

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
MEDFORD DISTRICT OFFICE
GRANTS PASS FIELD OFFICE
2164 NE Spalding Ave
Grants Pass, OR 97526**

Categorical Exclusion Determination and Decision Record

**Hubschneider Right-of-Way Grant
Serial No. OR 68224**

DOI-BLM-OR-M070-2015-0008-CX

Project: Right-of-Way Grant under Title V of the Federal Land Policy and Management Act (as Amended), P.L. 94-579.

Location: Medford District, Grants Pass Resource Area, Josephine County. HUC-10 –Lower Applegate River fifth field Watershed. The legal location is T37S-R5W- Section 22.

Applicant: Chris Hubschneider.

Description of Proposed Action

The Proposed Action is to issue one Right-of-Way grant (OR 68224) pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 USC 1761) on unnumbered BLM road #1 that is commonly referred to as Left Fork Oscar Creek Road and unnumbered road #2 that will connect to their residential property. The owner will be using the road to access a private residential property at T38S-5W-Section 22 tax lot 700. The Right-of-Way (ROW) grant area is 16 feet wide by approximately 1,875 feet long. The ROW covers the BLM managed section of Left Fork Oscar Creek Road and a second unnumbered BLM road of 385feet that crosses BLM land and connects to the private property at tax lot 700. The unnumbered road #2 will be improved to allow all season access to the residential property. All activities associated with maintaining the ROW would be in compliance with the terms and conditions of ROW grant OR 68224 (see attached) and any additional Project Design Features (PDFs) listed below. The ROW grant is proposed for 30 years with the option for renewal.

Project Design Features

All activities associated with the operation, use, and maintenance of the ROW would be in compliance with the terms and conditions of ROW grant OR 68224. The Holder shall comply with applicable Federal and State laws and regulations concerning the use of pesticides, insecticides, herbicides, fungicides, rodenticides, etc. The Holder shall submit a written plan of operation and receive written approval of said plan from the BLM Authorized Officer prior to use of said substances. PDFs include:

- Maintenance of the access route would be limited to mowing and cutting of brush encroaching on the ROW access route. This work would be completed by the grant holder.
- Wash heavy equipment including undercarriages prior to entry onto BLM-administered lands to remove mud, dirt, and plant parts. Washing shall occur with a pressure washer or at a facility with an undercarriage wash. Wash water shall not drain into watercourses.
- Any rock used to maintain the ROW must be weed free and must be free of *Phytophthora lateralis* (a pathogen that causes Port-Orford-cedar root disease).
- Two cross ditch culverts will be placed to facilitate proper drainage on unnumbered road #2. The culverts would be 18 inches and installed in existing mining ditches with the skew in alignment with the ditches. Unnumbered road #2 will require an 8 inch lift of pit run material that is weed free and POC clean.
- If cultural resources are discovered during project implementation the project would be redesigned to protect the cultural resource values present, or evaluation or mitigation procedures would be implemented based on recommendations from the Field Office Archaeologist, with input from interested federally recognized Tribes, approved by the Field Manager, and with concurrence from SHPO.
- The proposed ROW passes through BLM cultural site 35HS11-308. If the landowners would like to remove non-historic refuse, trash and other items from BLM land that are located along their proposed ROW, a Field Office Archaeologist will need to meet them onsite to discuss what items can be removed.

Plan Conformance Review

The proposal 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) as amended
- *Final-Medford District Proposed Resource Management Plan/Environmental Impact Statement and Record of Decision* (EIS, 1994 and RMP/ROD, 1995)
- *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)

Categorical Exclusion Determination

The Proposed Action qualifies as a categorical exclusion under Department of The Interior Manual 516 DM 11.9, E (16) which 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” and 11.9, E (17) which allows for “Grant of a short rights-of-way for utility service or terminal access roads to an individual residence, outbuilding, or water well.”

Before any action described in the list of categorical exclusions may be used, the “extraordinary circumstances,” included in Code of Federal Regulations at CFR § 46.205 (c) requires that “any action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances in section 46.215.”

