

**RECORD OF PLAN CONFORMANCE AND
CATEGORICAL EXCLUSION (CX) DETERMINATION**

Bureau of Land Management (BLM)

Project Name: **ODOT HWY 140 Geo-testing** CX Log #: DOI-BLM-OR-L040-2011-0036-CX
Project Location: See attached Map Lease or Serial #: OR 66874
BLM Office: Lakeview District, Klamath Falls Resource Area County: Klamath County, Oregon

A. Background

Description of Proposed Action:

ODOT is requesting access to conduct geotechnical investigations in areas of proposed Highway 140 realignment approximately 28 miles east of Klamath Falls. Access would be across portions of Section 34 in T37S, R11E, SW1/4. The geotechnical testing will consist of drilling three, 4-8 inch diameter soil borings using a tracked or truck mounted portable drill rig. Additional types of vehicles that will be accessing the property include a water truck, one or more utility trailers, and one or more pickups. All borings will be backfilled with granular bentonite upon completion. ODOT anticipates performing this work during the months of October 2011 through July 2012. Upon commencement of drilling activities, drilling at any one location should not exceed two days. Off road travel to the drilling locations of up to 900 feet will be required. Locations are shown on the attached Map C.

Minor trimming of branches and clearing of downed trees may be necessary to access the drill hole locations. The request is for 900 feet long by 50 feet wide. The additional width is to accommodate any movement to avoid vegetation or large surface rocks in the area that may be necessary.

Archeology and environmental studies of the project corridor, including the area of the proposed drilling locations, were conducted by ODOT under the Interagency Agreement sign July 1982. All drilling locations and access routes will be within the area surveyed and will be specifically selected to avoid potential archeological site and environmental impacts.

Purpose and Need for the Project:

The purpose of the proposed action is for the BLM to grant a short term Right-of-Way for Geotechnical Testing that is needed for the HWY 140 Re-alignment project.

Proposed Implementation:

From October 2011 through July 2012.

B. Land Use Plan Name

Date Approved/Amended: December 2008

The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decision(s): (refer to page 50) Provide needed rights-of-way, permits, leases, and easements over BLM administered lands in a manner that is consistent with the federal and state law.

C. Compliance with NEPA

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9, Appendix 4, (J) 3. *Conducting preliminary hazardous materials assessments and site investigations, site characterization studies and environmental monitoring. Included are siting, construction, installation and or operation of small monitoring devices such as wells, particulate dust counters and automatic air or water samples.*

The proposed action is categorically excluded from further analysis or documentation under the National Environmental Policy Act (NEPA) provided none of the Extraordinary Circumstances listed in 516 Departmental Manual 2, Appendix 2 (5/27/04) are met.

CX Extraordinary Circumstances Documentation		
Will the proposed categorical exclusion action:	YES	NO
2.1 Have significant impacts on public health or safety.		X
Rationale: No significant impacts expected.		
2.2 Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; 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.		X
Rationale: No unique features present.		
2.3 Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].		X
Rationale: No highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].		
2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		X
Rationale: No highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		
2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.		X
Rationale: Will not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.		
2.6 Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		X
Rationale: No direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		
2.7 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.		X
Rationale: Consultation occurred with OR SHPO by ODOT and on behalf of BLM, and a letter of no adverse effect was received 9/29/11 in the BLM office.		
2.8 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.		X
Rationale: No significant impacts on species listed, or proposed to be listed, as Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.		
2.9 Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.		X
Rationale: Does not violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.		
2.10 Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		X
Rationale: Does not have a disproportionately high and adverse effect on low income or minority populations.		
2.11 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).		X
Rationale: Does not 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).		
2.12 Contribute to the introduction, continued existence, or spread of noxious weeds or non-native 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).		X
Rationale: Refer to Exhibit A (attached) for weed stipulations.		

The proposed action would not meet any of the above extraordinary circumstances, or fail to comply with Executive Order 13212 (Actions to Expedite Energy-Related Projects) – to avoid direct or indirect adverse impact on energy development, production, supply, and/or distribution.

