

Revised Stipulations for Idaho-BLM Right-of-Way Grants and Land Use Authorizations

The following is a list of standard stipulations to be used in Right-of-Way grants (ROW) and other land use authorizations that has been revised to incorporate new stipulations for Fire Prevention and Control. The Authorized Officer and specialists must determine which stipulations are appropriate in each authorization. In addition to the terms and conditions identified in 43 CFR 2805.12 and 2920.7, this list provides a choice of stipulations to be applied according to specific conditions of each proposal. Additional mitigation may be identified during the NEPA process which results in a stipulation(s) not included in this list. When including a stipulation resulting from the NEPA process ensure that supporting documentation is included in the administrative record/case file. This list is not intended to capture stipulations for every resource or resource use. For example, Visual Resource Management, cultural resources, wildlife, sensitive species, recreation, etc. may require a stipulation to be added as a result of various planning documents, IBs, IMs/policy, guidance, conservation agreements, etc.

Other than replacing ROW with the appropriate land use authorization type, these standard stipulations have been reviewed and approved by a solicitor and should not be reworded to accommodate a request of an applicant or Holder.

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General Terms

1. The Holder shall conduct all activities associated with the construction, operation, maintenance, and termination of the ROW within the authorized limits of the ROW.
2. 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 grant or permit.
3. The authorized officer may suspend or terminate in whole, or in part, any notice to proceed which has been issued when, in his judgment, conditions arise which result in the

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approved terms and conditions being inadequate to protect the public health and safety or to protect the environment.

4. _____ days prior to expiration or relinquishment of the ROW, the Holder shall contact the authorized officer to arrange a joint inspection of the ROW. This inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, or seeding. The authorized officer must approve the plan in writing prior to the Holder's commencement of any termination activities.
5. There is reserved to the Secretary of the Interior, or his/her lawful delegate, the right to grant additional ROW or permits for compatible uses on, over, under or adjacent to the land involved in this grant.
6. The Holder shall notify the authorized officer of any change of mailing address within 30 days of such change.
7. Holder shall, within _____ days following completion of the facility, submit proof of construction. Said proof shall include "as built" drawings of the authorized facilities including but not limited to power lines and authorized roads, and highlighting any changes from the approved design.
8. Holder shall maintain the ROW in a safe, usable condition, as directed by the authorized officer.
9. If any emergency repair activity results in disturbance outside a previously disturbed area and/or the existing ROW boundary, the Holder will notify the authorized officer within 3 days of the occurrence. Upon review, the authorized officer may conclude the emergency repair activity is a substantial deviation. Substantial deviations require an amendment.
10. The Holder shall protect all survey monuments found within the ROW. 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 benchmarks 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 survey monuments or references are obliterated during Holder's operations, the Holder shall secure the services of a registered land surveyor or Bureau cadastral surveyor to restore the disturbed monument 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.
11. The Holder shall permit free and unrestricted public access upon the ROW for all lawful purposes except for those specific areas designated as restricted by the authorized officer to protect the public, wildlife, livestock, or facilities constructed within the ROW.
12. No signs or advertising devices shall be placed on the ROW or on adjacent public lands, except those posted by or at the direction of the authorized officer.

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13. As provided in 43 CFR 2807.12(b), the Holder shall be strictly liable for any activity or facility associated with your ROW area which the BLM determines presents a foreseeable hazard or risk of damage or injury to the United States as defined in 43 CFR 2807.12(b) 1 through 5. **[Note: The Authorized Officer must identify the activity and/or facility posing such hazard or risk, and the financial limitations on damages commensurate with such hazard or risk.]**

Notice To Proceed

14. The Holder shall not initiate any construction or other surface disturbing activities on the ROW without prior written authorization from the Authorized Officer. Such authorization shall be a written notice to proceed issued by the authorized officer. Any notice to proceed shall authorize construction or use only as therein expressly stated and only for the particular location or use therein described.

Bonding

Note: For use when bonding is long term:

15. A bond, acceptable to the authorized officer, shall be furnished by the Holder by or at such earlier date as may be specified by the authorized officer. The amount of this bond shall be determined by the authorized officer. This bond must be maintained in effect until removal of improvements and restoration of the ROW has been accepted by the authorized officer. Should the bond delivered under this grant become unsatisfactory to the authorized officer, the Holder shall, within 30 days of demand, furnish a new bond.

