

## **Categorical Exclusion Determination and Decision Record for Michael Keehmer Road R\W Application, OR 65750**

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### **Description of Proposed Action:**

The Butte Falls Resource Area, Medford District BLM (Bureau of Land Management) proposes to issue a right-of-way (r\w) grant to the applicant for use of an existing BLM road (portion of) for a 30-year term. The road is located in section 28, Township 34 South, Range 4 West, Willamette Meridian. The road is commonly known as the Ditch Creek Road, BLM Road No. 34-4-28 (Seg. A). The BLM owns and controls this portion of the road by way of exclusive easement(s). This mainline road crosses private land(s). BLM will do the road maintenance work on the road. The applicant is receiving legal ingress and egress to their private property. The right-of-way grant does not allow commercial hauling.

### **Plan Conformance Review**

This proposal was not scoped and the public was not involved in its development. This proposal is consistent with policy directed by the following:

- *Final Environmental Impact Statement for the Revision of the Resource Management Plans of the western Oregon Bureau of Land Management and Record of Decision and Resource Management Plan for the Medford District* (EIS, 2008 and ROD/RMP, 2008);
- *Record of Decision To Remove the Survey and Manage Mitigation Measure Standards and Guidelines from the Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl* (USDI 2007); and
- *Medford District Integrated Weed Management Plan Environmental Assessment* (1998) and tiered to the *Final-Northwest Area Noxious Weed Control Program Environmental Impact Statement* (EIS, 1985).

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, 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 Resource Management Plan (USDI 2008, p. 41) that directs the BLM to “Provide needed rights-of-way, permits, leases, and easements over BLM-administered lands in a manner that is consistent with federal and state laws” (USDI 2008, p. 49).

### **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) 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.”

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.

**Project Design Features**

None

**Contact Person**

For additional information concerning this project, contact Joe Hoppe, Project Leader, at (541) 618-2310.

**Prepared by:**

  
Joe Hoppe

Lands and Realty Specialist

2/9/2009  
Date

**NEPA Compliance:**

  
Jean Williams, Environmental Specialist

Butte Falls Resource Area

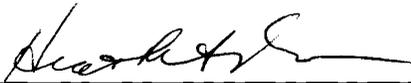
2/19/09  
Date

**Decision**

It is my decision to approve a right-of-way grant to Michael Keehmer for the use of approximately 2,600 feet of the existing Ditch Creek Road, as described in the Proposed Action.

**Decision Rationale**

The proposed action has been reviewed by the Butte Falls Resource Area staff and appropriate Project Design Features will be incorporated into the proposal as specified above. 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.



Heather A. Bernier  
Field Manager  
Butte Falls Resource Area

2/19/09

Date

**ADMINISTRATIVE REMEDIES**

In accordance with BLM’s Rights of Way regulations (See 43 CFR § 2801.10), administrative review of right-of-way decisions requiring National Environmental Policy Act (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 decision-making 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** (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 publication of this decision on the Medford district website. Only signed hard copies of a notice of appeal that are delivered to the Medford District Office (3040 Biddle Road, Medford, OR 97504) will be accepted. Faxed or emailed 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. (See 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 [See 43 CFR § 4.410(d)]. Furthermore, you may raise on appeal only those issues you raised in comments on the environmental assessment or that have arisen after the opportunity for comments closed [See 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 Dennis W. Christiansen 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**

The instructions for properly filing an appeal are contained in the attached form 1842-1.

## **CONTACT INFORMATION**

For additional information contact Heather Bernier, Butte Falls Field Manager, 3040 Biddle Road, Medford, OR, 97504; (541) 618-2260. 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, VA 22203
- Regional Solicitor  
Pacific Northwest Region, USDI  
805 SW Broadway, Suite 600  
Portland, OR 97205

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**

- 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).
- 1. NOTICE OF APPEAL**.....
- 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 97205
- 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