D. Surveys and Consultation

Surveys and/or consultation may be needed for special status plants and animals, for cultural resources, and other resources as necessary (appropriate fields are Initialed and Dated by responsible resource specialist):

Surveys	Are Completed	Will Be Completed	Are Not Needed
SS Animals			X MDB 10/11/11
SS Plants	DLE 10/18/11		
Cultural Resources	BMB 10/5/11		
Consultation	Is Completed	Will Be Completed	Is Not Needed
SS Animal Consultation*			X MDB 10/11/11
Botanical Consultation			DLE 10/18/11
Cultural Consultation	BMB 10/5/11		
*(SS = Special Status)			

E. Contact Person

For additional information concerning this CX review, contact:

Debora Boudreau, Realty Specialist, Klamath Falls Resource Area, 2795 Anderson Avenue, Building 25, Klamath Falls, Oregon 97603-7891 or telephone: 541-885-4150

EXHIBIT A **STIPULATIONS**

By accepting a grant, you agree to comply with and be bound by the following terms and conditions. During construction, operation, maintenance, and termination of the project you must:

1. To the extent practicable, comply with all existing and subsequently enacted, issued, or amended Federal laws and regulations and state laws and regulations applicable to the authorized use.
2. Rebuild and repair roads, fences, and established trails destroyed or damaged by the project and or use by row holder.
3. Build and maintain suitable crossings for existing roads and significant trails that intersect the project.
4. Do everything reasonable to prevent and suppress wildfires on or in the immediate vicinity of the right-of-way area.
5. Not discriminate against any employee or applicant for employment during any phase of the project because of race, creed, color, sex, or national origin. You must also require subcontractors to not discriminate.
6. Pay monitoring fees and rent described in 43 CFR Sec. 2805.16 of this subpart and subpart 2806 of this part.
7. If BLM requires, obtain, and/or certify that you have obtained, a surety bond or other acceptable security to cover any losses, damages, or injury to human health, the environment, and property in connection with your use and occupancy of the right-of-way, including terminating the grant, and to secure all obligations imposed by the grant and applicable laws and regulations. If you plan to use hazardous materials in the operation of your grant, you must provide a bond that covers liability for damages or injuries resulting from releases or discharges of hazardous materials. BLM may require a bond, an increase or decrease in the value of an existing bond, or other acceptable security at any time during the term of the grant
8. Assume full liability if third parties are injured or damages occur to property on or near the right-of-way (see 43 CFR Sec. 2807.12 of this part);
9. Comply with project-specific terms, conditions, and stipulations.
10. Restore, re-vegetate, and curtail erosion or conduct any other rehabilitation measure BLM determines necessary;

11. Ensure that activities in connection with the grant comply with air and water quality standards or related facility citing standards contained in applicable Federal or state law or regulations;
12. Control or prevent damage to Scenic, aesthetic, cultural, and environmental values, including fish and wildlife habitat; Public and private property; and Public health and safety;
13. Ensure that you construct, operate, maintain, and terminate the facilities on the lands in the right-of-way in a manner consistent with the grant
14. Notify the Authorized officer of any maintenance or repairs prior to taking any action on the Right-of-Way.
15. When the state standards are more stringent than Federal standards, comply with state standards for public health and safety, environmental protection, and citing, constructing, operating, and maintaining any facilities and improvements on the right-of-way
16. Grant BLM an equivalent authorization for an access road across your land if BLM determines the reciprocal authorization is needed in the public interest and the authorization BLM issues to you is also for road access
17. Immediately notify all Federal, state, tribal, and local agencies of any release or discharge of hazardous material reportable to such entity under applicable law. You must also notify BLM at the same time, and send BLM a copy of any written notification you prepared
18. Not dispose of or store hazardous material on your right-of-way, except as provided by the terms, conditions, and stipulations of your grant
19. Certify your compliance with all requirements of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 et seq., when you receive, assign, renew, amend, or terminate your grant
20. Control and remove any release or discharge of hazardous material on or near the right-of-way arising in connection with your use and occupancy of the right-of-way, whether or not the release or discharge is authorized under the grant. You must also remediate and restore lands and resources affected by the release or discharge to BLM's satisfaction and to the satisfaction of any other Federal, state, tribal, or local agency having jurisdiction over the land, resource, or hazardous material
21. Comply with all liability and indemnification provisions and stipulations in the grant
22. As BLM directs, provide diagrams or maps showing the location of any constructed facility
23. Comply with all other stipulations that BLM may require.
24. Conditions of Approval to Protect Cultural Values

If subsurface cultural resources are unearthed during operations, activity in the vicinity of the cultural resource will cease and a BLM representative notified immediately. Pursuant to 43 C.F.R. 10.4 the holder of this authorization must notify the authorized officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, the project leader/operator/permittee/etc. must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures that are made by the authorized officer (BLM).