NEPA Categorical Exclusion Review

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

Yes No

() Remarks: All proposed activities follow established rules concerning health and safety.

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.*

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: Past experience from this type of activity has shown no highly uncertain, potentially significant, unique or unknown risks.

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

Yes No

() Remarks: Similar actions have taken place on the Medford District and there is no evidence that this type of action would establish a precedent or decision for future action.

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

Yes No

Remarks: The BLM has conducted this type of activity in the past with no significant direct, indirect, or cumulative effects.

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: Similar actions have taken place on the Medford District and there is no evidence that this type of action would have a disproportionately high or adverse effect on low income or minority populations.

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: The activities involved within these project areas would not affect current populations of noxious weeds or increase the risk of introducing new sites.

Reviewers:

Michael W. Crawford 3-25-15
Fisheries Date

[Signature] 3-25-15
Wildlife Date

[Signature] 3-25-15
Botany Date

Paul Stenley 03-25-15
Soils/Hydrology Date

[Signature] 3/26/15
Cultural Resources Date

[Signature] 03-26-15
Planning/NEPA Date

Cindy Weidner 3/25/15
Engineering Date

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Decision Record

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Proposed Action

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Decision and Rationale

Based upon the attached Categorical Exclusion, it is my decision to provide this ROW grant to Chris Hubschneider as described in the Proposed Action.

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

Administrative Review

Administrative review of ROW 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 ROW 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)).

For additional information concerning this decision contact Mark Brown, Planning and Environmental Coordinator, telephone (541) 471-6505, 2164 NE Spalding Avenue, Grants Pass, Oregon 97526.

Implementation Date

This is a land decision on a ROW 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. ROW decisions that remain in effect pending an appeal are considered “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 (IBLA) 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 Authorized Officer in the Grants Pass Field Office by close of business (4:30 p.m.) not more than 30 days after the effective date. Only signed hard copies of a notice of appeal that are delivered to 2164 NE Spalding Ave, 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 IBLA under its regulations at 43 CFR § 1.3. The appellant also has the burden of showing that the decision appealed 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 (at the address listed above) and with the IBLA (at the address listed below) within 30 days after the notice of appeal was filed.

According to 43 CFR Part 4, you have the right to petition the IBLA 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:

- The relative harm to the parties if the stay is granted or denied,
- The likelihood of the appellant’s success on the merits,
- The likelihood of immediate and irreparable harm if the stay is not granted, and
- Whether the public interest favors granting the stay.

A notice of appeal with petition for stay must be served upon the IBLA and the Regional Solicitor (at the addresses listed below) at the same time such documents are served on the

Authorized Officer 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.

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
805 S.W. Broadway, Suite 600
Portland, Oregon 97205

Appeal Format Requirements: The following are some of the formatting requirements for an appeal. A document filed in a case before IBLA must, in general, be double spaced (43 CFR § 4.401(d)(2)(v)) and a Statement of Reasons may not be longer than 30 pages (43 CFR §§ 4.412(a) 4.414(b)(1)). Unless the IBLA orders otherwise, the text of a statement of reasons may not exceed 30 pages, excluding exhibits, declarations, or other attachments (43 CFR § 4.412(a)). See 43 CFR §§ 4.401, 4.412, and 4.414 for more detail and other formatting requirements.

 (Acting A.)

Allen Bollschweiler,
Field Manager
Grants Pass Resource Area

3/27/15

Date

R05W

T37S

Proposed
Culvert Locations

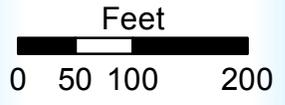
Approx 385 Feet
Unnamed Road #2

T37S-R05W
22

1391 Feet
Unnamed Road #1
commonly called
Left Fork Oscar Cr Rd

Cryer R.O.W.

-  Improved Road
-  Proposed Culvert
-  Not Known Road Owner
-  Bureau of Land Management



No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual or aggregate use with other data. Original data were compiled from various sources and may be updated without notification.

Prepared By: rlutes
Current Date: 02/04/2015 11:04:10 AM