

Frequently Ask Questions (FAQ)

ACTIVITIES INSIDE/OUTSIDE OF ROW

1. Can BLM NV issue one consistent letter across the state with a similar process as opposed to individual letters from district/field offices that may have differing content and direction?

BLM Nevada State Office has created a standard template letter informing ROW holders that they have the authority to conduct routine operation and maintenance activities within their authorized ROW and what type of reporting information to provide to the BLM after the work has been completed. This has been distributed to all Authorized Officers (AO) and Realty staff.

2. What activities of O&M are permitted within or outside of my authorized ROW?

Electric transmission and distribution facility ROW holders have the authority to conduct routine operation and maintenance activities within their authorized ROW ([43 CFR 2805.14\(a\)](#)). Per the regulations, ROW holders “must also do everything reasonable to prevent and suppress wildfires on or in the immediate vicinity of the ROW area ([43 CFR 2805.12\(a\)\(4\)](#)), and comply with project-specific terms, conditions, and stipulations, including any requirements to control or prevent damage to property”, and they are responsible to perform routine operation and maintenance (O&M) work to prevent wildfires per the terms, conditions, and stipulations; including any requirements to control or prevent damage to property and public health and safety ([43 CFR 2805.12\(a\)\(8\)\(iii\)](#)).

If necessary, O&M activities are required outside of the authorized ROW boundary area, the AO may permit these activities if it is determined necessary and reasonable. The reasonable and necessary determination shall be based on the degree of potential fire hazard for that particular ROW. In conjunction, a full NEPA analysis will not be required if the activities would not create significant additional surface disturbance or detrimentally impact other resources in the respective area. The AO will authorize this activity with the appropriate NEPA analysis, amongst other required authorization documents.

In emergency scenarios created by unanticipated fire hazards (e.g., inclement weather causing branches to be blown near transformers), the AO would work with the ROW holder to authorize appropriate reduction/elimination techniques. The “emergency” status would be determined collaboratively by the respective AO with the ROW holder. The techniques used to accomplish this should be the least intrusive necessary to reduce/eliminate the potential fire hazard.

3. How do we address expired ROWs or utility lines that never had a ROW, or activities outside the O&M activities authorized under the ROW Permits?

It is the facility owner’s responsibility to do everything reasonable to prevent wildfire, and to control and prevent damage to public and private property, in a manner that follows applicable federal and state law. If a facility owner reports activities to BLM that are not covered by their existing authorizations or for which there is no existing ROW permit, BLM will need to take appropriate action to address those situations, including ensuring that the utility companies apply for the appropriate authorizations and addressing unauthorized actions that are taken.

4. What about activities outside of the ROW (i.e. tree clearing 100' from a line with a 20' ROW)? What about hazard trees?

Per Public Law 115-141, Sec. 512 defines a hazard tree as:

“(1) HAZARD TREE.—The term ‘hazard tree’ means any tree or part thereof (whether located inside or outside a right-of-way) that has been designated, prior to tree failure, by a certified or licensed arborist or forester under the supervision of the Secretary concerned or the owner or operator of a transmission or distribution facility to be—

“(A) dead, likely to die within the routine vegetation management cycle, or likely to fail within the routine vegetation management cycle; and

“(B) if the tree or part of the tree failed, likely to—

“(i) cause substantial damage or disruption to a transmission or distribution facility; or

“(ii) come within 10 feet of an electric power line.

