

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

CATEGORICAL EXCLUSION REVIEW AND DECISION RECORD

DOI-BLM-OR-M040-2015-0002-CX

Project Name: Qwest Telecommunication Line Right-of-Way Grant OR 024876

Prepared By: Tanya Dent
Michelle Calvert

Title: Realty Specialist
Planning and Environmental Coordinator

BLM Office: Ashland R.A., Medford District **Phone:** 541-618-2477 or 541-618-2252

DESCRIPTION & LOCATION OF THE PROPOSED ACTION

The proposed action is to reauthorize Federal Land Policy and Management Act (FLPMA) Right-of-Way (ROW) Grant OR 024876 to Qwest Corporation (dba CenturyLink QC) for the continued use of their buried telecommunications line located in the NW1/4 NW1/4, Section 9, T. 40 S., R. 3 E., as shown on the attached map (Exhibit A). This buried line is located within the road prism along Segment C of BLM Road 39-3E-32.3 (Soda Mountain Road). There is no new ground disturbance activity requested with this renewal application.

The portions of BLM land showing in T. 40 S., R. 3 E., Section 4, along the Soda Mountain Road, were recently acquired and the buried utility line had previous rights from the landowners at that time.

The ROW is estimated to be 10 feet wide by 1,532 feet in length and contains approximately 0.35 acres. The term of the right-of-way grant will be for 30 years.

The ROW on the Medford District is located within the Cascade-Siskiyou National Monument (CSNM) which was designated by Presidential Proclamation 7318 on June 9, 2000. The telecommunications line is recognized in the CSNM Record of Decision and Resource Management Plan (ROD/RMP) as a valid existing right that was expressly recognized and protected in the presidential proclamation (USDI 2008, pp. 114-115).

TERMS AND CONDITIONS

The following terms and conditions will be included in the proposed authorization.

1. This grant is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800.
2. A BLM botanist will be notified by March 1st of each year if vegetation treatments, including noxious weed treatments, are planned and the exact location within the ROW of those treatments. This will allow the botanist to provide the grantee with the special protection measures necessary to ensure protection of known Bureau Special Status plants and Survey and Manage species sites within this ROW.

3. The Holder shall provide a written work schedule specifically detailing activities for all maintenance and repair of the right-of-way (vegetative, roads, structural equipment, etc.) authorized through this grant six (6) months prior to the proposed commencement of activities. Said written schedule shall describe in detail the type of site specific activity being proposed, equipment and work methods to be used, debris disposal options proposed, beginning and ending dates of operation, etc. The Holder shall strictly adhere to any BLM requirements at the Holder's cost. The Holder shall also include the name, address and telephone number of the Holder's delegated representative. The delegated representative is the person who is authorized by the Holder to carry out the terms and conditions of the grant and act on behalf of the Holder.
4. No hazardous materials are to be produced, transported, or stored on this right-of-way. The Holder shall notify the authorized officer if there is a significant variance from this authorization with respect to hazardous materials and their use, storage, or disposal. The Environmental Protection Agency maintains and updates a list of all hazardous substances that may present substantial danger to the public health or the environment in Title 40 of the United States Code of Federal Regulations Part 302.
5. The Holder shall notify the BLM Authorized Officer upon discovery of any noxious weed species found in the right-of-way area and is responsible for immediate control and eradication. The Holder shall consult with, and obtain approval from the BLM Authorized Officer for acceptable weed control methods, such as mechanical or chemical. All equipment shall be washed prior to entering, and immediately after leaving the project area at a site where any mud or debris from the equipment will not contribute to the spread of noxious weeds.
6. The Holder shall during the life of this grant, comply with all applicable State and Federal environmental laws, regulations, and standards. The Holder shall also immediately discontinue all construction or other operations under this grant upon receipt of written notice from the Authorized Officer that such operations are in violation of said provisions.
7. The United States reserves the right to grant subsequent use pursuant to 43 CFR 2801.1-1.
8. The Holder should be aware that the BLM may grant other rights-of-way across BLM lands, and also may enter into agreements for exchange or sale of BLM-administered lands.
9. The Holder or his contractor shall coordinate with BLM prior to any proposed operations and maintenance activities within the right-of-way on BLM managed lands, to establish any cultural concerns in areas being treated.
10. The Holder shall promptly remove and dispose of all waste caused by its activities as directed by the BLM Authorized Officer. The term "waste" as used herein means all discarded matter including, but not limited to: human waste, trash, garbage, refuse, petroleum products, ashes, equipment and vegetative materials.
11. The Holder shall not place signs, gates, or barricades on public land, its resources or improvements without prior written approval from the BLM Authorized Officer.