The project leader/operator/permittee/etc. is responsible for informing all persons associated with this project that they will be subject to prosecution for knowingly disturbing Native American Indian shrines, historic and prehistoric archaeology sites, or for collecting artifacts of any kind, including historic items and/or arrowheads from Federal lands pursuant to the 1906 American Antiquities Act (P.L. 59-209; 34 Stat. 225; 16 U.S.C. 432, 433), the Archaeological Resources Protection Act of 1979 (P.L. 96-95; 93 Stat. 721; 16 U.S.C. 470ee as amended), and/or other federal laws.

25. Hydrology

In locations where the project causes soil disturbance or exposed soil is temporarily stored, place sediment-trapping materials or structures such as straw bales, jute netting, or sediment basins where sediment could be transported to waters of the state.

Suspend ground-disturbing activity if projected forecasted rain will saturate soils to the extent that there is potential for movement of sediment from the road to wetlands, floodplains and waters of the state. Cover or temporarily stabilize exposed soils during work suspension. Upon completion of ground disturbing activities, immediately stabilize fill material and rehabilitate disturbed areas. Measures could include but not limited to erosion control blankets and mats, soil binders, soil tackifiers, slash placement.

26. Wildlife

If construction activities need to occur during the bird nesting season (May 15 through August 15), a pre-construction site survey by a qualified Biologist would be required. If it is determined that nesting birds are present, a buffer zone (100 feet is recommended for migratory birds) would be established and maintained until the young birds have fledged.

Raptor Nests –

Implement seasonal restrictions and nest site protection for active/occupied raptor nests from human caused disturbance during the critical nesting period. These seasonal restrictions would vary by species

For Bald Eagles and Golden Eagles use the Fish and Wildlife Service Bald Eagle Management guidelines. Seasonal Restriction period would occur from Jan 1- August 31.

These guidelines can be found at the following web site;
<http://www.fws.gov/pacific/eagle/NationalBaldEagleManagementGuidelines.pdf>

For Osprey the seasonal restriction would occur from May 1 – August 1 (KFRA RMP) within 660 ft. of the nest site.

For all other raptors use the latest information of the critical nesting period for the raptor species and implement seasonal restrictions from human caused disturbance that may result in nest failure or abandonment.

27. The Lessee or Right-of-Way (ROW) Holder shall post the lease or ROW Serial Number on all structures authorized by the lease or grant where practical

28. Weeds

All vehicles and equipment will be cleaned off prior to operating on BLM lands. Removal of all dirt, grease, and plant parts that may carry noxious weed seeds or vegetative parts is required and may be accomplished with a pressure hose.

High concentrations of noxious weeds in the immediate area of mechanical operations shall be mowed to ground level prior to the start of project activities.

