# Categorical Exclusion Determination and Decision Record for OR-067561 Right-of-Way Grant

## DOI-BLM-OR-M050-2014-0003-CX

### Description of Proposed Action

Hunter Communications, Inc. is proposing to amend their existing ROW grant, OR 067561, to add approximately 170 linear feet of buried fiberoptic line. This line would run from the existing utility vault along road 36-4-7.06 to AT&T's communication facility located on Fielder Mountain The proposal is to use a mini excavator to dig a trench 15 inches wide to a buried minimum depth of 30 inches below top of grade. The proposed amendment would be 10 feet x 170 feet and contain approximately .04 acres, located in Township 36 South, Range 4 West, Section 7, SE1/4 (See attached diagram and map).

### Plan Conformance Review

The Bureau of Land Management did not scope this proposal and the public was not involved in its development. This proposal is in conformance with objectives, land use allocations, and management direction of the 1995 *Medford District Record of Decision and Resource Management Plan* (ROD/RMP) and any plan amendments in effect at the time this document is published. This project also conforms with the 1994 *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).

The proposed action was designed to be consistent with the direction given for the management of public lands in the Medford District by the Oregon and California Lands Act of 1937, Federal Land Policy and Management Act of 1976, Endangered Species Act of 1973, Clean Water Act of 1987, Safe Drinking Water Act of 1974 (as amended 1986 and 1996), Clean Air Act of 1990 (as amended), and Archaeological Resources Protection Act of 1979.

This proposal is consistent with management direction in the Medford District 1995 ROD/RMP (p. 82) that directs the BLM to "Continue to make BLM-administered lands available for needed rights-of-way where consistent with local comprehensive plans, Oregon statewide planning goals and rules, and the exclusion and avoidance areas identified in this RMP."

### Project Design Features

- Mulch and seed all areas where in the course of the project, soil is exposed. The type, quality and quantity of materials used shall be approved by the BLM Authorized Officer.
- Clean all equipment prior to entry onto BLM-administered lands to minimize the introduction of noxious weeds. Cleaning is defined as removal of dirt, grease, plant parts, and material that may carry noxious weed seeds. Cleaning prior to entry may be accomplished by using a pressure hose.
- Hunter Communication will monitor disturbed areas and staging and disposal sites where excess material is stockpiled for Oregon Department of Agriculture listed noxious weeds (http://www.oregon.gov/ODA/PLANT/WEEDS/Pages/index.aspx) for three years after

ground disturbance occurs. Treat noxious weeds when detected at the time of year when treatments are effective for each species. Utilize treatments that are effective at controlling specific species. Herbicide applicators must be Oregon State licensed to treat weeds on BLM-administered lands. Herbicides will be applied in accordance with the 2010 Record of Decision for the Final Environmental Impact Statement of Vegetation Treatments Using Herbicides on BLM Lands in Oregon (http://www.blm.gov/or/plans/vegtreatmentseis/documents.php), including Standard Operating Procedures (Appendix 2, pp. 457-467) and maximum application rates (pp. 59-61). Use only herbicides approved for use on BLM-administered lands (currently only glyphosate, 2, 4-D, and picloram) and apply according to herbicide labels. Hunter Communication will complete Pesticide Application Records (PARs) for herbicide treatments on BLM-administered lands and submit to the BLM each year before December 1.