12. The United States shall not be held liable for any damage to the right-of-way caused by the general public or as a result of fire, wind, or other natural disasters or as a result of the land management activities of the BLM. The Holder shall indemnify the United States against any liability for damages to life or property arising from the occupancy or use of public lands under the grant.
13. The Holder shall protect all survey monuments, witness corners, reference monuments, and bearing trees within this right of way against disturbance during construction, operation, maintenance, and rehabilitation. If any monuments, corners, or accessories are destroyed, obliterated, or damaged during construction, the Holder or his contractor shall restore said items to the satisfaction of the BLM Authorized Officer.
14. The Holder shall be responsible for costs incurred for reconfiguration of Holder improvements within the right-of-way when road reconstruction or other activities prescribed by the BLM are required.
15. 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. The plan shall provide the type and quantity of material to be used; the pest, insect, fungus, etc. to be controlled; the method of application; the location for storage and disposal of containers; and any other information the BLM Authorized Officer requires. Application of said substances by the Holder shall be under the supervision of an appropriately licensed applicator. The Holder's plan shall be submitted no later than October 1 of any calendar year covering the proposed activities for the next calendar year (i.e., October 1, 2014, deadline for calendar year 2015 action). The use of substances on or near the right-of-way shall be in accordance with the BLM approved plan.

PLAN CONFORMANCE

The proposed action is located on BLM-administered land and lies within the Cascade-Siskiyou National Monument. The proposed action is in conformance with and tiered to the 2008 *Cascade-Siskiyou National Monument ROD and RMP*. The proposed action is consistent with *Medford District Integrated Weed Management Plan Environmental Assessment (1998)* and tiered to the *Northwest Area Noxious Weed Control Program (EIS, 1985)* and the 2001 ROD and Standards and Guidelines for Amendments to Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines. 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 (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, and the Archaeological Resources Protection Act of 1979.

The Proposed Action is in conformance with the applicable land use plan because it is specifically provided for in the approved decision, VER-2, in the CSNM ROD/RMP 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 protection of monument resources" (CSNM ROD/RMP, p. 114).

“The establishment of this monument is subject to valid existing rights. Valid existing rights (VERs) may include a variety of BLM authorizations such as rights-of-way grants, leases, reciprocal agreements, and withdrawals. Valid rights are expressly recognized and protected in the presidential proclamation” (CSNM ROD/RMP, p.114).

COMPLIANCE WITH NEPA

The Proposed Action qualifies as a categorical exclusion under Department of Interior Manual 516 DM 11.9, E (9), which allows for renewals and assignments of leases, permits, or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations.

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The Proposed Action has been reviewed, and none of the extraordinary circumstances described in CFR § 46.215 apply.

CATEGORICAL EXCLUSION REVIEW

Extraordinary circumstances (CFR § 46.215) 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:

Yes	No	<u>Categorical Exclusion Exception</u>
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- | | | |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 1. Have significant adverse effects on public health or safety. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 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. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 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. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 4. Have highly uncertain and potentially significant environmental effects or unique or unknown environmental risks. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 6. Have a direct relationship to other actions with individually insignificant, but significant cumulative environmental effects (40 CFR 1508.7 and 1508.25(a)). |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 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).

SUMMARY OF FINDINGS

The proposed action has been reviewed against the twelve criteria listed above for an exception to a categorical exclusion and does not fall under any exception as identified in 516 DM 2. The project qualifies as a categorical exclusion under 516 DM 11.9 E (9).

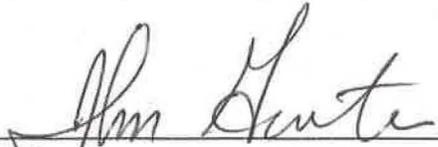
<u>Michelle Calvert</u>	<u>Planning and Environmental Coordinator</u>	<u>2/9/15</u>
Prepared by	Title	Date

<u>Kathy Minor</u>	<u>Planning and Environmental Coordinator</u>	<u>2/9/15</u>
Reviewed and Edited by	Title	Date

DECISION

Based on the Categorical Exclusion Review documented above, I have determined this project proposal involves no significant impact to the human environment. Therefore, this project is categorically excluded from NEPA documentation under 516 DM 11.9 E (9), and no further environmental analysis is required.

It is my decision to reauthorize the requested telecommunications line right-of-way grant to Qwest Corporation (dba CenturyLink QC) as described above. The serialized case file is OR 024876.



 John Gerristma
 Field Manager
 Ashland Resource Area

2/9/15

 Date

ADMINISTRATIVE REMEDIES

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 (a) – (c)). Other than the applicant/proponent for the right-of-way 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)).

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 authorized officer who made the decision in this 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:

*BUREAU OF LAND MANAGEMENT
MEDFORD INTERAGENCY OFFICE
Ashland Resource Area
3040 Biddle Road
Medford, OR 97504*

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 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 and the Regional Solicitor 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

For additional information contact:

John Gerristma, Field Manager, Ashland Resource Area
Medford Interagency Office
Bureau of Land Management
3040 Biddle Road
Medford, OR 97504
(541) 618-2438

Or

Michelle Calvert, Ashland Resource Area Planning and Environmental Coordinator, at (541) 618-2252

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, Virginia 22203
- Regional Solicitor
Pacific Northwest Region
U.S. Department of the Interior
1220 S.W. 3rd Avenue
Portland, OR 97204
- Qwest Corporation dba Century Link QC
8021 SW Capital Hill Road
Portland, OR 97219

Buried Telecommunication Line
Ashland Resource Area

Exhibit A
OR 24876