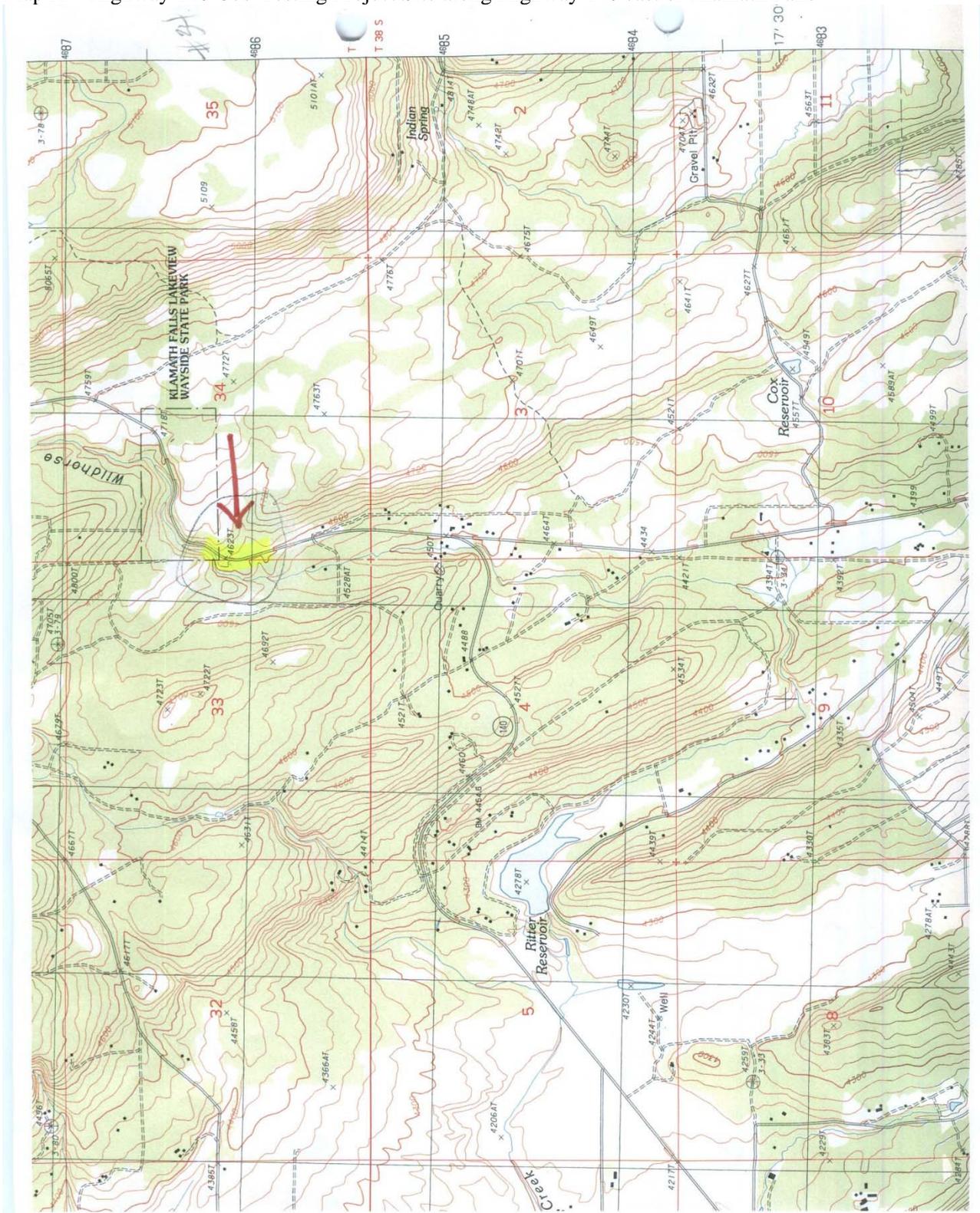
All equipment and vehicles operating off of main roads shall be cleaned off prior to leaving the job site when the job site includes noxious weed populations. Removal of all dirt, grease, and plant parts that may carry noxious weed seeds or vegetative parts is required and may be accomplished with a pressure hose.

29. During the closure period (winter and spring), user will only use the road when it is frozen or dry and will not use the road during wet conditions. If the road is damaged by holder, holder will be required to pay for road maintenance and/or make adequate repairs to road surface and drainage features. This is necessary to keep roads in satisfactory condition, prevent excessive erosion, and to protect the road from winter and spring road use damage. Except in emergency situations, grantor may suspend the use of roads during periods when the forests are closed by lawful authority. Grantor may also suspend the use of such roads when, due to weather conditions, unrestricted use would cause excessive damage to the roads.

