U.S. DEPTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
MEDFORD DISTRICT OFFICE
GRANTS PASS 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 065485 CE-OR-117-08-26

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

T. 38 S., R. 5W., Section(s): 15,
Medford District, Grants PassResource Area, Josephine County
HUC-6: Lower Williams, #171003090503 (see Exhibit A Map attached).
Applicant: Jeffrey and Sherry Krueger

Description of Proposed Action

The proposed action is the issuance of right-of-way grant to Jeffrey and Sherry Kruger (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 065485.

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

The proposed uses include:

The use 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. 38S, , R. 5W, Sec. 16, SENE, Tax Lot 300.

BLM Roads to be Included in Right-of-Way			
BLM Road/Segment No.	Seg. Length	Length to be Used	Present Surface Type
38-5-15 A	0.53	0.53	BST
38-5-15 B	0.27	0.27	BST
38-5-15 C	1.04	0.10	BST

The affected roads and/or lands are located in Josephine County on BLM lands and BLM controlled 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

See Exhibit B attached hereto.

Plan Conformance Review

This proposed action 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)
- Final Supplement to the 2004 *Supplemental Environmental Impact Statement to Remove or Modify the Survey and Manage Mitigation Measure Standards and* Guidelines (FSEIS, 2007 and ROD, 2007.[1]

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).

[1]Complete title: *Record of Decision to Remove the Survey and Manage Mitigation measure Standards and Guidelines from Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl*.

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 {RA NEPA Coordinator}
For additional information concerning this project, contact Carl Symons, Project Leader, at (541) 648-2239.

Prepared by:

10/3/08

Anthony Kerwin, Environmental Planner Date:
Grants Pass Resource Area

Decision

It is my decision to authorize right-of-way grant serial No. OR 065485 as described in the Proposed Action. The project is planned to begin implementation in Fall 2008.

Decision Rationale

The proposed action has been reviewed by the Grants Pass 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.

10-3-08

Abbie Jossie, Field Manager Date
Grants Pass Resource Area

ADMINISTRATIVE REMEDIES:

Administrative review of right-of-way decisions requiring 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:

BUREAU OF LAND MANAGEMENT
GRANTS PASS INTERAGENCY OFFICE
2164 NE Spalding
Grants Pass, OR 97526

will be accepted. Faxed or e-mailed appeals will not be considered.

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 Jeffrey and Sherry Krueger (addresses below) 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:

Abbie Jossie, Field Manager, Grants Pass Resource Area
Grants Pass Interagency Office
Bureau of Land Management
2164 NE Spalding
Grants Pass, OR 97526
(541)618-6500
Or Tony Kerwin, Resource Area 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

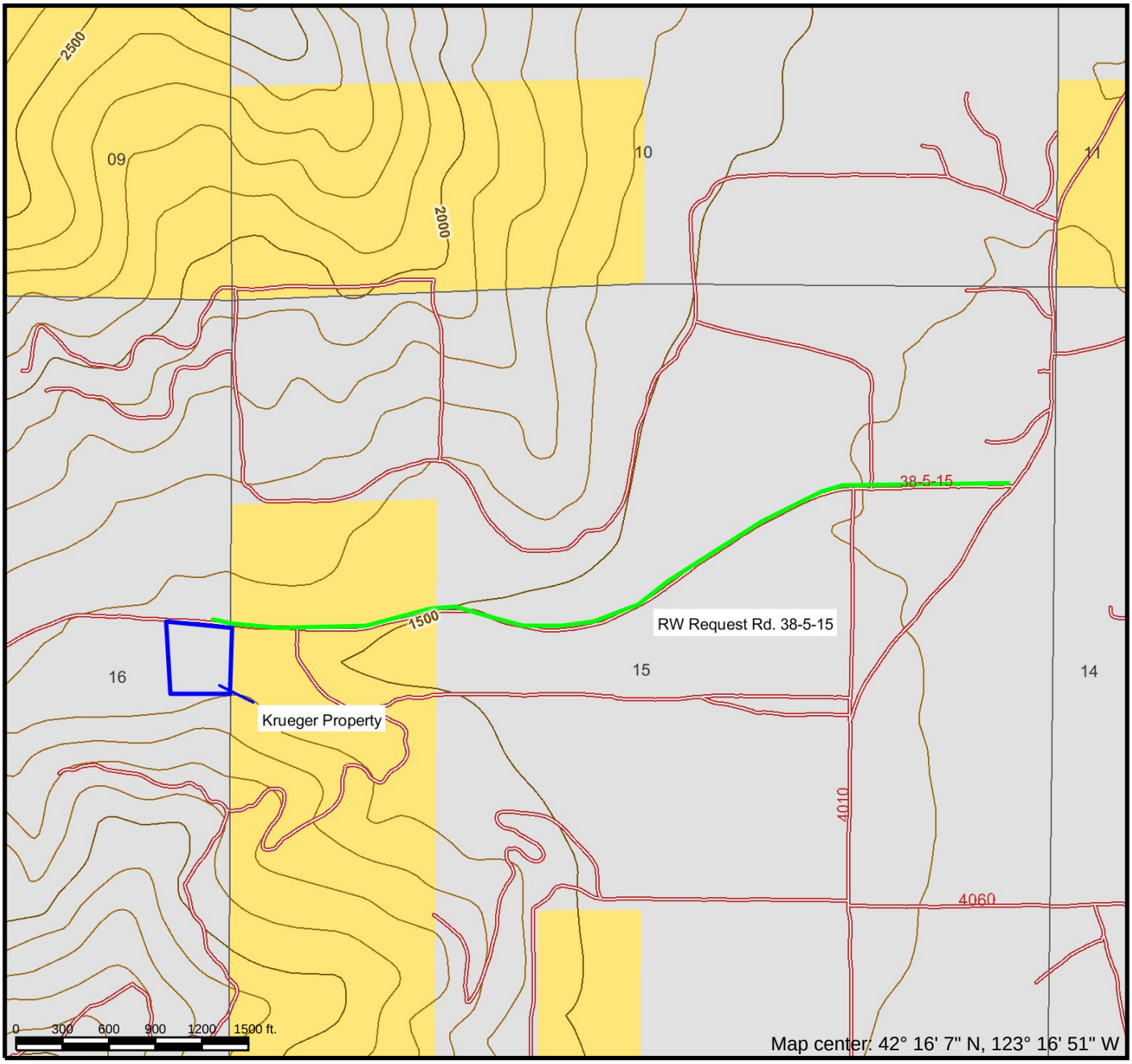
- Regional Solicitor
  Pacific Northwest Region
  U.S. Department of the Interior
  500 N.E. Multnomah Street, Suite 607
  Portland, Oregon 97232