- Refuel and maintain equipment outside of riparian reserves and locate fueling areas so accidental spills will be contained and will not drain into the stream system.
- Grant Holder must prepare a Spill Prevention, Control, and Countermeasure Plan for all hazardous substances to be used in the contract area, as directed by the Authorized Officer. Such plan shall include identification of Purchaser's representatives responsible for supervising initial containment action for releases and subsequent cleanup. Such plans must comply with the State of Oregon DEQ OAR 340-142, Oil and Hazardous Materials Emergency Response Requirements.
- Material staging and disposal sites for excess material will be preapproved by the BLM authorized officer.
- Use appropriate traffic control signs and devices for public safety while work is in progress.
- No disturbance within Special Status plant buffer. Buffer is flagged with black and yellow flagging.
- Notify the Medford District Archaeologist 14 days before trenching begins to allow for cultural monitoring during the ground-disturbing activity. At this time the project may be redesigned or evaluation and mitigation measures implemented to protect cultural resource values based on District archaeologist recommendations and concurrence from the Butte Falls Field Manager and State Historic Preservation Office.
- Stop work and notify the Medford District Manager within 12 hours if an archaeological site is discovered during the project.
- Road use will be limited to dry weather, generally from May 15 to October 15. This restriction could be waived by the Authorized Officer, in consultation with BLM resource specialists.
- Construction would not occur on any hydrologically connected roads when water is flowing in the ditchlines or during any conditions that would result in any of the following; surface displacement such as rutting or ribbons; continuous mud splash or tire slide; fines being pumped through road surfacing from the subgrade and resulting in a layer of surface sludge; road drainage causing a visible increase in stream turbidities, or any condition that would result in water being chronically routed into tire tracks or away from designed road drainage during precipitation events. Construction would not resume for 72 hours following any storm that results in visible ponding/puddling on road surface or until road surface is sufficiently dry to prevent any of the above conditions from reoccurring, as approved by the authorized officer.

- Suspend any project related activities if conditions develop that cause a potential for sediment laden runoff to enter a wetland, floodplain or waters of the state. Cover or otherwise temporarily stabilize all exposed soil. Properly install sediment trapping devices to disconnect site. Resume operations when sediment control devices are in place and conditions allow turbidity standards to be met.
- All operations will be in compliance with fire season restrictions and regulations identified by the Oregon Department of Forestry.
- The BLM shall be notified at least 14 days before ground disturbing activities begin and upon completion of ground-disturbing activities.
- Place a mat on the road surface to contain the soil removed during trenching in order to prevent contamination of road surface.
- Material excavated will be placed back into the trench. Excess material will be removed to a BLM approved location.
- Grant Holder shall furnish replacement crushed aggregate which will consist of hard, durable particles or fragments of crushed stone or crushed gravel. Rock shall be to the size and quality requirements for crushed aggregate materials normally used locally in the construction and maintenance of BLM roads.
- Grant Holder shall notify the BLM if culverts are damaged due to Grant Holder activities. If it is determined that culvert needs replacing, the Grant Holder will replace the culvert to BLM standards.
- BLM roads and BLM-controlled roads will be repaired and restored to pre-disturbance condition.
- Fiberoptic cable will be buried under culverts on BLM and BLM-controlled roads.
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## 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(12). This section allows for

*Grants of right-of-way wholly within the boundaries of other compatibly developed rights-of-way*.

Before any action described in the list of categorical exclusions may be used, the "extraordinary circumstances," included in the Code of Federal Regulations (CFR) at 43 CFR 46.205(c) must be reviewed for applicability. 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 Tanya Dent, Project Leader, at (541) 618-2477.

## NEPA Categorical Exclusion Review

**Proposed Action:** The proposed project is to authorize a right-of-way grant to Hunter Communications as described in the Proposed Action.

The Code of Federal Regulations at 43 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" (listed below). Additional analysis and environmental documents must be completed for any normally categorically excluded action which may:

**Butte Falls Resource Area CX Extraordinary Circumstances Documentation**

1. *Have significant impacts on public health or safety.*
   ☐ Yes ☒ No
   Initial JC Remarks:
   ☐ Yes ☐ No
   Initial_____ Remarks:

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
   Initial JC Remarks:

3. *Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].*
   ☐ Yes ☒ No
   Initial JC Remarks:

4. *Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.*
   ☐ Yes ☒ No
   Initial JC Remarks:

5. *Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.*
   ☐ Yes ☒ No
   Initial JC Remarks:

6. *Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.*
   ☐ Yes ☒ No
   Initial SLS Remarks:

7. *Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau.*
   ☒ Yes ☐ No
   Initial JR 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 | Initial mw | Remarks: |
| Animals | ☐ Yes | ☒ No | Initial D.K. | Remarks: |
| Fish | ☐ Yes | ☒ No | Initial B.H. | Remarks: |

9. *Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.*
   ☐ Yes ☒ No
   Initial [illegible] Remarks:

10. *Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).*
    ☐ Yes ☒ No
    Initial [illegible] 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
    Initial [illegible] 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
    Initial mw Remarks:

