

W. B. C. I.

ORIGINAL

Memorandum Date: June 23, 2008

Order Date: July 9, 2008

TO: Board of County Commissioners

DEPARTMENT: Public Works, Land Management Division

PRESENTED BY: D. Michael Jackson, Lane County Surveyor 

AGENDA ITEM TITLE: **IN THE MATTER OF ACCEPTING AN AMENDMENT TO BUREAU OF LAND MANAGEMENT RIGHT OF WAY GRANT NO. OR 62104 FOR PANTHER CREEK ROAD (COUNTY ROAD NUMBERS 10, 121 AND 1121) AND GRANTING THE COUNTY ADMINISTRATOR AUTHORITY TO SIGN THE AMENDMENT AND THE GRANT NO. OR 62104 (19-05-17)**

I. MOTION

TO APPROVE THE ORDER ACCEPTING AN AMENDMENT TO BUREAU OF LAND MANAGEMENT RIGHT OF WAY GRANT NO. OR 62104 FOR PANTHER CREEK ROAD (COUNTY ROAD NUMBERS 10, 121 AND 1121) AND GRANTING THE COUNTY ADMINISTRATOR AUTHORITY TO SIGN THE AMENDMENT AND THE GRANT NO. OR 62104 (19-05-17)

II. DISCUSSION

A. Background / Analysis

In response to an application made in 2005 by Lane County, the Bureau of Land Management granted right of way over lands under its jurisdiction adjacent to Panther Creek Road (County Roads Numbers 10, 121 and 1121), including that area at milepost 5.0 of County Road 1121 for replacement of an existing culvert and placement of rock at the outlet of the culvert. Board of Commissioners Order Number 05-8-24-14 authorized the County Administrator to sign the right of way grant offer, and accepted Right of Way Grant OR 62104.

Right of Way Grant OR 62104 is now being amended to include an additional 0.07 acre to assist in the installation and maintenance of a new "fish friendly" culvert as noted and shown on Exhibit A of Amendment 1 to Right of Way Grant OR 62104, attached to and made a part of the Order. There is no cost to Lane County for the grant of right of way affected by this amendment.

The Board is now being asked to authorize the County Administrator to sign the amendment to Right of Way Grant OR 62104, and to approve the Order to accept the amendment. Also, in the processing of the amendment, it was discovered that even though the original Right of Way Grant OR 62104 was accepted by Order 05-8-24-14, it was never recorded and contained a deficiency (stamped signature) in the County

Administrator's signature block. Consequently, the Board is also being asked to authorize the present County Administrator to sign the Right of Way Grant OR 62104 in order that it may be recorded and its reception number noted on the amendment to the original grant.

B. Recommendation

Acceptance of Amendment 1 to Bureau of Land Management Right of Way Grant OR 62104 is necessary in order for Lane County to receive final grant of right of way approval by the Bureau of Land Management, which will enable Lane County to proceed with the planned installation of the new culvert at milepost 5.0 of Panther Creek Road (Co. Rd. 1121). Pursuant to ORS 93.808, the amendment and the original grant may be recorded upon approval by the County Administrator. Therefore, it is recommended that the Board of County Commissioners approve the Order to accept the amendment, and to authorize the County Administrator to sign the amendment and the Right of Way Grant OR 62104 on behalf of Lane County.

C. Follow-up

If the Board of County Commissioners approves the Order accepting Amendment 1 to Bureau of Land Management Right of Way Grant OR 62104 and authorizing the County Administrator to sign the amendment and the Grant OR 62104, the Grant OR 62104 and the Amendment 1 are to be signed by the County Administrator. The Grant OR 62104 is to be recorded first in the Lane County Office of Deeds and Records, and its Instrument Number entered on the Amendment 1. Amendment 1 is then to be recorded and its Instrument Number entered on the Order. Copies of the Order and all attachments are to be forwarded to the Lane County Surveyor and County Assessor for appropriate action. If the Order is denied, an Order to Deny will be presented to the Board at a later regularly scheduled meeting.