Note: For use when bonding is short term or for specific phase of land use authorization:

16. The Holder shall provide a bond in the amount of _____ (an adequate amount to ensure restoration of the disturbed area), to be maintained until restoration of disturbed areas and other requirements relative to the construction phase of the project have been accepted by the authorized officer. Upon completion of these construction related requirements, the authorized officer may terminate or reduce the amount of the bond. Should the bond delivered under this grant become unsatisfactory to the authorized officer, the Holder shall, within 30 days of demand, furnish a new bond.

Construction Plans & Operations and Maintenance

17. The Holder shall obtain the services of a licensed professional engineer to locate, survey, design, and construct the proposed ROW as directed by the authorized officer. Drawings should include (1) width, (2) maximum grade, and (3) design speed of the road, (4) site plan, (5) building design, (6) floor plan, (7) tower design, and (8) electrical drawing; where applicable.
18. The Holder shall construct, operate, and maintain the facilities, improvements, and structures within this ROW in strict conformity with the plan(s) of development which

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was (were) approved and made part of the grant on [user entry]. Any relocation, additional construction, or use that is not in accord with the approved plan(s) of development, shall not be initiated without the prior written approval of the authorized officer. A copy of the complete ROW grant, including all stipulations and approved plan(s) of development, shall be made available to the authorized officer on the ROW area during construction, operation, and termination. Noncompliance with the above will be grounds for an immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment.

19. The Holder shall conduct all activities associated with the operation and termination of the ROW within the authorized limits of the ROW. If at any time the Holder wishes to reconstruct, remodel or relocate any portion of the ROW, or the improvements, in a manner that has been determined to be a substantial deviation, prior written authorization must be obtained from the authorized officer.
20. Upon completion of construction, the Holder shall post as directed by the authorized officer, the Bureau serial number assigned to this ROW grant at the following location(s): [user entry].
21. Specific sites as identified by the authorized officer (e.g., archaeological sites, areas with threatened and endangered species, or fragile watersheds) where construction equipment and vehicles are not allowed shall be clearly marked onsite by the Holder before any construction or surface disturbing activities begin. The Holder shall be responsible for assuring that construction personnel are well trained to recognize these markers and understand the equipment movement restrictions involved.
22. No construction or maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of ____ inches deep, the soil shall be deemed too wet to adequately support construction equipment.
23. No surface disturbance or maintenance activity will be allowed within ____ feet of any stream or riparian area, which shall be clearly marked as specified by the authorized officer. Any deviation from this requirement shall have the prior written approval of the authorized officer.
24. Holder shall remove only the minimum amount of vegetation and/or topsoil necessary for the construction and/or maintenance of structures and facilities.
25. The Holder shall furnish and apply water or other means satisfactory to the authorized officer for dust control.
26. Topsoil shall be conserved during excavation and reused as cover on disturbed areas to facilitate regrowth of vegetation.
27. Suitable topsoil material removed in conjunction with clearing and stripping shall be conserved in stockpiles within the ROW or at an approved location.
28. Holder shall limit excavation to the areas of construction. All off-site borrow areas must be approved in writing by the authorized officer in advance of excavation. All waste material resulting from construction or use of the site by Holder shall be removed from the site. All waste disposal sites on public land must be approved in writing by the authorized officer in advance of use.
29. Construction holes left open overnight shall be covered. Covers shall be secured in place and shall be strong enough to prevent livestock or wildlife from falling through and into a hole.

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30. The Holder shall furnish and install culverts of the gauge, materials, diameter(s), and length(s) indicated and approved by the authorized officer. Culverts shall be free of corrosion, dents, or other deleterious conditions.
31. Right-of-Way shall be maintained in a sanitary condition at all times; waste materials at those sites shall be disposed of promptly at an appropriate waste disposal site. 'Waste' means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products, ash, and equipment that are a result of the Holder's activities.