**Categorical Exclusion Reviewers:**

| Name | Title | Date | Initials |
|---|---|---|---|
| Jean Williams | NEPA Coordinator | 2/4/2014 | JW |
| Marcia Wineteer | Botanist | 1/29/14 | MW |
| Dave Roelofs | Wildlife Biologist | 1/24/14 | D.R. |
| Baker Holden | Fisheries Biologist | 1/27/14 | BH3 |
| Shawn Simpson | Hydrologist | 1/29/14 | SLS |
| Amy Meredith | Soil Scientist | 1/23/14 | ACM |
| Al Mason | Fire/Fuels Specialist | 2/4/14 | APM |
| Lisa Rice | Archaeologist | 1/23/14 | LR |
| Jeff Brown | Engineer | 1/23/14 | JB |
| Trish Lindaman | Outdoor Recreation Planner | 1/27/14 | TL |

It is my decision to authorize Hunter Communications a right-of-way grant to install fiberoptic cables to existing fiberoptic cable networks, as described in the Proposed Action.

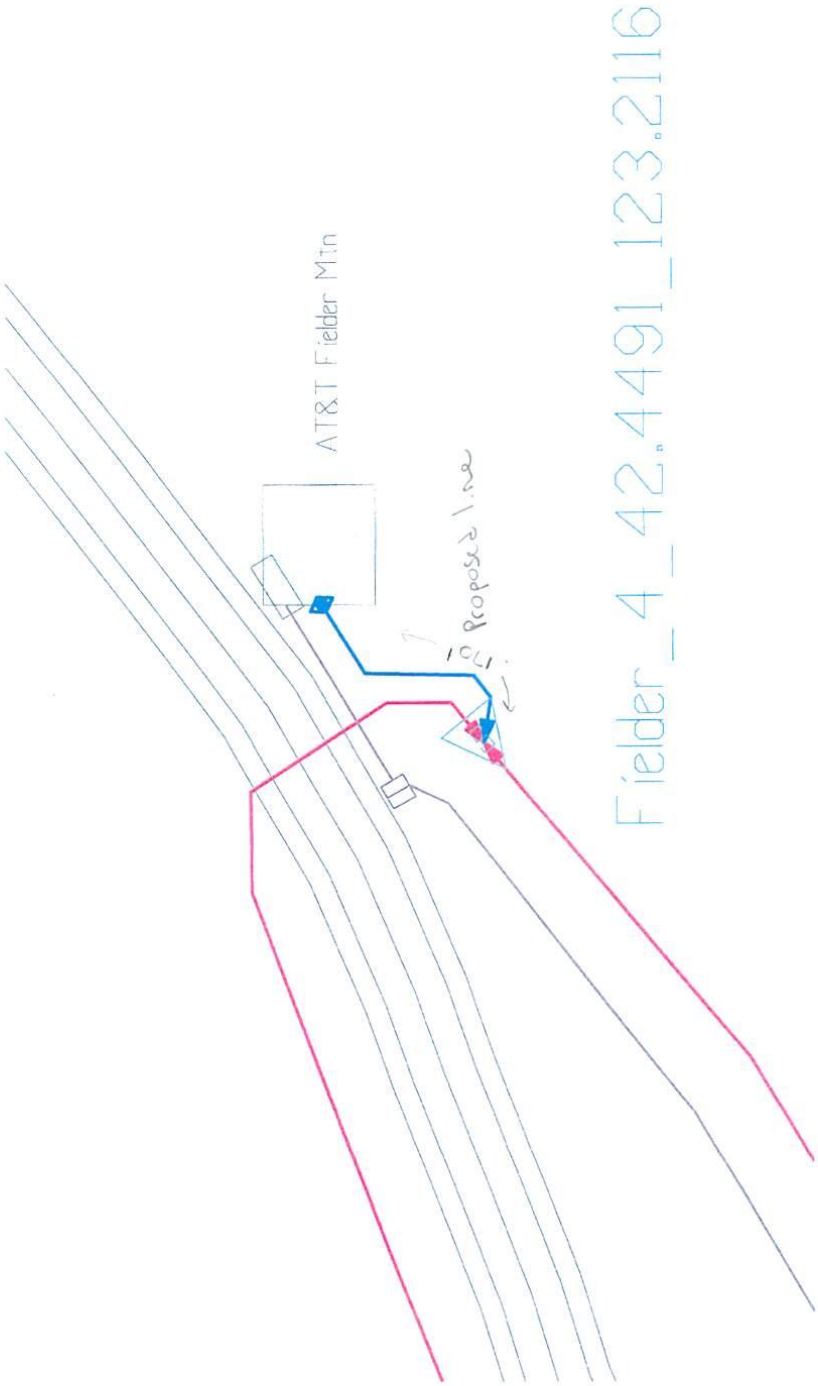
## Decision Rationale

The proposed action has been reviewed by Butte Falls 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 human environment and no further environmental analysis is required.