If vegetation or hazard trees have contacted or present an imminent danger of contacting an electric transmission or distribution line from within or adjacent to an electric transmission or distribution ROW, the owner or operator of the electric transmission or distribution lines may prune or remove the vegetation or hazard tree to avoid the disruption of electric service and eliminate immediate fire and safety hazards. In this case, the owner or operator shall notify the local BLM field or district office no later than 1 day after the date of the response to emergency conditions. Sec. 512 of FLPMA provides direction on how the BLM will identify and remove hazard trees, and specifically applies to facility owners for electric transmission and distribution. For non-utility related activities, the Programmatic Environmental Assessment “Hazard Removal and Vegetation Management Project” is a tool available to help expedite tree removal and other vegetation management for infrastructure such as roads. The SD should facilitate electric utility access to their ROWs under temporary use authorizations or grant amendments to include access rights. Any environmental reviews for such permitting should meet time and page limits under SO 3355

VEGETATION MANAGEMENT

5. Will Nevada follow all items in the FLPMA amendment ([PL 115-141](#))?

All Field Offices (FO) are required to follow directions set forth in section 512 of FLPMA to have ROW holders modify or develop a plan proposing vegetation management activities, operation and maintenance activities, fire safety activities, and inspection activities necessary to operate and maintain electrical distribution and transmission lines on federal land.

6. How will maintenance and vegetation management activities be handled/address when work is required in a pre-FLPMA/pre-NEPA area?

If the company has a pre-FLPMA and/or pre-NEPA authorization they are allowed by their authorization to do the routine operations and maintenance to keep their authorized use working properly. BLM can not require ROW holders to bring it into compliance with FLPMA or NEPA by requiring new reviews unless they do or propose doing something that is a substantial deviation from the authorized use. Because a ROW holder is carrying out previously approved use that does not prompt an additional management decision, NEPA is not triggered.

7. What about situations where roads need to be bladed or otherwise improved to perform maintenance and vegetation management?

This policy addresses a facility owner's responsibility to prevent wildfires, not other activities that might be needed to protect ingress and egress. If the current ROW grant is not authorized with legal access, and a new road needs to be bladed or otherwise improved to perform O&M and/or vegetation management activities, the ROW holder would need to apply for a new authorization to have legal road access and would be able to blade and improve the road.

8. If maintenance/vegetation management activities need to be performed and result in an unintentional issue (damage to live vegetation, damage to animal habitats, etc.), will BLM levy violations and fines against the ROW holder?

During the course of conducting operation and maintenance activities and an unintentional damage to live vegetations, damage to animal habitat, etc. occurs, it would be considered a non-compliance/trespass. Each AO has discretion to determine what course of action would be taken for the non-compliance/trespass. ROW holders are still bound to existing regulations for non-compliance and trespass. To minimize unintentional issues, it would be highly recommended to coordinate with your local FO as early as possible on the O&M activities that are proposed to avoid unintentional issues.

9. What types of treatment does BLM allow?

If your ROW grant does not include a vegetation management plan, contact the local FO and meet with the resource specialist to develop a plan. If you have an existing vegetation management plan that does not meet your operations and maintenance needs, please contact your local FO and meet with a resource specialist to amend or revise your plan.

10. Is this policy limited to activities that fall solely within existing rights-of-way?

Per 43 CFR 2805.12(4) ROW holders are responsible to do everything reasonable to prevent and suppress wildfires on or in the immediate vicinity of the right-of-way area. Consistent with Sec. 512 of FLPMA and existing regulations, this policy would include operations and maintenance (O&M) activities adjacent to, but outside of the rights-of-way (ROWs), that are determined to pose a threat to the electrical facility.

11. What about vegetation clearing that does not involve trees?

This policy addresses routine O&M actions that pose a serious fire risk if not taken, including the removal of vegetation that is not a tree. Clearing of vegetation is a common routine O&M activity to prevent wildfires.

12. How does this IM relate to herbicide treatment and what can be used?

ROW grants may have stipulations that require a ROW holder to notify the BLM prior to conducting certain authorized vegetation management actions. Unless specified in the ROW grant, these vegetation management actions do not require the BLM to complete additional NEPA analysis (including Categorical Exclusions), site surveys, or issue a separate decision. However, the notification does provide the opportunity for the BLM to share information with the ROW holder on potential or known environmental considerations in the ROW area, and for the ROW holder to coordinate with the BLM and other relevant Federal and State agencies, as

necessary. If your ROW grant does not indicate what type of herbicide treatment can be used, contact your local FO and speak the weed resource specialist to determine what can be used.