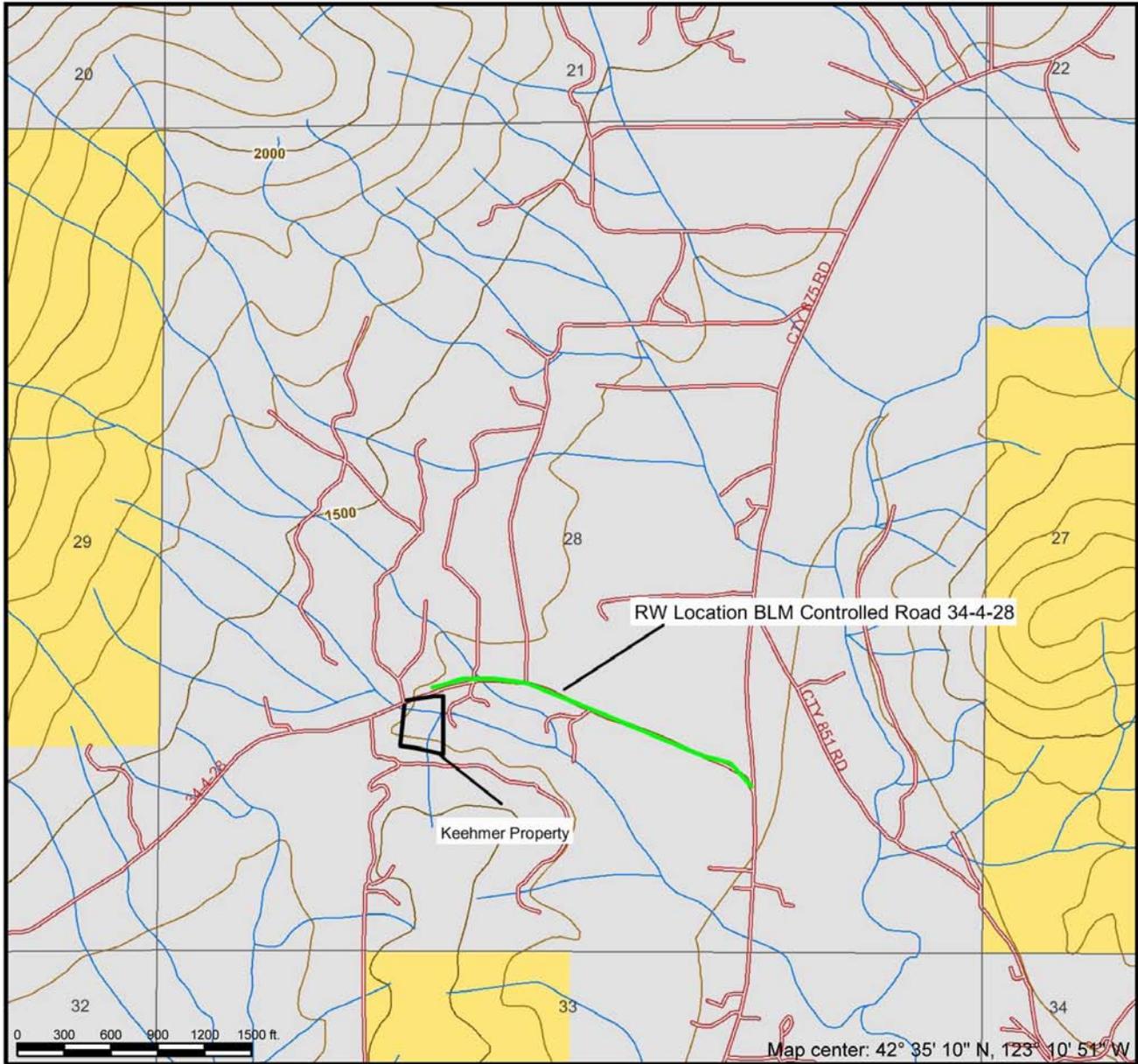
(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

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(Form 1842-1, September 2006)

# Keehmer OR 065750 Exhibit A

T34S, R4W, Section 28



- BLM-administered
- Non BLM
- Sections
- Streams
- Highways
- Roads



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

Printed: Nov 26, 2008 11:30:26 AM  
[http://web.maps.or.blm.gov/foi\\_section](http://web.maps.or.blm.gov/foi_section)

**Scale 1:12,000**  
 Universal Transverse Mercator  
 Zone 10, North American Datum of 1983

**Proposed Action:** R\W grant authorization (OR 65750) to the applicant for legal use of a portion of the Ditch Creek Road for private ingress and egress. The road is located in the Ditch Creek drainage of the Butte Falls Resource Area.

The Code of Federal Regulations at 43 CFR 46.205(c) 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

Initial QU 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 A 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 QU Remarks:

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

Yes  No

Initial QU 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 QU Remarks:

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

Yes  No

Initial SG 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 A Remarks: CRM report OR110-09-28

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 DR Remarks:  
Fish  Yes  No Initial LR 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 JW Remarks:

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

Yes  No  
Initial JW 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 LR 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:

I have reviewed the proposed action in accordance with the above criteria and have determined the proposed action would not involve any significant environmental impacts. Therefore, the proposed action does not meet any of the criteria for exception and is categorically excluded from further environmental review. The proposed action qualifies as a categorical exclusion under 516 DM 11, Appendix 11.9 E (16).

Jean A. Williams  
Butte Falls Resource Area NEPA Coordinator

2/19/09  
Date

[Signature]  
Butte Falls Field Manager

2/19/09  
Date

**Categorical Exclusion Reviewers:**

<b>Name</b>	<b>Title</b>	<b>Date</b>	<b>Initials</b>
Jean Williams	NEPA Coordinator	2/19/09	JW
Marcia Wineteer	Botanist	2/11/09	mw
Dave Roelofs	Wildlife Biologist	2/17/09	DR
Steve Liebhardt	Fisheries Biologist	2/10/09	SL
Shawn Simpson	Hydrologist	2/17/09	KS
Ken VanEtten	Soil Scientist	2/19/09	SL
Al Mason	Fire/Fuels Specialist	2/11/09	APM
Ann Ramage	District Archaeologist	2/13/09	AR
Doug Stewart	Silviculturist	2/18/09	DS
Trish Lindaman	Outdoor Recreation Planner	2/10/09	TL
Randy Bryan	Engineering	2/11/09	RRB