Access

32. Construction and/or maintenance-related traffic shall be restricted to routes approved by the authorized officer. New access roads or cross-country vehicle travel will not be permitted unless prior written approval is given by the authorized officer. Authorized roads used by the Holder shall be rehabilitated or maintained when construction activities are complete.
33. If snow removal from the road is undertaken, equipment used for snow removal operations shall be equipped with shoes to keep the blade ___ inches off the road surface. Holder shall take special precautions where the surface of the ground is uneven and at drainage crossings to ensure that equipment blades do not destroy vegetation.

Hazardous Materials and Toxic Substances

34. Holder shall comply with the applicable Federal and State Laws and regulations concerning the use of pesticides (i.e. insecticides, herbicides, fungicides, rodenticide, and other similar substances) in all activities/operations under this grant. Pesticides shall be used only in accordance with their registered uses and within the 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. Pesticides shall not be permanently stored on public lands authorized for use under this grant. Applicator(s) shall hold a current applicator's license or be under the direct supervision of a licensed applicator.
35. The Holder(s) 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 ROW or any of the ROW facilities, or used in the construction, operation, maintenance or termination of the ROW or any of its facilities. "Hazardous material" means any substance, pollutant or contaminant that is listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended, (hereinafter "CERCLA") and its regulations. The definition of hazardous substances under CERCLA includes any "hazardous waste" as defined in the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., as amended, (hereinafter "RCRA") and its regulations. The term hazardous material

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also includes any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, 42 U. S. C. § 2011 et seq., as amended. 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.

36. The ROW Holder agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq. or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.) on the ROW (unless the release or threatened release is wholly unrelated to the ROW Holder's activity on the ROW). This agreement applies without regard to whether a release is caused by the Holder, its agent, or unrelated third parties.
37. The Holder(s) shall comply with the Toxic Substances Control Act of 1976 as amended, 15 U.S.C. § 2601 et seq. (1982) with regards to any toxic substances that are used, generated by or stored on the ROW or on facilities authorized under this ROW grant. (See 40 CFR Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation, and Liability Act, section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.
38. The Holder shall inform the authorized officer within 48 hours of any accidents on Federal lands that require reporting to the Department of Transportation as required by 49 CFR Part 195 (hazardous liquids transported by pipeline).

Fire Prevention and Control

All of the following fire stipulations shall be used in powerline authorizations. Stipulations #41 and #42 (at a minimum) shall be used in all other types of authorizations.

39. When performing construction and maintenance (including emergency repairs) activities during the “closed” fire season (May 10 – October 20), as set by Idaho State Law, Title 38-115, or during any other closed fire season prescribed by the BLM Idaho State Director, the Holder, including those working on their behalf, shall equip at least one on-site vehicle with firefighting equipment, including, but not limited to, fire suppression hand tools (i.e. shovels, rakes, Pulaski’s, etc.), a 16-20 pound fire extinguisher, and a sufficient supply of water for initial attack, with a mechanism to effectively spray the water (i.e. backpack pumps, watersprayer, etc.).
40. Within the bounds of the ROW, the Holder shall provide and maintain a vegetation clearance of _____ feet around the base of wood poles or other facilities with the potential to catch and/or spread fire.
41. During conditions of extreme fire danger or when the State of Idaho and/or the BLM Idaho State Director issues a fire restriction order, operations shall be limited or

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suspended in specific areas, or additional measures may be required by the authorized officer.

