental Environmental Impact Statement: Management of Port-Orford-Cedar in Southwest Oregon* (FSEIS, 2004 and ROD, 2004);
- *Medford District Integrated Weed Management Plan Environmental Assessment (1998*) and tiered to the *Northwest Area Noxious Weed Control Program* (EIS, 1985)
- *Record of Decision to Remove the Survey and Manage Mitigation Measure Standards and Guidelines (2007)*
- *Final SEIS to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines (2004), as allowed by Judge Pechman's October 11, 2006 Order as follows:*
    - *Thinning projects in stands younger than 80 years old;*
    - *Replacing culverts on roads that are in use and part of the road system, and removing culverts if the road is temporary or to be decommissioned;*
    - *Riparian and stream improvement projects (planting, placing material in-stream, road and trail decommissioning, channel and floodplain reconstruction, or removal of channel diversions; and*
    - *Hazardous fuel treatments with a commercial component in stands > 80 years old.*

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 proposal 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 of 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, Appendix 11.9 E. Realty (16): "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 Tony Kerwin, Environmental Planner, at (541) 471-6564.

/s/ Roger Viets____ 3/18/08
Prepared by Date

_____ 3/27/08
NEPA Review Date

Decision
It is my decision to authorize right-of-way grant No. OR 064727, as described in the Proposed Action. The grant is effective immediately and will remain in effect pending an appeal unless the Secretary rules otherwise (See 43 CFR § 2801.10).

Decision Rationale
The proposed action has been reviewed by the Grants Pass Resource Area staff and appropriate Project Design Features, as specified in Exhibit B, 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.

_____ 3-31-08
Abbie Jossie Date
Field Manager
Grants Pass Resource Area

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 publication of this decision on the Medford District website. Only signed hard copies of a notice of appeal that are delivered to the Grants Pass Interagency Office (2164 NE Spalding Avenue, Grants Pass, OR 97526) 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 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 or that have arisen after the opportunity for comments closed. (See 43 CFR § 4.410(c)).

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, LL Boyd Properties, Inc. and Jerry E. Michael 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.

CONTACT INFORMATION

For additional information contact Tony Kerwin, Environmental Planner at (541) 471-6564. 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
- LLBoyd Properties Inc. & Michael, Jerry E.
  13533 HWY 234
  Gold Hill, OR 97525-5517

Categorical Exclusion Review
Right-of-Way Grant to be Issued
Under Title V of the Federal Land Policy and Management Act
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NEPA Categorical Exclusion Review

Proposed Action:

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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 <u>No</u>

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 <u>No</u>

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

   Yes No

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

   Yes No

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

   Yes No

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

   Yes No

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

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

   Animals Yes No

   Fish Yes No

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

   Yes No

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

    Yes No

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

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

Reviewers:

Coreen Francis 3/19/08
Silviculture, Vegetation Dynamics & Port-Orford Cedar — Date