BIOLOGICAL

13. How does this IM relate to the Migratory Bird Treaty Act and treatment windows?

Solicitors Opinions (M-37050) have concluded that the MBTA's prohibitions on pursuing, hunting, taking, capturing, killing or attempting to do the same applies only to affirmative and purposeful actions. Thus, incidental take, from conducting routine operations and maintenance activities would not result in violation of the MBTA. However, any seasonal restrictions that have been included within a ROW grants terms and conditions for the purpose of avoiding adverse impacts to Migratory Birds should still be adhered to, especially if they were spelled out in the NEPA documentation and ROD/DR. Otherwise we would not be in conformance with our own decisions. This has been demonstrated recently by other policy changes (e.g., mitigation) that do not supersede prior, existing decisions.

14. How does this IM relate to Sage Grouse ARMPA and restrictions or windows for treatment?

Sage Grouse ARMPA seasonal restrictions will be applied during the period specified below to manage discretionary surface-disturbing activities and uses on public lands to prevent disturbances to Greater Sage Grouse (GRSG) during seasonal life-cycle periods:

1. In breeding habitat within 4 miles of active and pending GRSG leks from March 1 through June 30
 - a. Lek: March 1 to May 15
 - b. Lek hourly restrictions: 6 p.m. to 9 a.m.
 - c. Nesting: April 1 to June 30
2. Brood-rearing habitat from May 15 to September 15
 - a. Early: May 15 to June 15
 - b. Late: June 15 to September 15
3. Winter habitat from November 1 to February 28
 - The seasonal dates may be modified due to documented local variations (e.g., higher/lower elevations) or annual climatic fluctuations (e.g., early/late spring, long/heavy winter), in coordination with the Nevada Department of Wildlife, in order to better protect GRSG and its habitat.
 - Authorizations and permits will limit noise from discretionary activities (during construction, operation, and maintenance) to not exceed 10 decibels above ambient sound levels at least 0.25 miles from active and pending leks, from 2 hours before to 2 hours after sunrise and sunset during the breeding season. (See Appendix M, Greater Sage-Grouse Noise Protocol)

CULTRUAL

15. Is the utility operator fire prevention O&M activity subject to additional Section 106, National Historic Preservation Act (NHPA) review?

No. There is no new federal undertaking since the utility operators do not need additional permission from the BLM to carry out previously authorized O&M activities, including those to prevent and suppress fire.

16. How do utility operators ensure O&M fire prevention activities do not cause undue harm to archaeological resources?

Utility operators should, to the maximum extent consistent with preventing and suppressing fire, comply with terms and conditions relating to the protection of cultural resources. There are a variety of techniques, depending on the circumstances, which can be appropriate to minimize undue harm to archaeological resources (including Class I data, Class II or Class III surface surveys, site modeling, and other techniques). The BLM should coordinate with ROW holders with the goal of issuing cultural resource use permits (CRUP) and fieldwork authorizations (FWA) in a timely manner and in advance of the need for the holder to undertake O&M fire prevention and suppression activities. Field Managers are strongly encouraged to issue FWAs quickly with few or no additional restrictions beyond the stipulations specified in the CRUP and those suggested here.

17. What are the changes to the CRUP?

Many ROWs are known to not contain sensitive cultural resources; if that is the situation for a ROW in which Districts are informed by a ROW holder that they intend to conduct O&M activities to reduce wildfire risk per the Policy, then a statement to this effect should be included in the SharePoint site for that ROW for current and future reference to facilitate the O&M activities.

If a known sensitive/eligible site lies within a ROW that will be subjected to O&M activities to reduce wildfire risk, then my guidance would be to place a map of the location of the resource with boundaries that include a buffer zone together with a notation of the types of vegetation removal methods that should be used for that area such that the result (a) reduces wildfire risk and meets the spirit of the State Director's Policy; and (b) does not cause adverse effects to the resource. Obviously, other notations should refer to the fact that the mapped area should not be used for parking, staging areas for vehicles/equipment etc. In that way, the area will be shown in SharePoint as a sensitive area that requires special consideration during the O&M activities.