42. In accordance with 43 CFR 2805.12(d) (or subsequent revisions), the Holder shall do everything reasonable to prevent wildfires on or in the immediate vicinity of the ROW. The Holder will immediately report fires to the BLM authorized officer or Fire Dispatch 800-974-2373 and take all necessary fire suppression actions, when safe to do so, with their personnel and equipment on any fires they cause to ignite.
43. The Holder shall report to the Fire Investigator or BLM Incident Commander and shall not enter into the origin area on BLM fires unless given permission to do so.
44. The Holder will collaborate and cooperate with the BLM in its efforts to investigate, suppress and respond to all future wildland fires. The duty to “collaborate” and “cooperate” includes, but is not limited to, the following duties regardless of whether BLM is on the scene:
 - i. The duty to provide the BLM (authorized officer or Fire Dispatch 800-974-2373) with reasonable and timely notice concerning all wildland fires involving the Holder’s facilities, or discovered during routine operations.
 - ii. The duty to share factual information with the BLM concerning the wildland fires, including but not limited to the names of Holder’s employees with knowledge of the incident; and to allow employees to be interviewed by BLM’s investigators regarding factual information relating to a wildland fire.
 - iii. The duty to reasonably account for Holder’s actions taken at the scene of a wildland fire.
 - iv. The duty to minimize disturbance of potential evidence located on the scene; to properly handle and preserve any evidence collected; to not engage in any destructive testing without BLM’s consent; and to make all evidence available to the BLM in a rapid and timely manner.
 - v. The duty to not hamper the BLM investigation of origin and cause of the wildland fire; and to reasonably assist BLM’s investigation at the scene.
 - vi. The duty to provide information concerning the construction, maintenance and/or repairs of any of Holder’s facilities located at or adjacent to a wildland fire.
 - vii. The duty, during BLM fire suppression efforts: to defer to and follow the instructions of the BLM’s incident commander regarding activities within the boundaries of the wildland fire and checking in and out of the wildland fire; and to recognize BLM’s primary authority over the scene.
45. Within the bounds of the ROW, the Holder shall provide and maintain a vegetation clearance of _____ feet around the base of wood poles or other facilities with the potential to catch and/or spread fire.

Cultural

46. Pursuant to 43 CFR 10, the Holder of this authorization must immediately 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), the Holder must stop activities in the vicinity of the discovery and protect it until notified to proceed by the authorized

officer. The BLM Authorized Officer will determine avoidance, protection or mitigation measures in consultation with the Holder, Idaho SHPO, and affected Tribes. Costs associated with the discovery, evaluation, protection or mitigation of the discovery shall be the responsibility of the Holder.

47. Any cultural and/or paleontological resource (historic or prehistoric site or object, or fossil) discovered by the Holder, or any persons 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 mitigation, and any decision as to proper avoidance, protection or mitigation measures will be made by the authorized officer after consulting with the Holder and others under Section 106 of the National Historic Preservation Act.

Avian Protection

48. Operations and maintenance within the ROW shall comply with the most current nest management guidelines provided by the U.S. Fish and Wildlife Service (USFWS) as clarified in ID-IB-2010-039, or most recent guidance.
49. Unless otherwise agreed to by the authorized officer in writing, powerlines shall be constructed in accordance to standards outlined in the most recent version of the report, *Suggested Practices for Avian Protection on Power Lines* (Avian Power Line Interaction Committee, 2006). The Holder shall assume the burden and expense of proving that pole designs not shown in the above publication are “eagle safe.” Such proof shall be provided by a raptor expert approved by the authorized officer. The BLM reserves the right to require modifications or additions to all power line structures placed on this ROW, should they be necessary to ensure the safety of large perching birds. Such modifications and/or additions shall be made by the Holder without liability or expense to the United States.
 - a. **Note: The above stipulation must be included in every above-ground powerline authorization.**
50. If proposed operations and maintenance activities are located within one mile of bald or golden eagle nests, the Holder shall coordinate with the BLM and the USFWS to determine the likelihood of disturbance and any appropriate measures necessary to comply with the Bald and Golden Eagle Protection Act (16 U.S.C. § 668 et seq.).
51. Operations and maintenance activities shall be conducted, as much as possible, within the ROW in order to avoid and/or minimize take of migratory birds as defined in the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. § 703 et seq.) as amended. If any ground disturbing activities must occur during the nesting season (e.g., soil disturbance or vegetation removal), the Holder shall coordinate with the BLM and USFWS to determine appropriate measures to comply with the MBTA. At a minimum, the Holder shall consider conducting ground disturbance and vegetation removal either prior to or following the nesting season to avoid take during the nesting season.

