



RIGHTS OF WAY

Policy & Procedures Manual For

Rights-Of-Way Located On State Endowment Lands



Idaho Department of Lands
Real Estate Bureau
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For Rights-Of-Way Encumbering Navigable Waters and Public Trust Lands, Refer to the Resource Protection Bureau Policy Documents

"Trusted Stewards of Idaho's Resources, From Main Street to Mountaintop"



Rights-of-Way Policy Manual

In accordance with [Executive Order 2020-02, Transparency in Agency Guidance Documents](#), guidance documents promulgated by the department are not new laws. They represent an interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

This document may reference other documents that are not currently available online. Copies of these reference documents may be obtained by filing a public records request at <https://www.idl.idaho.gov/public-records-request>.

Agency Contact

Right-of-Way Program Manager

Please contact your local Idaho Department of Lands Supervisory Area for assistance on a right-of-way related project: <https://www.idl.idaho.gov/about-us/supervisory-areas>.

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Rights-of-Way at a Glance

Purpose

To give an overview of the Idaho Department of Lands' (IDL) Rights-of-Way program for those interested in obtaining rights-of-way (ROW) over State Endowment Trust Lands (Endowment Lands). The program provides Policy and ROW tools as well as professional guidance and assistance for the implementation and administration of ROW by IDL's operations – generally the 10 Supervisory Area Offices. The Rights-of-Way Program consists of a statewide Program Manager and a ROW Agent. The ROW Agent is generally responsible for supervision of ROW projects in field operations. Various forms of ROW's are issued by IDL, in the form of **permits** and **easements**.

Unlike public lands that are managed by the federal government for multiple uses, State Endowment Trust Lands (Endowment Lands) are managed by the State of Idaho under a Constitutional mandate to generate maximum long-term income for public schools and other State institutions in Idaho.

A ROW is the permission to pass over or through land owned by another party using some particular, described path. A ROW is a land use authorization allowing use, construction and/or operation for a specific project—often involving transportation (trail, road, highway, or railroad for public or private passage) or commercial conveyance (pipelines, cables, communication lines or power poles)—on identified lands.

A ROW is also used to refer to the land—usually a corridor strip—authorized for use in one or more of these ways. IDL issues ROW authorization documents in various forms (i.e. permits, term easements, perpetual easements) to authorize the use of a ROW over, upon, under, or through endowment lands for use, construction, and maintenance of a project for a specified period of time.

At the judgment and discretion of IDL, any ROW project that uses, occupies or causes alteration to Endowment Lands requires a ROW granted by IDL. Project examples include electric transmission lines (conduits, towers and related facilities, including respective access roads / routes), new or existing roads or highways, trails, communications cables, telephone/fiber optic lines, canals, flumes, and pipelines, among others.

Like other surface owners, IDL charges fees for ROW permits. IDL is required by law to charge a consideration fee for easements. IDL is also authorized to recover the costs of processing a ROW application by charging an application fee. Other associated costs, such as appraisals or surveys, are borne by the applicant.

Instruments for ROW must be issued in accordance with Idaho Code § 58-601 et seq., and Administrative Rule IDAPA 20.03.08. The general objective is to avoid encumbering Endowment Lands unless a clear benefit to the Endowment is evident.

Energy transport projects such as oil and natural gas pipelines and power transmission lines are processed as ROW applications. Projects involving construction of poles or towers used for communications sites (cell phone/ broadband, microwave, broadcast) on Endowment Lands are not

ROWs, but are generally processed as leases through IDL's Endowment Leasing Bureau. All utility documents should stipulate the size and details of the utility-line-pipe emplacement. Projects such as mineral extraction, timber harvesting, and grazing allotments are also administered through other IDL bureaus, but may have associated land uses that require a ROW, such as utilities installed to serve a communications site, mine or rock pit operation.

Each year, IDL receives numerous inquiries and ROW applications to obtain a ROW through Endowment Lands. When granted, a ROW authorization is permission to use a specific piece of land for a certain purpose or project, for a specific period of time.

Careful advance planning and coordination with IDL staff can help avoid problems and unnecessary delays. IDL Supervisory Area personnel handle ROW inquiries and accept applications from the public. Supervisory Area personnel handle each ROW request with a priority focus on quality customer service to ensure that these applications are processed expeditiously while protecting the Endowment Land and its resource values. Complex ROW inquires and applications may be directed to an IDL ROW Agent.

How do you know when you need a ROW?

As a rule, you do not need a ROW for casual, occasional, recreational use as long as it does not conflict with IDL's land management, and the revenue generating capacity of the land. Examples include accessing fishing areas, picking local berries, or non-guided, non-commercial hunting or other recreational activities. Contact your local IDL Supervisory Area Office or an IDL ROW Agent to discuss your plans before assuming your use does not require a ROW. In consultation with applicable bureau or program head(s), IDL Supervisory Areas makes the judgment on whether the required ROW authorizations are necessary.