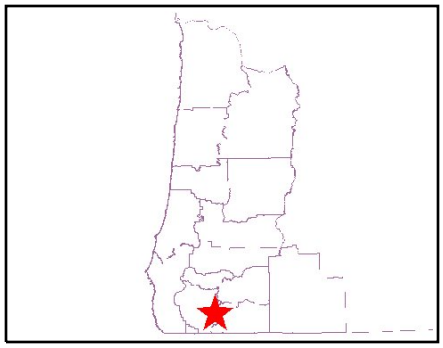
  Jeffrey and Sherry Kruger
  1211 Upper Powell Creek
  Williams, OR 97544

Attachments:
Exhibit A Map
Form 1842-1

Krueger, OR 065485

T38S - R5W Sec15





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

N

Internal Use Only

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

Printed: Jun 11, 2008 2:55:33 PM
http://web.maps.or.blm.gov/foi_section

Scale 1:12,000

Universal Transverse Mercator
Zone 10, North American Datum of 1983

EXHIBIT B

TERMS, CONDITIONS, AND STIPULATIONS

Project Design Features

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 part 2800.

b. Each grant issued 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.

c. The stipulations, plans, maps, or designs set forth below are incorporated into and made a part of this grant instrument as fully and effectively as if it were set forth herein in its entirety.

d. The Holder or their contractor shall:

1) Wash all ground disturbing equipment used on BLM lands prior to entering BLM lands to remove any dirt or vegetation that may harbor noxious weed seeds.

2) 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.

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

4) 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.

5) As determined by the Authorized Officer, do not use dirt roads as access routes when such use would cause severe rutting or erosion; and use, maintenance, and repair activities shall be suspended on public lands if soil condition warrants. The Holder shall repair any environmental damage resulting from activities associated with this authorization to the satisfaction of the BLM Authorized Officer.

6) 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.

7) 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.

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

9) 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.

e. 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.

f. 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.

h. 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.

i. Assignment of this grant to subsequent owners of the property is <u>not</u> 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.

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

k. 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.

l. 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.

Form 1842-1
(September 2006)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS
1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL.....	A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *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).
2. WHERE TO FILE	
NOTICE OF APPEAL.....	U.S. Department of the Interior, Bureau of Land Management Grants Pass Interagency Office 2164 NE Spalding Grants Pass, OR 97526
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).
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)).
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.

(Form 1842-1, September 2006)

NEPA Categorical Exclusion Review

Proposed Action:

The proposed action is the issuance of right-of-way grant to Jeffrey and Sherry Kruger (applicant) for residential access for a period of 30 years.

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

   ( ) 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

   ( ) Remarks:

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

   Yes No

   ( ) Remarks:

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

   Yes No

   ( ) Remarks:

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

   Yes No

   ( ) Remarks:

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

   Yes No

   ( ) 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

   ( ) 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 Remarks:

   Animals Yes No Remarks:

   Fish Yes No Remarks:

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

   Yes No

   ( ) Remarks:

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

    Yes No

    ( ) 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

    ( ) 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

    ( ) Remarks:

Reviewers:

Coreen Francis 10/2/08
Silviculture, Vegetation Dynamics & Port-Orford Cedar — Date

9/30/08
Botany — Date

9/29/08
Cultural Resources — Date

10/1/08
Fisheries — Date

10/1/08
Wildlife — Date

10/1/08
Soils/Hydrology — Date

9/29/08
Visual Resources / Recreation — Date

10/2/08
Engineering — Date