Plants

- 52. The Holder shall be responsible for weed control, including noxious weeds and non-native invasive plants that result from construction, use, or maintenance authorized in the Holder's ROW grant. The Holder must coordinate with the Authorized Officer and/or local authorities for acceptable weed control measures (within limits imposed in the grant stipulations) prior to implementing weed treatments. If herbicides are to be used for weed control, the applicator(s) shall hold a current State of Idaho applicator's license or be under the direct supervision of a licensed applicator.
- 53. The Holder is responsible for ensuring the undercarriages of equipment and/or vehicles used within the ROW are free of all soil and plant material prior to operating on public lands to reduce the establishment of new invasive, non-native species and/or the spread of existing species to new areas.
- 54. The Holder shall seed all disturbed areas with an agreed upon seed mixture, using an agreed upon method suitable for the location. Seeding shall be repeated if a satisfactory stand is not obtained as determined by the authorizing officer upon evaluation after the _____ growing season.
- 55. The Holder shall seed all disturbed areas with the seed mixture(s) listed below. The seed mixture(s) shall be planted in the amounts specified in pounds of pure live seed (PLS)/acre. There shall be no noxious weed seed in the seed mixture. Seed shall be tested and the viability testing of seed shall be done in accordance with State law(s) and within ___ months prior to purchase. Commercial seed shall be either certified or registered seed. The seed mixture container shall be tagged in accordance with State law(s) and available for inspection by the authorized officer.

| Seed Mixture | | |
|--|---------|-----------------|
| Species of seed | Variety | Pounds/acre PLS |
| xxx | xxx | xxx |
| Total lbs/acre PLS | | |
| Pure Live Seed (PLS) formula: % of purity of seed mixture times % germination of seed mixture = portion of seed mixture that is PLS. | | |

- 56. The Holder shall prepare a seedbed by (scarifying the disturbed area) (distributing topsoil uniformly) (disking the topsoil) as directed by the authorized officer.
 - a. **NOTE: select the text with parentheses as appropriate; delete the other text, the parentheses, and this note.**
- 57. Where appropriate, tree trimming is preferred over cutting or removal.
- 58. The Holder may clear brush and remove hazard trees less than 8 inches in Diameter Breast Height (DBH) within the ROW if necessary for operation and maintenance and/or for the health and safety of the Holder and his agents. Trees greater than or equal to 8 inch DBH within the ROW, and ANY hazard tree outside the ROW, shall be marked by the Holder and a request for removal shall be made to the Authorized Officer. Prior to harvest, hazard trees outside the ROW and trees greater than or equal to 8 inch DBH shall be verified, designated, and measured by the authorized officer and any merchantable timber shall be sold to Holder at not less than the appraised value.
- 59. For ROWs and other land use authorizations with slickspot peppergrass (*Lepidium papilliferum*) concerns use the following stipulations or terms and conditions from the most current plan, policy, or guidance.

Slickspot Peppergrass

The following stipulations will be used for all affected land use authorizations, including new, renewals, assignments and amendments (From the 2014 LEPA Conservation Agreement)

1. The Holder shall rehabilitate slickspot peppergrass (*Lepidium papilliferum*) habitat disturbed by construction or use to as near a native condition as possible. If ecological site conditions preclude the use of native species, the Holder may use non-invasive, non-native species for rehabilitation purposes, as approved by the Authorized Officer.
2. The Holder shall control noxious and invasive, non-native weeds on all portions of ROW or permitted areas disturbed during construction, maintenance, or use.
3. Within the slickspot peppergrass Zone of Consideration, the Holder shall establish at least a 50% perennial plant cover after all ground disturbing activities have been completed unless ecological site conditions preclude that level of cover. If a native species component existed prior to the ground disturbance, then the native species component of the perennial cover should be restored.

For ROWs located within Idaho National Heritage Program (INHP) B- or C-ranked Element Occurrences (EOs) and critical habitat.

4. The Holder shall control invasive, non-native species located in an additional ___ foot wide strip along the outside boundaries of the ROW.

Sage-Grouse

Direction when addressing land use authorizations in Greater Sage-Grouse habitat:

To meet the objectives of the “Idaho and Southwestern Montana Greater Sage-Grouse Approved Resource Management Plan Amendment (ARMPA), September 2015,” stipulations will be imposed on a case-by-case basis in accordance with the ARMPA management decisions, buffers, seasonal restrictions, and required design features.