III. ATTACHMENTS

Final Order w/attachments:

Attachment "A"-Site Map

Attachment "B" – Copy of Original Right of Way Grant OR 62104 (9 total pages, including 3 pages of Exhibit A Maps and 2 pages of Exhibit B, Additional Terms, Conditions and Stipulations)

Attachment "C" – Copy of Amendment 1 to Right of Way Grant OR 62104 (4 total pages each, including 1 page Exhibit A Map)

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

**IN THE MATTER OF ACCEPTING AN AMENDMENT TO)
 BUREAU OF LAND MANAGEMENT RIGHT OF WAY GRANT) ORDER NO.
 NO. OR 62104 FOR PANTHER CREEK ROAD (COUNTY)
 ROAD NUMBERS 10, 121 AND 1121) AND GRANTING THE)
 COUNTY ADMINISTRATOR AUTHORITY TO SIGN THE)
 AMENDMENT AND THE GRANT NO. OR 62104 (19-05-17))**

WHEREAS, Lane County made application to the Bureau of Land Management for a grant of right of way over lands under its jurisdiction adjacent to Panther Creek Road (County Roads Numbers 10, 121 and 1121), including that area at milepost 5.0 of County Road No. 1121 for culvert construction; and

WHEREAS, on October 5, 2005 the Bureau of Land Management approved Right of Way Grant OR 62104 which included the portion of Panther Creek Road (County Road No. 1121) at the milepost 5.0 culvert site; and

WHEREAS, pursuant to 43 CFR 2803.1-2(b)(1)(i) there is no cost to Lane County for the grant of right of way affected by this amendment, and it is in the best interest of the County to accept the right of way grant amendment; and

WHEREAS, even though the original Right of Way Grant OR 62104 was accepted by Board of Commissioners Order Number 05-8-24-14, Right of Way Grant OR 62104 was never recorded, and contained a deficiency (stamped signature) in the County Administrator's signature block; and

WHEREAS, pursuant to ORS 93.808, the right of way grant amendment and the original Right of Way Grant OR 62104 may be recorded upon approval by the County Administrator; and

NOW, THEREFORE, IT IS HEREBY ORDERED that the said Amendment 1 to Bureau of Land Management Right of Way Grant OR 62104 shall be and is hereby accepted by the Board of County Commissioners; and

IT IS FURTHER ORDERED that the Lane County Administrator is given the authority to sign documents in substantial conformance with the copies of Bureau of Land Management Right of Way Grant Number OR 62104 and the Amendment 1 to Right of Way Grant OR 62104 which are attached hereto and made a part of this Order as Attachments "B" and "C", respectively; and

IT IS FURTHER ORDERED that the above Order shall be entered in the records of the Board of County Commissioners' Journal of Administration, Lane County, Oregon; and

IT IS FURTHER ORDERED that the original Right of Way Grant OR 62104 be recorded in the Deed Records of the County and its Instrument Number be noted on the Amendment 1; and

IT IS FURTHER ORDERED that the Amendment 1 to Right of Way Grant OR 62104 be recorded in the Deed Records of the County and the Amendment Instrument Number be noted on this Order.

DATED this _____ day of _____, 2008.

**DEPARTMENT OF PUBLIC WORKS
LAND MANAGEMENT DIVISION**

Approved June 18, 2008

By 
Matt Laird, LMD Manager

**BOARD OF COUNTY
COMMISSIONERS
LANE COUNTY, OREGON**

By _____
Chair

Amendment Instrument Number _____
Lane County, Oregon Deed Records.

APPROVED AS TO FORM

Date 6-24-08 lane county


OFFICE OF LEGAL COUNSEL

21

ATTACHMENT "B"

FORM 2800-14
(August 1985)

Issuing Office
Eugene District, Oregon

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT

SERIAL NUMBER OROR 62104

1. A right-of-way is hereby granted pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

2. Nature of Interest:

a. By this instrument, the holder:

Lane County, Oregon
Department of Public Works
3040 North Delta Highway
Eugene, Oregon 97408-1696

receives a right to construct, operate, maintain, and terminate a roadway on public lands described as follows:

T. 19 S., R. 6 W., W.M., Lane County, Oregon: Those portions of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 11 located within 20 feet either side of the centerline of County Road 10, as shown on the attached Exhibit A.

T. 19 S., R. 6 W., W.M., Lane County, Oregon: Those portions of the S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 13 located within 30 feet either side of the centerline of County Road 121, as shown on the attached Exhibit A.