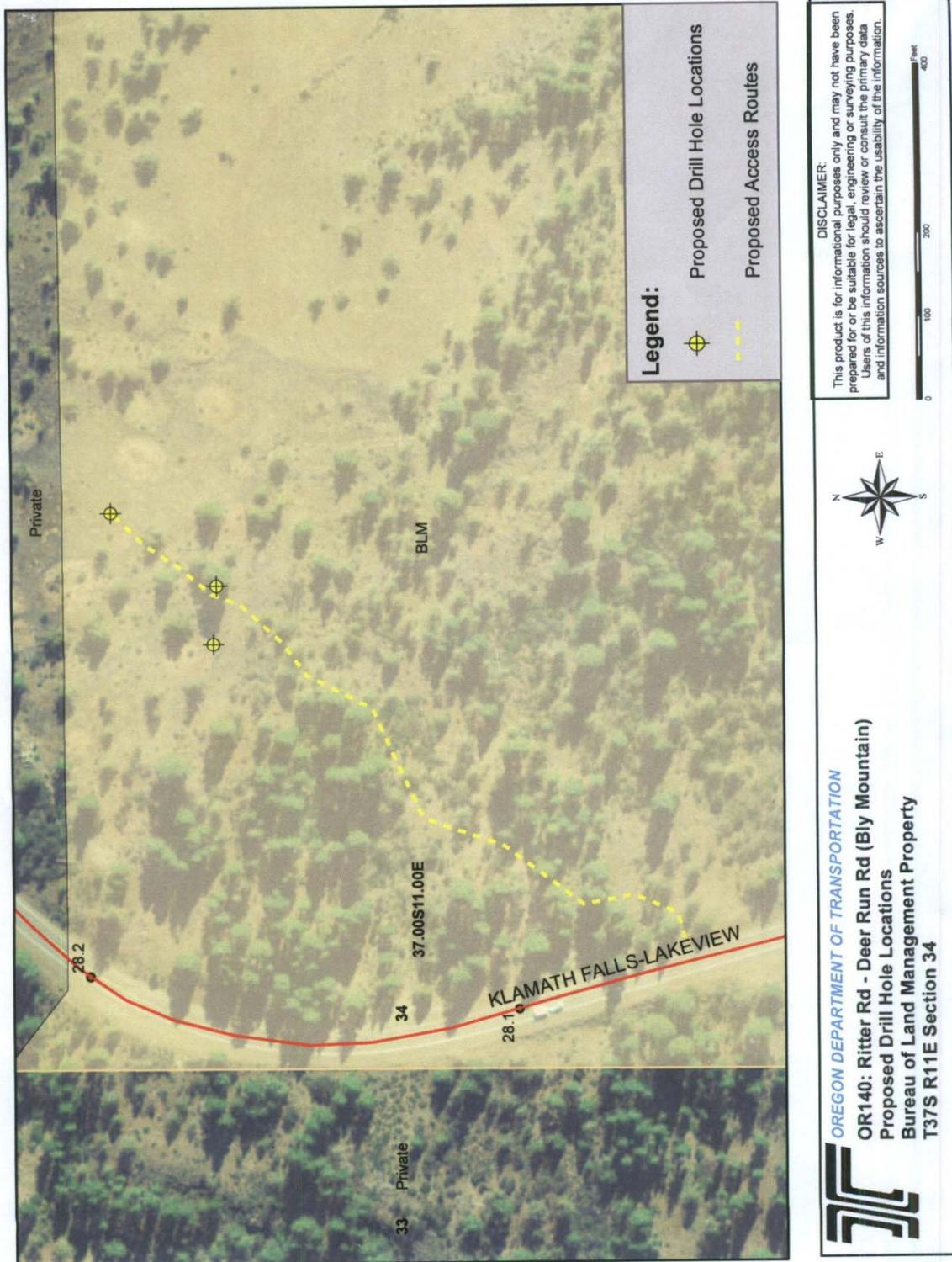
30. You are required to contact the Authorized officer in the event of a name change or address change.

31. All of Holder's controlled equipment or equipment under contract to Holder operating upon such roads shall be maintained in a good and safe operating condition and shall be operated cautiously so as to minimize accident hazards. All truck drivers shall have a valid Oregon Truck Operators license. Holder shall abide by all regulations posted along the roads by the Grantor.

Map A – Highway 140 Geo-Testing Project Site along Highway 140 east of Klamath Falls



Map B – Highway 140 Geo-Testing Drill Hole Locations



August 23, 2011

**Determination for ODOT Hwy 140 Geo-testing for Realignment
ROW #OR 66874
DOI-BLM-OR-L040-2011-0036-CX**

It is my decision to authorize access to BLM lands for Geo-Testing for the Highway 140 #OR 66874 as described in the Categorical Exclusion (CX) # DOI-BLM-OR-L040-2011-0036-CX.

Rationale

The proposed action has been reviewed by the Klamath Falls Resource Area staff and appropriate Stipulations, as specified, will be incorporated into the proposal. The proposed action would not create adverse environmental effects, meet any of the above extraordinary circumstances, or fail to comply with Executive Order 13212 (Actions to Expedite Energy-Related Projects) – to avoid direct or indirect adverse impact on energy development, production, supply, and/or distribution.

Based on the attached NEPA (National Environmental Policy Act) Categorical Exclusion Review, I have determined the proposed action involves no significant impact to the human environment and no further environmental analysis is required.

Signature

Authorizing Official: Donald K. Hoffheins

Date: 10/20/11

Acting for: (Signature)

Name: Donald J. Holmstrom

Title: Manager, Klamath Falls Resource Area