Commercial activities on Endowment land generally require a lease. Indemnification and hold harmless language is generally included in ROW grants, along with terms and conditions addressing best management practices.

Generally, a ROW is not required for dispersed recreational activities that cause no appreciable disturbance or damage to the Endowment Lands or resources, or are not a detriment to the existing improvements (roads, bridges, gates) on Endowment Lands.

You do need a ROW whenever you wish to build a ROW project on Endowment Land, or use existing ROW improvements to benefit other activities, including but not limited to: building roads or trails, crossing property, installing infrastructure.

A ROW is generally required for utilities serving a lease on Endowment Land. Access to such a lease is generally included in the lease and does not require a separate ROW.

Contact your local IDL Supervisory Area Office or an IDL ROW Agent to discuss your plans before assuming your use is casual. In consultation with applicable bureau or program head(s), IDL Supervisory Area makes the judgment on any required ROW authorizations that may be necessary.

Statutes and Rules

1. Citations of Pertinent Idaho Statutes

Rights-of-way on State Endowment Trust Land (Endowment Land) in the State of Idaho are administered according to the pertinent Idaho Constitutional Articles and all applicable Statutes including, but not limited to:

- Idaho Constitution Article I, Title 14 – The Right of Eminent Domain
- Title 58-104 State Land Board – Powers and Duties
- Title 42-1104, Right of Way Over State Lands
- Title 47 Chapter 9, Mines and Mining
- Title 58, Chapter 6, Rights of Way Over State Lands
- Title 74, Chapter 1, Transparent and Ethical Government
- Title 31-3212 and 67-2301, state agencies are exempt from recording fees

2. Idaho Administrative Procedures Act

Easements on State Endowment Lands adhere to the Administrative Rules found in the Idaho Administrative Procedures Act (IDAPA) 20.03.08 – Easements on State Owned Lands.

3. Mission of the Department of Lands

To professionally and prudently manage Idaho's endowment assets to maximize long-term financial returns to public schools and other trust beneficiaries and to provide professional assistance to the citizens of Idaho to use, protect, and sustain their natural resources.

4. Vision of the Department of Lands

The Idaho Department of Lands will be the premier organization for trust management, service, and regulatory oversight in the western United States. We will invest in Idaho's resources to maximize financial returns to the endowment trust beneficiaries and enhance the health and resilience of Idaho's natural resources for the benefit of all Idahoans. We will deliver programs with professionalism and integrity, providing exemplary service to the citizens of Idaho. We will invest in our employees and have an organizational culture and framework that equips, entrusts, and expects employees to make decisions. The Idaho Department of Lands will be a unified and vibrant organization in which all employees participate in constructive communication to fully meet our missions.

5. Rights of Way Program Priorities

Rights-of-way on State Endowment Lands are administered in accordance with the laws referenced above and in concert with the portions of Department's Mission and Vision applicable to Endowment Lands.

The ROW Program professionally and prudently issues ROWs on Endowment Lands and acquires ROWs benefitting Endowment Lands to create, enhance, preserve, and maximize long term

financial returns of Endowment Lands. The ROW Program and Area Managers have the authority to deny ROW applications.

The ROW Program supports IDL operations in administering ROWs in a manner that reasonably and responsibly allows access and use by the citizens of Idaho in a variety of appropriate forms.

The ROW Program supports the professional, local land managers to make decisions and exercise discretion regarding ROW's.

6. Rights of Way Program Top Priorities

- A. Assist Supervisory Areas in the evaluation and processing of ROW applications from public and private applicants.
- B. Assist Supervisory Areas in procuring access to Endowment Land when it is necessary for a timber sale or other revenue generating activity.
- C. Proactive, strategic access acquisition planning, in conjunction with Operations Chiefs, to analyze, prioritize, and acquire access to Endowment Lands which provide substantial value to the endowment beneficiaries, with special attention paid to:
 - 1. Willing and able ROW projects with cooperators; and
 - 2. Capitalizing on economies of scale.
- D. Process complex ROW requests such as interstate transmission lines and pipelines, and coordinate ROW projects encompassing multiple Supervisory Areas.
- E. Coordinate with Supervisory Area Staff in maintaining existing Co-op agreements, while ensuring annual meetings are being conducted by IDL field operations staff; attend Co-op meetings as a RES Bureau and Lands & Waterways Division representative.
- F. Conduct a biennial ROW Program review in order to:
 - 1. Review program's effectiveness, customer service, QA/QC, and alignment of priorities with the Department's objectives.
 - 2. Review policies, processes, and tools / forms.
 - 3. Remain adaptable and responsive to changing needs and environments within the ROW profession.
 - 4. Provide opportunity for internal and external stakeholder comments, feedback and participation in Policy development; invite collaboration with the ROW Program.
- G. Consult with Supervisory Areas as necessary to assist in the review and determination of expired / expiring ROW's.
- H. Consult with Supervisory Areas to assist with the IDL Operation's determination and notification of unauthorized ROW uses or ROW trespass on Endowment Land.