2/4/14

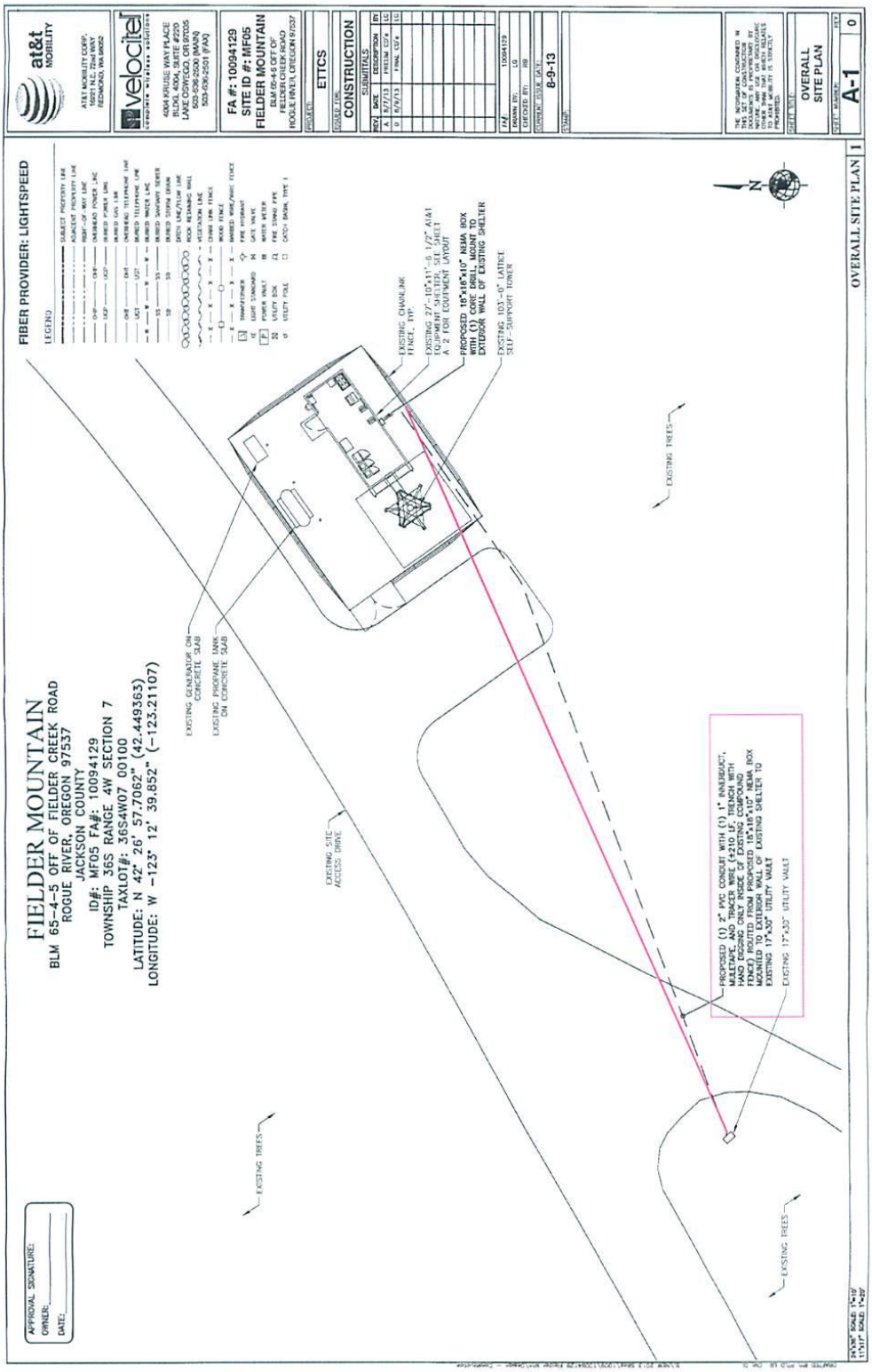
Jon K. Raby
Field Manager
Butte Falls Resource Area

Date


AT&T Fielder Mtn
Proposed Line
Fielder_4_42.4491_123.2116

Google earth feet 200 meters 90

— Approximate location of proposed buried fiber optic line. est. 170 feet.


