

UNITED STATES OF AMERICA
DEPARTMENT OF INTERIEOR
BUREAU OF LAND MANAGEMENT
MEDFORD DISTRICT OFFICE

**CATEGORICAL EXCLUSION DETERMINATION &
DECISION RECORD**

**Legay and Shidler R\W Application, OR 066388
DOI-BLM-OR-M070-2010-0037-CX**

I. PROPOSED ACTION

A. Description of Proposed Action

The proposed action is the issuance of right-of-way grant OR 06388 to Thomas Legay and Jill Shidler (applicants), for the use and maintenance of an existing graveled road for ingress and egress to residential property owned by the applicants located at tax lot 601, Grants Pass, Oregon. OR 066388 will be issued pursuant to Title V of the Federal Land Management Policy Act of October 21, 1976 (90 Stat. 2776; 43 USC 1761). The authorization would allow the use and maintenance of identified existing road for 30 years.

B. Location of Right-of-Way and Land Use Allocation

The affected road and/or lands are located in Josephine County on lands administered by the Grants Pass Resource area BLM. The existing road is located in T. 40 S., R. 8W. , Section 15 Willamette Meridian. The proposed right-of-way (R/W) location is shown on the attached map (Exhibit A). The road right-of-way is approximately 15 feet wide and 400 feet long across agency administered land.

C. Need / Rationale for the Proposed Action

The BLM needs to respond to Thomas Legay and Jill Shidler's application for road right-of-way in a manner consistent with the resource management plan objectives and direction in accordance with the BLM's obligations under the Federal Land Policy and Management Act of 1976 (FLPMA). The current land use plan directs BLM to "Continue to make BLM-administered lands available for needed rights-of-ways where consistent with local comprehensive plans." (Record of Decision and Resource Management Plan for the Medford District BLM (1995 ROD/RMP), p. 82).

D. Project Design Features

See Exhibit B and C attached hereto.

II. PLAN CONFORMANCE

This proposed action is consistent with policy directed by the following:

- the *Final-Medford District Proposed Resource Management Plan/Environmental Impact Statement and Record of Decision* (EIS, 1994 and RMP/ROD, 1995);
- the *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);
- *Final SEIS for Amendment to the Survey & Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines* (2000), and the ROD and *Standards and Guidelines for*

Amendment to the Survey & Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines (2001)

- the *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)

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.

III. 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). This section 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."

Extraordinary Circumstances Review

Title 43, Section 46.205(c) of the Code of Federal Regulations (CFR) requires the review of this action to determine if any of the following "extraordinary circumstances" (found at 43 CFR 46.215) would apply. If any of the extraordinary circumstances apply, then an otherwise categorically excluded action would require additional analysis and environmental documentation.

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

Yes No

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.*

Yes No

3. *Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].*

Yes No

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

Yes No

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

Yes No

6. *Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.*
Yes No
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
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.*
Yes No
9. *Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.*
Yes No
10. *Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).*
Yes No
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
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

Reviewers:

Larol Davison 8/25/10
Silviculture, Vegetation
Dynamics, & Port-Orford Cedar
Date

Robin C. Snider 8/24/10
Wildlife
Date

A J 8/23/10
Botany
Date

Dave Mauer 8/23/10
Soils/Hydrology
Date

Joan Brown 8/23/2010
Cultural Resources
Date

Ellen K. Coate 8/23/10
Visual Resources / Recreation
Date

Jan Peterson 8/23/2010
Fisheries
Date

James R. Proyer 8/23/10
Engineering
Date

Jim Gonzales 8-24-10
Fire and Fuels
Date

Tanya Dent 8/4/2010
Prepared by
Date

Dulcey Schuster 8/25/10
NEPA Reviewed by
Date

IV. DECISION

I have reviewed this Categorical Exclusion Documentation, including the plan conformance, NEPA compliance review, and extraordinary circumstances review, and have determined the proposed action is in conformance with the approved land use plan and that no further environmental analysis is required. It is my decision to authorize right-of-way grant OR 066388 as described in the Proposed Action for a period of 30 years.

Abbie Jossie
Abbie Jossie, Field Manager
Grants Pass Resource Area

8.25.10
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 officer who made the decision in this office by close of business (4:30 p.m.) not more than 30 days after the date of service. Faxed or e-mailed appeals will not be considered. Only signed hard copies of a notice of appeal that are delivered to the following address will be accepted; faxed or e-mailed appeals will not be considered.

*BUREAU OF LAND MANAGEMENT
GRANTS PASS INTERAGENCY OFFICE
2164 NE Spalding
Grants Pass, OR 97526*

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 the Right of Way applicant(s) George and Teresa Jones, 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.