Keeping sensitive cultural resources information confidential is always a consideration; I think it is also important to keep in mind that the State Director's Policy is a human health and safety issue, that there must be some level of trust with our own employees and our ROW holders to keep sensitive cultural information confidential, and that the only way to efficiently allow O&M activities to commence now and in the future is to ensure that folks are made aware of the location of known sensitive resources that lie within ROWs so that treatments can be designated to avoid adversely impacting them while reducing wildfire risk.

18. How should blanket FWAs be processed under this CRUP modified for the IM?

The Field Office Manager has the authority to issue a written blanket FWA that covers the entire field office for activities described in the IM and are strongly encouraged to do so. Pursuant to BLM Manual 8150.12E3 a written FWA from contractors can be issued once for the entire fire

season for each permit holder when the “proposed field work would consist of numerous instances of essentially similar tasks to be carried out in the same Field Office”.

19. What is the suggested language for the blanket FWAs under the IM?

Until December 31, 2020, CRUP holder “X” is authorized to conduct archaeological surface survey on lands administered by Field Office “Y” in support of utility operator’s fire prevention O&M within 100 feet of existing utility facilities and/or enough distance so that any hazard tree may be felled.

20. What permit holders have these modified CRUPs and will be asking for blanket FWAs?

A list will be kept on the Confidential Archaeological Server “T drive” accessible to all BLM archaeologists and can be periodically distributed to field managers.

21. Is the issuance of the associated CRUP subject to Section 106, NHPA review?

Yes. By definition, the issuance of a permit to archaeological contractors to help utility operators in the minimization of undue harm to archaeological resources from fire prevention O&M activity is an undertaking pursuant to Section 106 review. BLM has determined, pursuant to 36 CFR Part 800.3(a)(1), that this undertaking (issuing CRUPs) does not have the potential to cause effects on historic properties, assuming such historic properties were present. Therefore, with the issuance of this FAQ, the BLM has no further obligations under Section 106 for CRUPs under the IM.

22. How will BLM assess whether utility operators were successful in avoiding undue degradation to archaeological resources?

The IM specifies that BLM will perform a year-end review to determine what appropriate follow-up actions may be necessary. The BLM will review any information supplied by ROW holders, as discussed in the IM and the CRUP, along with field inspections funded by the utility operators to form the basis of an assessment.

ALL OTHERS

23. What is the format for reporting?

The format for reporting is the same format utility companies already use to notify the BLM of routine O&M. It is the timing of requested submittal to the BLM that is being modified by this policy. We will be developing more specific reporting guidelines if the need arises during the implementation of this policy.

**24. What do we do if ROW holders do not comply with the reporting requirement?
How would the agency know if they are not complying with the reporting requirement?**

The utility companies are currently asked to notify the BLM of this type of work, and there was already a possibility that utility companies do not always comply with that request. This policy does not create any additional risk of non-reporting. It is possible that this policy will provide added incentive for the utility companies to accurately report their activities as this information

will help determine BLM policy going forward. If the requested notifications and information are not provided consistent with the policy, then BLM will determine the appropriate course of action to address non-compliance.

25. The policy leaves interpretation of what constitutes a wildfire risk to the ROW holder. What happens when the utility company takes action for risks that are not necessarily present or that BLM does not agree with?

Utility companies are subject to reporting requests under this policy for all O&M work completed. If actions are taken that exceed the scope of authorized O&M activities and those of FLPMA, we should coordinate with the response team to determine if the proposed activities would require additional guidance, NEPA, or added stipulations. necessary to mitigate the wildfire risk. BLM would take appropriate action to address what would then constitute unauthorized activities that are not in accordance with federal law and regulation.

26. The annual review of data provided by the utility companies sounds like a big workload. Is this something lands, and realty already does?