3/26/08
Botany — Date

3/24/08
Cultural Resources — Date

3/24/08
Fisheries — Date

3/21/08
Wildlife — Date

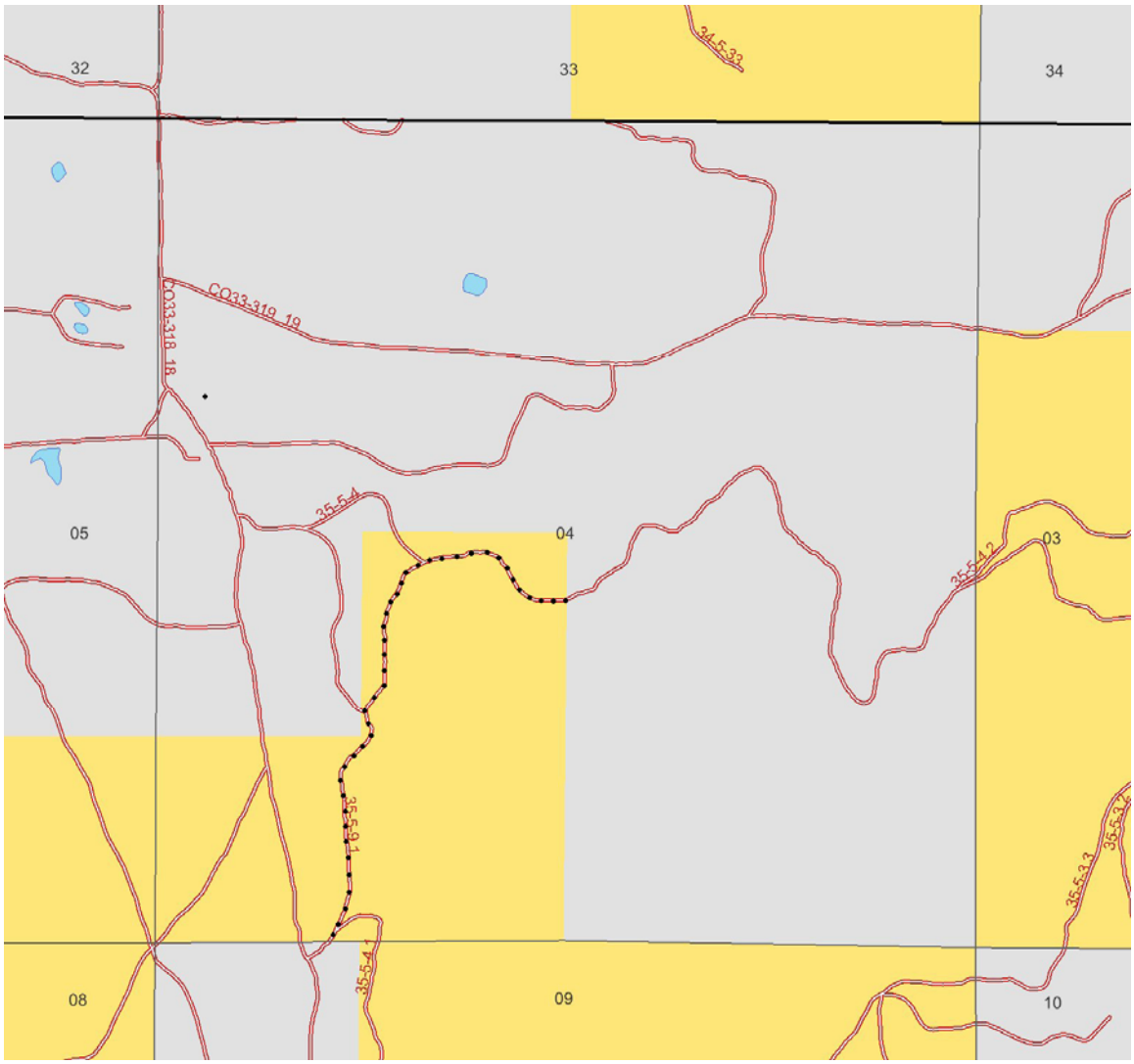
3/21/08
Soils/Hydrology — Date

3/21/08
Visual Resources / Recreation — Date

James R. Roper 3/20/08
Engineering — Date

EXHIBIT A

Boyd, Lee
ROW Permit OR 064727
T35S R5W Sec 4



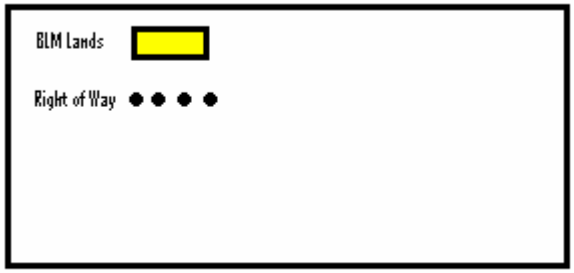


EXHIBIT B

Project Design Features

1) Be prepared to conduct all maintenance concerning the use of this authorization at the Holder's cost in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

2) Notify the Authorized Officer of his intended use of any mechanized equipment for the maintenance authorized through this grant fourteen (14) days prior to its intended use, the date it is to commence, and the delegated representative of the Holder. Such delegated representative is the person who is authorized by the Holder to carry out the terms and conditions of the grant and act on behalf of the Holder. The notice of the delegated representative shall include a current mailing address and telephone number.

3) Contact and receive either a permit or notification from the Oregon State Forestry prior to use of mechanized equipment in the maintenance and repair of this right-of-way grant. The Holder and/or his contractor shall comply with all Oregon Department of Forestry and BLM fire restrictions.

4) Immediately stop all operations and notify the BLM upon becoming aware of, encountering, or discovery of any cultural, historical or pre-historic value within the right-of-way.