FIELDER MOUNTAIN
BLM 65-4-5 OFF OF FIELDER CREEK ROAD
ROGUE RIVER, OREGON 97537
JACKSON COUNTY
ID#: MF05 FA#: 10094129
TOWNSHIP 36S RANGE 4W SECTION 7
TAXLOT#: 36S4W07 00100
LATITUDE: N 42° 26' 57.7062" (42.449363)
LONGITUDE: W -123° 12' 39.852" (-123.21107)
FIBER PROVIDER: LIGHTSPEED
LEGEND
APPROVAL SIGNATURE:
OWNER:
DATE:
EXISTING GENERATOR ON CONCRETE SLAB
EXISTING PROPANE TANK ON CONCRETE SLAB
EXISTING SITE ACCESS DRIVE
EXISTING TREES
EXISTING CHAINLINK FENCE, TYP.
EXISTING 27'-10"x11'-6 1/2" AT&T EQUIPMENT SHELTER, SEE SHEET A-2 FOR EQUIPMENT LAYOUT
PROPOSED 18"x16"x10" NEMA BOX WITH (1) 1" CONDUIT BELOW GRADE TO EXTERIOR WALL OF EXISTING SHELTER
EXISTING 103'-0" LATTICE SELF-SUPPORT TOWER
PROPOSED (1) 2" PVC CONDUIT WITH (1) 1" INNERDUCT, MULE LINE AND TRACER WIRE (±210 LF) TRENCH WITH HAND DIGGING ONLY INSIDE OF EXISTING COMPOUND FENCE) ROUTED FROM PROPOSED 18"x16"x10" NEMA BOX MOUNTED TO EXTERIOR WALL OF EXISTING SHELTER TO EXISTING 17"x30" UTILITY VAULT
EXISTING 17"x30" UTILITY VAULT
OVERALL SITE PLAN
at&t MOBILITY
velocitel
FA #: 10094129
SITE ID #: MF05
FIELDER MOUNTAIN
ETTCS
CONSTRUCTION
8-9-13
OVERALL SITE PLAN
A-1

## Administrative Review or Appeal Opportunities

In accordance with BLM's Rights-of-Way regulations (43 CFR § 2801.10), 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). Other than the applicant for the right-of-way, 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 of their alleged injury through their participation in the decisionmaking process (see 43 CFR § 4.410(b) and (c)). The latest date that any affected parties received the Notice of Decision will establish the date initiating a 30-day appeal period.

## 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** (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; therefore, 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 this decision is approved (or the date the affected parties received notice of the decision). Only signed hard copies of a notice of appeal that are delivered to the BLM Medford District Office, 3040 Biddle Road, Medford, Oregon 97504 will be accepted. **Faxed or e-mailed appeals will not be considered**.

In addition to the applicant, anyone who has participated in the National Environmental Policy Act process for this project will qualify as party to the case (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 (43 CFR § 4.410(d)). Furthermore, you may raise on appeal only those issues you raised in comments on the environmental document or that have arisen after the opportunity for comments closed (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, and Hunter Communication 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 Board will review any petition for a stay and may grant or deny the stay. If the Board 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 the Board makes a final ruling on the case.

## Contact Information

For additional information, contact: Jon Raby, Field Manager, Butte Falls Resource Area, 3040 Biddle Road, Medford, Oregon 97504 or telephone 541-618-2200.

Additional contact addresses are:

U.S. Department of the Interior, Office of Hearings and Appeals,
Interior Board of Land Appeals
801 N. Quincy Street, MS 300-QC,
Arlington, VA 22203

U.S. Department of the Interior
Office of the Regional Solicitor
805 SW Broadway, Suite 600
Portland, OR 97205

Hunter Communications
801 Enterprise Drive
Central Point, OR 97601

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
Medford District Office
3040 Biddle Road
Medford, OR 97504

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)