T. 19 S., R. 5 W., W.M., Lane County, Oregon: Those portions of the S $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 17 located within 30 feet either side of the centerline of County Road 1121, as shown on the attached Exhibit A.

b. The right-of-way or permit area granted herein is between 40-60 feet wide and approximately 2.25 miles long and contains 15.8 acres more or less.

- c. This instrument is perpetual unless it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.
- d. Notwithstanding early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. Rental:

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. Terms and Conditions:

- a. This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800.
- b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within 90 days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.
- c. Each grant issued for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The stipulations, plans, maps, descriptions or designs set forth in Exhibits A and B, dated June 29, 2005 attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.
- e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.
- f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.
- g. This grant supercedes any right-of-way obtained pursuant to the Act of July 26, 1866 (Revised Statute 2477). The right-of-way for Lane County Road No. 4086 across the lands included in this grant shall henceforth be administered according to the terms and conditions of this grant and applicable Federal laws and regulations.

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant or permit.

Dan M. Howells
(Signature of Holder) A.O.

acting Field Manager
(Title)

5 October 2005
(Date)

William A. Van Vactor

(Signature of Authorized Officer) Holder
William A. Van Vactor

County Administrator
(Title)

5 October 2005
(Effective Date of Grant)

AGENCY ACKNOWLEDGMENT

STATE OF OREGON)
COUNTY OF LANE)

On this 5 day of October, 05, before me appeared Dan Howells, to me personally known, who being duly sworn, did say that he is the Field Manager of the Siuslaw Resource Area of the Eugene District of the Bureau of Land Management, United States Department of the Interior, and that he is authorized to sign the said instrument on behalf of the said Bureau, and he acknowledged that he executed the said instrument as a voluntary act and deed.

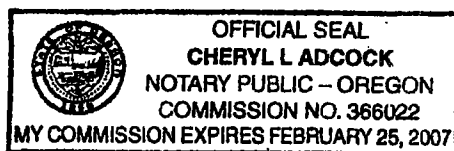
(SEAL)

Cheryl L Adcock
Notary Public in and for the

State of Oregon

Residing at Eugene

My commission expires: 2/25/07



Right of Way Grant OR 62104

The undersigned agrees to the terms and conditions of the grant as outlined above.

Jeff Spartz

Lane County Administrator
(Title)

(Date)

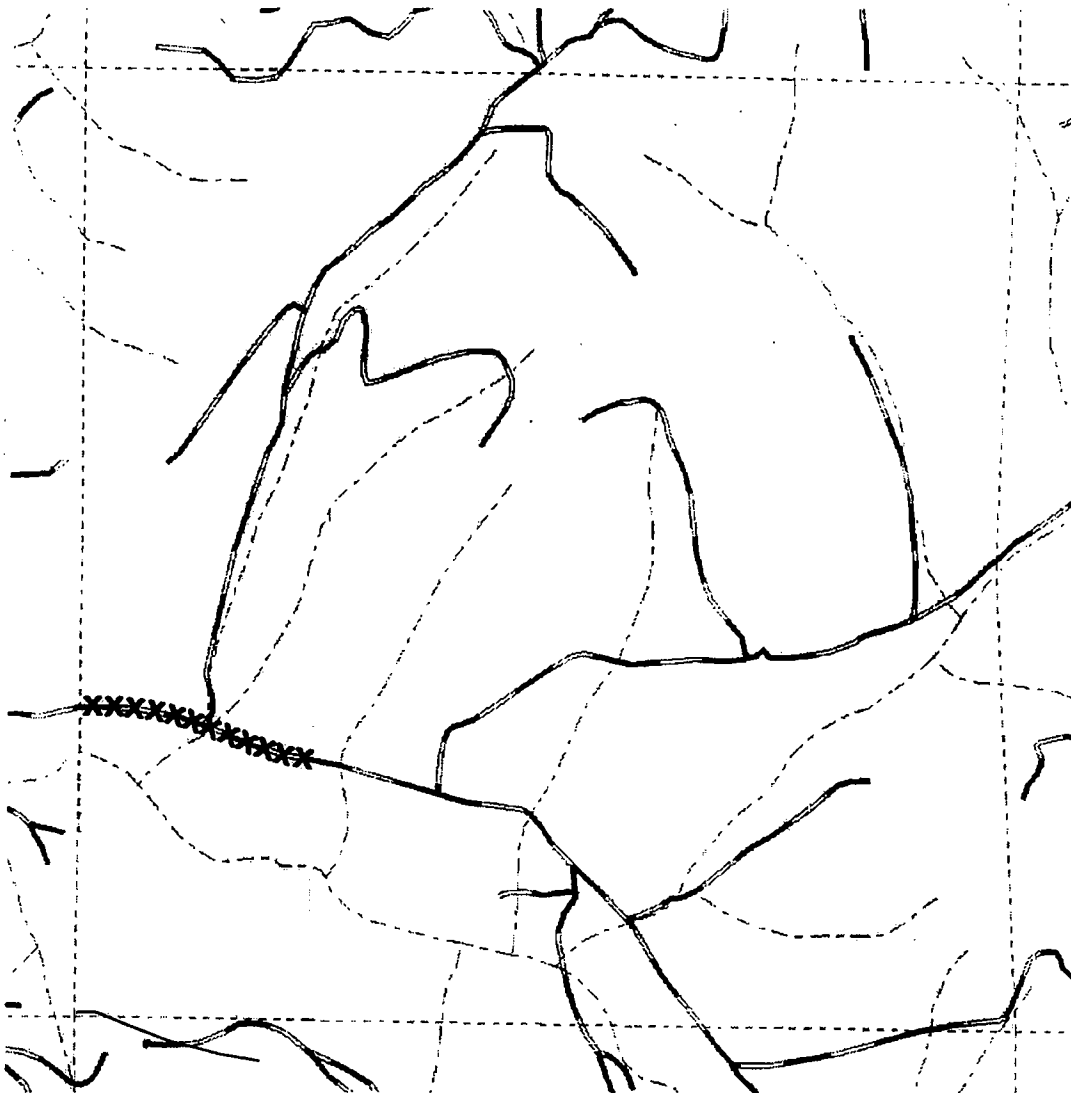
STATE OF OREGON) SS.
COUNTY OF LANE)