CONTACT INFORMATION

For additional information contact:

Abbie Jossie, Field Manager, Grants Pass Resource Area
Grants Pass Interagency Office
Bureau of Land Management
2164 NE Spalding
Grants Pass, OR 97526
(541) 471-6652
Or Dulcey Schuster (Grants Pass Environmental Planner) at (541) 471-6565

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
805 SW Broadway, Suite 600
Portland, Oregon 97205
- Thomas Legay
Jill Shidler
PO Box 1363
Cave Junction, OR 97523

Attachments:
Exhibit A Map
Exhibits B & C

Rights-of-Way Stipulations

The Holder shall comply with the applicable Federal and State laws and regulations concerning the use of pesticides (i.e., insecticides, herbicides, fungicides, rodenticides, and other similar substances) in all activities/ operations under this grant. The Holder shall obtain from the Authorized Officer approval of a written plan prior to the use of such substances. The plan must 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 other information that the Authorized Officer may require. The plan should be submitted no later than December 1 of any calendar year that covers the proposed activities for the next calendar year (i.e., December 1, 2010, deadline for a calendar year 2011 action). Emergency use of pesticides may occur. The use of substances on or near the right-of-way shall be in accordance with the approved plan. A pesticide shall not be used if the Secretary of the Interior has prohibited its use. A pesticide shall be used only in accordance with its registered uses and within other limitations if the Secretary has imposed limitations. Pesticides shall not be permanently stored on public lands authorized for use under this grant.

The Holder shall promptly remove and dispose of all waste caused by its activities as directed by the 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, and equipment.

The United States will not be held liable for any damage to the road caused by the general public or as a result of fire, wind, or other natural disasters or as a result of silvicultural practices, timber harvesting operations, or other actions stemming from the land management activities of the Bureau of Land Management.

Cultural and Paleontological Resources. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.

The Holder shall not use dirt roads as access routes when such use would cause severe rutting or erosion, as determined by the Authorized Officer. Construction, use, maintenance, and termination activities shall be suspended on public lands if soil condition warrants, as determined by the Authorized Officer.

The Holder(s) shall not place signs, gates, or barricades on public land, its resources, or improvements without prior written approval from the Authorized Officer.

The holder will be responsible for all upgrading, and preventive and corrective access road maintenance operations under this grant on this road. This may include, but not be limited to, blading the roadway, cleaning the ditches and drainage facilities, dust abatement, or other requirements as directed by the Authorized Officer.

The Holder shall contact the Authorized Officer or his representative at least 15 days prior to the anticipated start of maintenance activities. The Authorized Officer is the BLM Grants Pass Field Manager, and his designated representative is:

Title: Grants Pass Lead Area Engineer
Address: 2164 NE Spalding Ave.
Grants Pass, OR 97526
Telephone No: 541-471-6500

EXHIBIT C

SPECIFICATIONS - ROADSIDE BRUSHING

GENERAL

Description of Work - The work consists of cutting and removing trees and other vegetative growth along both sides of the roadway including bridges.

Operating Permit – State law requires a permit to operate power run machinery. Contact the local State Forestry Office prior to the operation of power driven machinery.

Environmental Considerations

Equipment Cleaning: Equipment shall be washed prior to entering BLM lands. Removal of all dirt, grease and plant parts that may carry noxious weed seeds or vegetative parts is required and may be accomplished with a pressure hose.

To minimize the spread of Port Orford Cedar Root Disease into noninfected areas the following measures shall be taken:

- a) All equipment and vehicles used in the maintenance, repair and brushing shall be steam cleaned or washed with high pressure water hose before entering and leaving the Right-of-Way Area. The Right-of-Way area is shown on Exhibit A. Washing will take place at a designated washing station approved by the Contracting Officer. Before leaving the washing station, soil and organic matter shall be removed from equipment and vehicles. The equipment used for washing will be sufficient to remove all soil and organic matter from equipment and vehicles. The water used for cleaning equipment and vehicles shall be in quantities sufficient to complete the required washing. The water used at the washing station will be well water or Municipal water.
- b) All water used at the washing station shall drain away from creeks, streams, and the area used for washing.
- c) Report noxious weeds to Grants Pass Resource Area Engineering or Botanists before treating..

Do not remove vegetation in Riparian Area with out written Authorization.

Do not operate equipment in Riparian Areas with out written Authorization.

SPECIFIC TASKS

Brushing shall be performed manually with hand tools including chainsaws. Self-propelled equipment shall not be allowed. The area to be cut shall consist of the roadbed surface, cut slopes and fill slopes.

