

DECISION RECORD & CATEGORICAL EXCLUSION REVIEW

(DOI-BLM-OR-M060-2011-0005-CX)

Project Name: Griffin Road Right-of-Way (OR 66510)

BLM Office: Ashland R.A., Medford District. **Contact:** Juanita Wright (541) 618-2345

DESCRIPTION & LOCATION OF THE PROPOSED ACTION:

The Ashland Resource Area of the Medford District Bureau of Land Management (BLM) proposes to issue a right-of-way grant to a private landowner who has requested a Right-of-Way (ROW) for use of an existing rocked surface road (38-2-21) across BLM in the SE ¼ SW ¼ of Section 21, T38S, R2W, and over a portion of that road controlled by BLM through an exclusive easement in T38S, R2W, Section 28. The ROW will provide the applicant with legal access (ingress and egress) to his private property.

The Federal Land management Policy Act (Title V section 501) grants the BLM authority to grant, issue, or renew rights-of-way over, upon, under, or through such lands for roads.

PLAN CONFORMANCE

The proposed action is in compliance with the *1995 Medford District Record of Decision and Resource Management Plan (RMP)* which states to “*continue to make BLM-administered lands available for needed rights-of-way.*” The 1995 Medford District Resource Management Plan incorporated the *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and the Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (Northwest Forest Plan) (USDA and USDI 1994).*

The 1995 Medford District Resource Management Plan was later amended by the 2001 *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines.* On July 25, 2007, the *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* amended the 1995 Medford District Resource Management Plan by removing the Survey and Manage Mitigation Measure Standards and Guidelines.

On December 17, 2009, the U.S. District Court for the Western District of Washington issued an order in *Conservation Northwest, et al. v. Rey, et al.*, No. 08-1067 (W.D. Wash.) (Coughenour, J.), granting Plaintiffs’ motion for partial summary judgment and finding a variety of NEPA violations in the BLM and USFS 2007 Record of Decision eliminating the Survey and Manage mitigation measure. Judge Coughenour deferred issuing a remedy in his December 17, 2009 order until further proceedings, and did not enjoin the BLM from proceeding with projects (including timber sales).

This project may proceed even if the District Court sets aside or otherwise enjoins use of the 2007 Survey and Manage Record of Decision. This is because this meets the provisions of the last valid Record of Decision, specifically the 2001 Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines (not including subsequent Annual Species Reviews). This project is not a habitat disturbing activity, as defined in page 22 of the Standards and Guidelines of the *2001 Record of Decision and Standards and Guidelines*, for any Survey and Manage species. Because the project is not habitat disturbing, the Survey and Manage provisions, including pre-disturbance surveys, are not

required under the *2001 Record of Decision and Standards and Guidelines*, (Standards and Guidelines, p. 7, 21-22).

The proposed action is also 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, the Archaeological Resources Protection Act of 1979, and the National Historic Preservation Act of 1966 as Amended (NHPA).

CATEGORICAL EXCLUSION REVIEW

Department of the Interior Regulations (43 CFR § 46.205(c)) require that any action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances listed in 43 CFR § 46.215. An action would meet one of the extraordinary circumstances if the action may:

<u>Yes</u>	<u>No</u>	<u>Categorical Exclusion Exception</u>
()	(X)	1. Have significant adverse effects on public health or safety.
()	(X)	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.
()	(X)	3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)] not already decided in an approved land use plan.
()	(X)	4. Have highly uncertain and potentially significant environmental effects or unique or unknown environmental risks.
()	(X)	5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
()	(X)	6. Have a direct relationship to other actions with individually insignificant, but significant cumulative environmental effects. (40 CFR 1508.7 and 1508.25(a)).
()	(X)	7. Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places.
()	(X)	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)	9. Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.
()	(X)	10. Have disproportionate significant adverse impacts on low income or minority populations (Executive Order 12898).
()	(X)	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)	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).

COMPLIANCE WITH NEPA

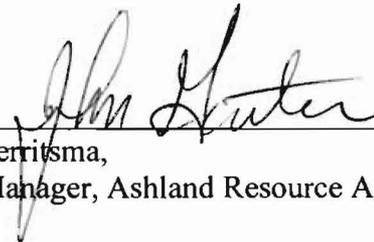
In accordance with 43 CFR §§ 46.205(c) and 46.215, the proposed action has been reviewed against the twelve criteria above and I have determined that none of the extraordinary circumstances described in 43 CFR § 46.205(c) apply to this project. The project qualifies as a categorical exclusion under 516 DM 11.9, E (16) which allows for the "issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes."

DOCUMENT PREPARATION AND REVIEW

Stephanie Kelleher	Ecosystem Planner/Environmental Coordinator	1-20-2011
Name	Title	Date

DECISION

I have determined that the proposed action qualifies as a categorical exclusion under 516 DM 11.9, E (16) and involves no significant impact to the human environment and that no further environmental analysis is required. It is my decision to authorize the issuance of the requested right-of-way grant, OR 66510, to the private applicant as described above in the Proposed Action.

	1/21/11
John Gerritsma, Field Manager, Ashland Resource Area	Date

ADMINISTRATIVE REMEDIES

Notice of this decision will be posted on the District internet website. In accordance with 43 CFR 2801.10, this decision is in effect immediately and will remain in effect pending any appeal to the Interior Board of Land Appeals under 43 CFR Part 4, unless a stay is granted under 43 CFR § 4.21(b).