On _____, 2008, personally appeared the above named
_____, County Administrator of Lane County, Oregon
and acknowledged the forgoing instrument to be his voluntary act before me:

NOTARY PUBLIC FOR OREGON

My Commission Expires: _____

Exhibit A
Page 1 of 3
OR 62104
June 29, 2005



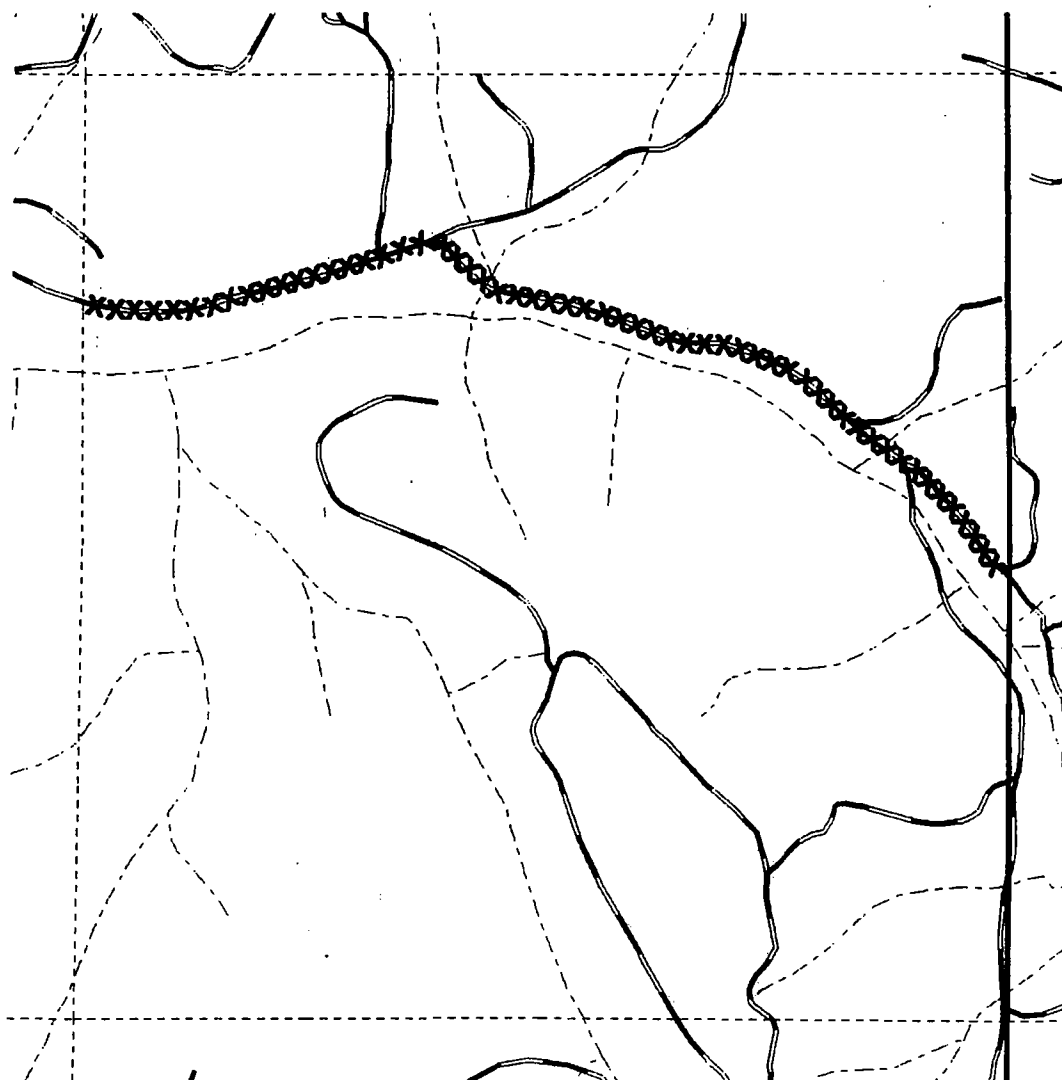
XXXXXXXX R/W AREA 40'