Cutting Limits - The measured horizontal distance beyond the ditch centerline and the measured horizontal distance from the outside shoulder as shown on Drawing OR-11-9113.4-10

Bridges – The cutting limits beneath or adjacent to bridges shall extend 8 feet horizontally from each side of the outermost projected line of the bridge including abutments, curbs, rails or decks. All cut brush and trees shall be removed from beneath the bridge and from the stream channel in accordance with either “a” or “b” under the section Debris – Handling/Disposal.

Sight Distance - When needed for sight distance on the inside of circular curves, the middle ordinate measured from the edge of shoulder shall not exceed 25 feet as measured parallel with the slope, and the long chord shall be no less than 200 feet as shown on Drawing OR-11-9113.4-10, Sight Distance Diagram.

Cutting Requirements – Grant Holder shall:

- (a) Cut all vegetation taller than (6) inches in height within the cutting limits that have a trunk or bole less than (7) inches in diameter when measured (54) inches above the ground surface. Vegetation exempted from cutting are trees left from thinning and spacing described in section “g” of Cutting Requirements.
- (b) Cut all vegetation to a maximum height of (1) inch above the ground. All remaining limbs shall be severed from the stump. Sharp pointed ends will not be permitted. Cuts shall be parallel to the existing surface.
- (c) Cut all limbs from trees that have a trunk or bole (7) inches or greater in diameter when measured (54) inches above the ground surface within the cutting limits. Limbs shall be cut to within (1) inch of the limb collar at the trunk or bole for the entire circumference of the trunk and to a height of (14) feet as measured from the roadway surface.
- (d) Cut all limbs that extend into the cutting limits from trees growing outside of the cutting limits. Limbs shall be cut to within (1) inch of the limb collar at the trunk or bole surface. The cutting limit area shall be cleared of all limbs to a height of (14) feet as measured from the roadway surface.

- (e) Clear all vegetation for a minimum of (4) foot radius from all culvert inlets.
- (f) Cut all vegetation as described in Section "a" under Cutting Requirements on straight sections of road except as follows: Vegetation need not be cut beyond the outside shoulder of the road where the shoulder is more than (4) feet beyond the basic lane width as shown on Drawing OR-11-9113.4-10
- (g) Thin, space and prune trees through curved sections of road for visibility as shown in Drawing OR-11-9113.4-10. Thinning and spacing of trees shall be a minimum (10) feet in height and (10) feet apart. A minimum (1/3) tree crown shall be maintained on any pruned tree.

Debris - Handling/Disposal

- (a) Roads to be brushed: Debris resulting from roadside brushing shall be scattered down slope below the road shoulder. No debris shall be left in the ditches, channels, catch basins, culverts, roadway, fences, cattle guards, or on the cut slope. Debris shall not be allowed to accumulate in concentrations, but shall be further reduced or removed. Concentrations will be defined as any debris, limbs or branches touching each other or piled on top of each other or any material sticking up over (2) feet in elevation above the ground.
- (b) Roads to be brushed and chipped: Debris resulting from roadside brushing shall be chipped. No debris shall be left in the ditches, channels, catch basins, culverts, roadway, fill slopes or cut slopes. Maximum chip pile size shall be (3) feet in diameter by (2) feet in height. No chip pile shall be located within (20) feet of any stream channel.
- (c) Cut trees or debris shall not be allowed to stand or lean against other standing uncut trees or brush. Such "hangups" shall be removed, reduced and scattered down slope.

Signs, markers, other road appurtenances, and other specially marked items are to remain in place.

Traffic warning signs meeting the minimum requirements as stated in the Manual for Uniform Traffic Control Devices (MUTCD) for shape, size, color and legend shall be provided at each end of the active operating areas.

DEFINITIONS

Culvert - Any structure which provides a passageway, drain, or waterway under a road or embankment.

Cutting Limits - The vegetation cutting and removal area described in the specifications and/or shown on the exhibit.

Drainage Ditch - A specific type of furrow ditch located within or abutting the roadbed.

Right-of-Way - A general term denoting land, property, or interest therein (usually a strip) acquired for or devoted to transportation purposes.

Roadbed - The portion of a road within the intersection of the top surface and side slopes, excluding that portion of the ditch below the top surface.

Roadside - A general term denoting the area between the roadway and the Right-of-Way line.

Running Surface - The portion of the roadway or bridge for the movement of vehicles, exclusive of shoulders on asphalt paved roads.

Sight Distance - The length of road or bridge ahead visible to the vehicle driver.

Shoulder - The portion of the roadway contiguous with the running surface for accommodation of stopped vehicles or emergency use.

Surface Course - The top layer of a pavement structure, sometimes called the wearing course, usually designed to resist skidding, traffic abrasion, and the disintegrating effects of climate.