The BLM has been directed by MOU, National policy, and recent amendments to FLPMA to have at least annual meetings with utility companies to address vegetation management and other O&M issues, and if possible, to develop regional O&M plans. The data we collect will assist greatly in developing those plans. To a certain extent, lands and realty already holds regular meetings with utility ROW holders, including to discuss O&M activities. Some State Offices have state-wide Master Agreements or are in the process of setting these agreements up, which would allow us to fund, among other actions, more staff to assist with this workload so that we can review the information on O&M activities that have been undertaken and come up with more effective regional O&M plans.

27. What are the impacts of potential resources affected, including administrative efforts to address those impacts?

Monitoring routine operations and maintenance is cost recoverable. Furthermore, the utility companies are financially responsible for impacts to resources affected by their actions. If damage to public land resources or unauthorized activities should occur, any remittances for damages would include administration, overhead, indirect rate, etc. There should be little to no budgetary impacts.

28. What about O&M activities that can cause wildfire or cause increased wildfire risk?

ROW holders are liable for damages caused by their activities on public land, including routine O&M activities. That is, under existing regulations, a ROW holder can perform an activity that is authorized, and still cause damage to public land resources that they would be liable for, such as if their O&M activities start a wildfire.

29. Why does this guidance expire on Dec. 31, 2020? What is the appropriate policy after this one expires?

The BLM has been directed to streamline processes for ROWs in collaboration with utility companies, especially as they relate to O&M on electric transmission and distribution facilities. Through the post-season evaluation of O&M activities conducted under this policy, we will have a better understanding of how the policy worked, what additional streamlining needs may exist,

and whether there is a need for a long-term policy. Committing to a policy such as this one prior to evaluating its effectiveness and utility company compliance would be short-sighted. Please see [WO IM 2018-070](#) for applicable national policy on vegetation management and ROWs.

30. Why is the emphasis on wildfire and not all safety issues associated with these facilities?

The emphasis is on wildfire because over decades dense trees and undergrowth have amassed in these lands, fueling catastrophic wildfires. These conditions, along with insect infestation, invasive species, disease, and drought, have weakened our forests, rangelands and other Federal lands, and have placed communities and homes at risk of damage from catastrophic wildfires.

31. What is the expectation for Field Office staff conducting inspections after the fact? Is such expectation reasonable given the large workload this would impose?

This policy does not alter existing expectations that staff conduct inspections or perform monitoring for operations and maintenance after such activities are completed. Monitoring routine operations and maintenance activities is cost recoverable. For instance, we are in the process of offering utility companies the opportunity to enter into state-wide Master Agreements which would allow us to fund, among other actions, more staff to assist with this workload. Under state-wide Master Agreements, the utilities and State Office should consider engaging third party Compliance Inspection Contractors (CIC) which are often used to monitor new construction projects, if significant compliance workload is anticipated for monitoring O&M activities.

32. Can we request a single POC per field office per utility company for submitting the reports? Consistent reporting and clear communication will greatly assist the field.

Yes, we will make that request through multiple venues. We will request this of the primary contacts each State Office already works with and we can address this in any Master Agreements. We will also be developing consistent and clear reporting requirements as needed.

33. Do utility operators need additional permission to conduct O&M fire prevention on existing facilities?

No, the utility operators do not need additional permission from the BLM to maintain safe facilities. The infrastructure owners are, however, obligated to comply with the terms and conditions of their authorizations, as well as applicable laws and regulations.

34. How does this IM relate to the existing stipulations that are currently in place for the existing ROW?

This IM does not supersede or negate any requirements imposed by state, federal law, national BLM policy, or existing stipulations.

1. What type of partnership can BLM and ROW holders implement with respect to speeding up the process for permits and doing fuels mitigation work together?

BLM's recommended practices to have work completed in a timely manner would be to coordinate with the DO/FO as early as possible, provide a detailed work activities, with location of proposed work (map, GIS, coordinates), equipment used, number of vehicles, dates of

proposed work, and estimated time frame to complete work and to determine if a fuel mitigation collaboration plan be put in place.