BLM
Streams

Roads

T.19S, R.06W. Sec. 11

Scale 1:12000
1000 0 1000 2000
Feet



XXXXXXXXX R/W AREA 60'

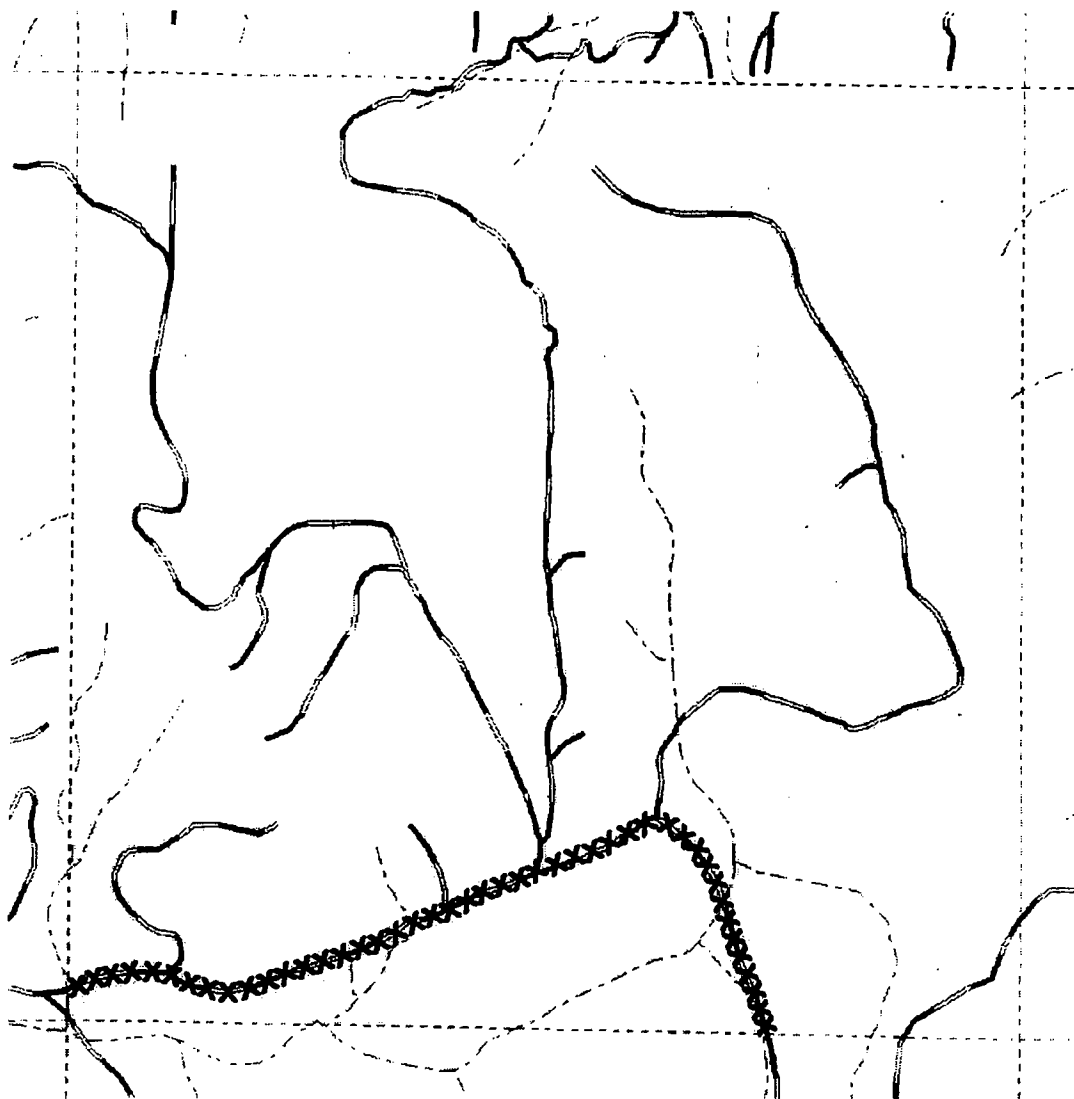
BLM
Streams
Roads

T.19S, R.06W. Sec. 13

Scale 1:12000
1000 0 1000 2000
Feet



Exhibit A
Page 3 of 3
OR 62104
June 29, 2005



XXXXXXXX R/W AREA 60'

----- BLM
Streams
——— Roads

T.19S, R.05W. Sec. 17

Scale 1:12000
1000 0 1000 2000
Feet



OR 62104

Date: June 29, 2005

EXHIBIT B**ADDITIONAL TERMS, CONDITIONS, AND STIPULATIONS**

1. The holder shall indemnify the United States against any liability for damage to life or property arising from the occupancy or use of public lands under this permit to the fullest extent that the appropriate statutes and constitution of the State of Oregon provide as of the date of this permit, or statutes enacted subsequent to the date of this permit and in effect at the time damage or injury occurs.
2. The United States will not be held liable for any damage to the road caused by the general public or as result of fire, wind, or other natural disasters or as a result of silvicultural practices, timber harvesting operations, or other actions stemming from the normal land management activities of the Bureau of Land Management.
3. The holder of this temporary use permit or the holder's successor in interest shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto.
4. Use of pesticides shall comply with the applicable Federal and State laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the holder shall obtain from the authorized officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the authorized officer. Emergency use of pesticides shall be approved in writing by the authorized officer prior to such use.
5. 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.
6. Pursuant to 43 CFR 10.4(g) the holder of this authorization must notify the Authorized Officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), you must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.

OR 62104

7. The holder shall immediately discontinue construction activities upon written notice from the authorized officer that:
- A. threatened or endangered plants or animals protected under the Endangered Species Act of 1973, as amended, may be affected by the activities and a determination is made that consultation or reinitiation of consultation with the U.S. Fish and Wildlife Service is required concerning the species prior to continuing activities; or
 - B. Federal Candidate (Category 1 and 2), sensitive or State listed species protected under BLM Manual 6840 - Special Status Species Management - have been discovered and a determination is made that continued activity under this permit would affect the species or its habitat.

Discontinued activities may be resumed upon receipt of written instructions and authorization from the authorized officer.