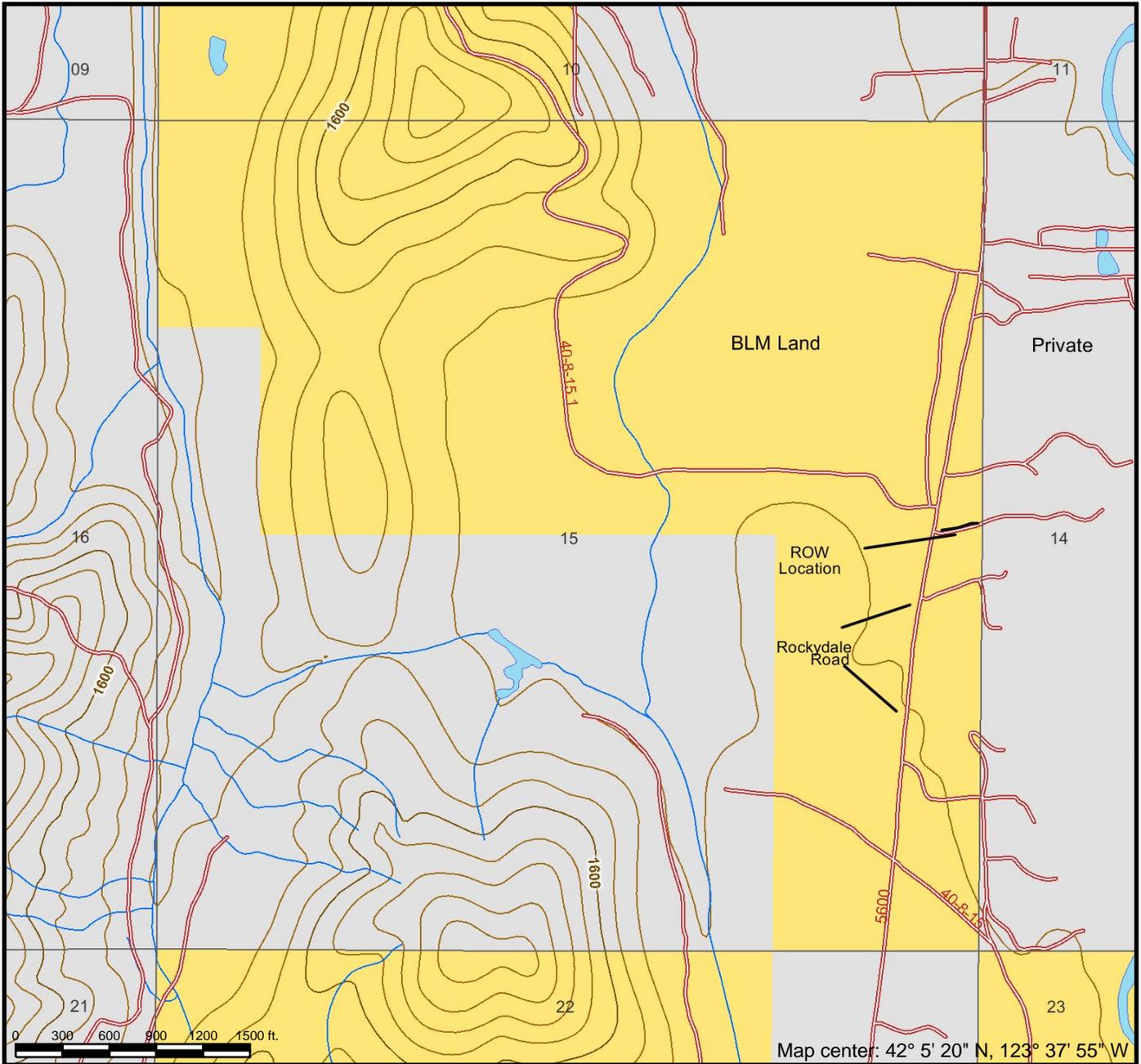
Traveled Way - The portion of the roadway for the movement of vehicles, exclusive of shoulders on asphalt paved roads. For purpose of this contract, traveled way includes turnouts and curve widening.

Turnouts - A short auxiliary lane on a one-lane road provided for safe passage of meeting vehicles.

Vegetation - All trees, woody plants, vines etc.

Exhibit A - OR 066388

T40S - R8W Sec15



- | | | |
|-----------------------------|----------|----------|
| Forest Operations Inventory | Non BLM | Highways |
| TPCC | Lakes | Roads |
| Township and Range | Streams | Trails |
| Sections | Wetlands | |



Internal Use Only



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

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http://web.maps.or.blm.gov/foi_section

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