5) Comply with all applicable State and Federal environmental laws, regulations, and standards. The Holder shall also immediately discontinue all construction or other operations under this grant upon receipt of written notice from the Authorized Officer that such operations are in violation of said provisions.

6) All ground disturbing equipment used on BLM lands must be washed prior to entering BLM lands to remove any dirt or vegetation that may harbor noxious weed seeds.

7) Notify the Authorized Officer upon discovery of any noxious weed species found on the right-of-way area. The Holder is responsible for immediate control and eradication. The Holder shall consult with, and obtain written approval from, the Authorized Officer for acceptable weed control methods, such as mechanical or chemical, or provide funds to BLM for treatment.

8) 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 repair activities shall be suspended on public lands if

soil condition warrants, as determined by the Authorized Officer. The Holder shall repair any environmental damage resulting from activities associated with this authorization to the satisfaction of the BLM Authorized Officer.

9) Undertake every reasonable measure to minimize erosion to the roads and surrounding areas, soil disturbances and turbidity to waterways, ground disturbing activity or the introduction of invasive plants.

10) Promptly remove and dispose of all waste caused by their activities. The term "waste" as used herein means all discarded matter including, but not limited to human waste, trash, garbage, refuse, petroleum products, ashes, equipment and vegetative materials.

11) Not place signs, gates, or barricades on public land, its resources or improvements without prior written approval from the Authorized Officer.

12) Protect all survey monuments, witness corners, reference monuments, and bearing trees within this right-of-way against disturbance during construction, operation, maintenance, and rehabilitation. If any monuments, corners, or accessories are destroyed, obliterated, or damaged, the Holder or his contractor shall restore said items to the satisfaction of the BLM Authorized Officer.

13) Machinery and/or ground disturbing activity shall be restricted to inside the designated right-of- way by repair and maintenance equipment only. Work involving soil disturbance shall be preformed in the dry season only, which is generally between May 15th and October 15th of any year. Heavy equipment operation and ground disturbing activities are prohibited when soil moisture content exceeds 25% by weight. All equipment shall be washed and inspected for leaks before entering BLM administered lands.

14) No hazardous materials are to be produced, transported, or stored on this right-of-way. The Holder shall notify the Authorized Officer if there is a significant variance from this authorization with respect to hazardous materials and their use, storage, or disposal. The Environmental Protection Agency maintains and updates a list of all hazardous substances that may present substantial danger to the public health or the environment in Title 40 of the United States Code of Federal Regulations Part 302.

15) No pesticides (i.e. insecticides, herbicides, fungicides, rodenticides and other similar substances) shall be applied to the grant area unless the Holder has written approval from the Authorized Officer.

16) Natural vegetation shall be cleared or trimmed only when necessary to provide suitable access for operation, maintenance and repair of the system. No tree eight inches (8") in diameter or over at breast height shall be cut without prior written approval from the BLM Authorized

Officer during the exercise of the rights granted herein.

17) Assignment of this grant to subsequent owners of the property is not automatic. A formal assignment decision must be authorized by BLM. Contact the Authorized Officer of the Bureau of Land Management, Medford, Oregon for information regarding the process.

18) The United States reserves the right to grant subsequent use pursuant to 43 CFR 2801.1-1.

19) The right-of-way Holder is aware that Bureau of Land Management (BLM) administered lands in Western Oregon are managed in part for timber resource activities which include timber harvesting, reforestation, and tree release programs. BLM forest management activities may also include application of herbicides, firewood cutting, and prescribed burning. Logging operations cause dust and noise. Many of these activities are considered objectionable by residents living on adjacent private lands. BLM roads will be used to haul timber. Other important resources of these lands include wildlife habitat, minerals, soil and water quality, recreation opportunities, and others. The Holder should also be aware that the BLM may grant other rights- of-way across BLM lands, and also may enter into agreements for exchange or sale of BLM administered lands.

20) The United States shall not be held liable for any damage to the right-of-way caused by the general public or as a result of fire, wind, or other natural disasters or as a result of silviculture practices, timber harvesting operations, or other actions stemming from the land management activities of the Bureau of Land Management. The Holder shall be responsible for costs incurred for reconfiguration of Holder improvements within the right-of-way when BLM activities are required.