8. The holder shall protect all survey monuments found within the right-of-way. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic bench marks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the authorized officer and the respective installing authority, if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands of the United States, latest edition. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.
9. The holder shall comply with all applicable Federal, State and local laws and regulations, existing or hereafter enacted or promulgated, with regard to any hazardous material, as defined in this paragraph, that will be used, produced, transported or stored on or within the temporary use area or any of the temporary use area facilities, or used in the construction, operation, maintenance or termination of the temporary use permit or any of its facilities. "Hazardous material" means any substance, pollutant or contaminant that is listed as hazardous under the CERCLA of 1980, as amended, 42 U.S.C. 9601 et seq., and its regulations. The definition of hazardous substances under CERCLA includes any "hazardous waste" as defined in the RCRA of 1976, as amended, 42 U.S.C. 6901 et seq. and its regulations. The term "hazardous material" also includes any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under CERCLA section 101(14), 42 U.S.C. 9601(14), nor does the term include natural gas.

ATTACHMENT "C"

United States Department of the Interior

2810
OR 62104

BUREAU OF LAND MANAGEMENT
Eugene District Office
P.O. Box 10226
Eugene, Oregon 97440-2226



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

Lane County Department of Public Works	:	Right-of-way amendment
3040 North Delta Highway	:	OR 62104
Eugene, Oregon 98408-1696	:	

Right-of-Way Grant OR 62104 Amended

This amendment is granted to Lane County Department of Public Works, amending Right of Way Grant OR 62104 recorded on Reception No. 2008-_____, Lane County, Oregon Deed Records. Your FLPMA Right-of-Way Grant OR 62104 was approved by the Bureau of Land Management on October 5, 2005. Grant OR 62104 documented in recordable form the authorization of the existing right-of-way over a portion of Panther Creek Road. This amendment adds to the Right-of-Way over the following public lands:

Those portions of the SW1/4SE1/4 of Section 17, T19S, R5W, W.M. adjacent to the NE'ly right of way of Panther Creek Road between stations 4+40 and 4+63, and adjacent to the SW'ly right of way of Panther Creek Road between stations 4+29 and 4+56, as shown on attached map Exhibit A."

This amendment will change the grant in the following ways:

1. Add additional public lands, authorizing an additional 0.007 acre to assist in the installation and maintenance of a new "fish friendly" culvert as shown on Exhibit A (Amendment 1) dated April 11, 2008, attached hereto and made a part hereof.
2. In all other respects Grant OR 62104 shall remain unchanged.

If you agree with this amendment please sign both copies and return to this office for approval. The Authorized Officer, as referred to in the stipulations of Exhibit B is the Field Manager, Siuslaw Resource Area. Please address any questions regarding this grant to Tracy Maahs, Realty Specialist, at 683-6376.

The issuance of this Amendment constitutes a final decision by the Bureau of Land Management in this matter. This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the

burden of showing that the decision appealed from is in error. This decision shall remain effective, pending appeal, pursuant to 43 CFR 2804.1(a).

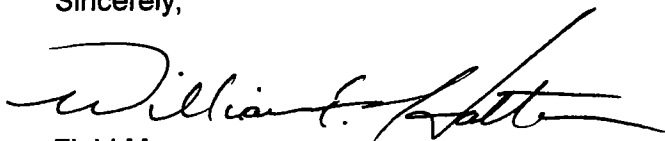
If you wish to file a petition (pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required 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 (see 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 regulation, 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.

Sincerely,



Field Manager
Siuslaw Resource Area

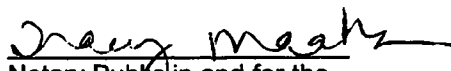
AGENCY ACKNOWLEDGMENT

STATE OF OREGON)
)
COUNTY OF LANE)

On this 13 day of May, 2008, before me appeared William Hatton to me personally known, who being duly sworn, did say that he is the Field Manager of the Siuslaw Resource Area of the Eugene District, Bureau of Land Management, United States Department of the Interior, and that he is authorized to sign the said instrument on behalf of the said Bureau, and he acknowledged that he executed the said instrument as a voluntary act and deed.

(SEAL)




Notary Public in and for the
State of Oregon
Residing at Eugene Oregon
My commission expires Jan 24 2011

Right of Way Amendment to OR 62104

The undersigned agrees to the terms and conditions of the amendment as outlined above.

Jeff Spartz

Lane County Administrator
(Title)

(Date)

STATE OF OREGON) SS.
COUNTY OF LANE)

On _____, 2008, personally appeared the above named
_____, County Administrator of Lane County, Oregon
and acknowledged the forgoing instrument to be his voluntary act before me:

NOTARY PUBLIC FOR OREGON

My Commission Expires: _____