Roles and Responsibilities

Purpose

To outline the responsibilities associated with administering Rights-Of-Way (ROW) benefitting or encumbering State Trust Endowment Lands, and to provide IDL ROW staff a better understanding of the responsibilities of positions, programs, bureaus, and other staff members who work together processing a ROW request - from application to execution or denial.

1. Supervisory Area Staff

For each ROW application received by a supervisory area office, an identified staff member shall be designated as the Point of Contact (POC) for the ROW applicant. This POC is the Supervisory Area's assigned representative. POCs should have journeyperson knowledge of both the Easements Training, and Contracts Training, provided by the ROW Program and Office of the Attorney General. The intention is for POCs to be trained to process ROW's, possess demonstrated knowledge and experience in ROW policies and procedures.

The POC consults with the ROW Agent as needed. The POC processes a ROW application and is generally responsible for drafting the ROW document, either a permit or an easement. If the ROW application is denied, the POC drafts the denial letter or rejects an incomplete application. The POC is responsible for keeping the Area's ROW file, including all pertinent information, correspondence, and any file notes, such as valuation data, summaries of parties' intentions, etc. Any cover letters are the responsibility of the POC. The Area Manager is the signing authority for selling or obtaining temporary permits within the Supervisory Area.

NOTE: If the application is for a temporary permit that involves lands encompassing more than one Supervisory Area, the signing authority shall be all respective Area Managers or the Operations Chief.

If the ROW is an easement, the POC completes the **Easement Approval Cover Sheet** that accompanies the easement package when delivered to the Processing Center for routing to obtain Land Board signatures. The POC is responsible for keeping record of all easement approvals, i.e., approval from Land Records, the staff appraiser, and the ROW Agent.

Supervisory Areas that participate in Cooperative Road Use and/or Road Maintenance Agreements ("Co-op's") should:

- A. Maintain regular correspondence with Co-op partners regarding shared roads and cost-share responsibilities; and
- B. Schedule and attend regular Co-op business meetings.

2. Lands & Waterways Processing Center

The Lands and Waterways Processing Center is involved in acquired or granted easements, or if the Supervisory Area or ROW Program requests tracking of a temporary permit (e.g., Road Use permit (RUP)). Tracking of RUP's is not required; however, the processing center is set up to track RUP's.

The Processing Center processes easements for the following:

- A. Assign AE (Acquired Easements) and/or ES (Easements Granted) numbers:
- B. Confirm that an easement application contains the required information (such as an approved legal description)
- C. Route documents for Land Board Signature, and for recordation at the appropriate County,
- D. Distribute and file executed easements with Land Records.

In addition, the Processing Center inputs pertinent transaction data into the current tracking system (Instrument Management System (IMS)).

Prior to routing an easement for Land Board signature, a completed Easement Approval Cover Sheet must accompany every easement, easement assignment, easement correction or easement amendment.

3. Land Records Staff

Through the Document Exchange, Land Records Staff is available to provide initial review and assistance with drafting the legal description for an easement or temporary permit. Prior to the POC or ROW Agent distributing easements for signatures, Land Records issues written approval of the legal description and verifies the beneficiary. No approval is necessary for temporary permits.

Land Records can also help determine the location of existing easements and deeds (if any) that may conflict with the request. Land Records will work with the ROW POC to address any problems with the legal descriptions.

REMINDER: The legal description document or record of survey, stamped and signed by a licensed surveyor, must be submitted with any review of metes and bounds legal descriptions provided by external parties.

4. ROW Agent

All granted or acquired easements, easement assignments, amended or corrected easements, and terminations / extinguishments must be reviewed and approved, in writing, by a ROW Agent. The completed Easement Approval Cover Sheet, and Office of Attorney General (OAG) Instrument Approval Form, drafted by the Area or ROW Agent, shall remain with the easement when delivered to the Processing Center for routing of Land Board signatures. The Processing Center will include this in the official file.

The ROW Agent provides guidance, assistance, and direction to Area Staff, and will coordinate ROW projects encompassing more than one Supervisory Area. If the ROW project has complexities, it is expected the ROW Agent will be available to regularly consult and assist the Area(s). As directed by the ROW PM, the ROW Agent may assume the POC role and handle processing and drafting of certain ROW projects. The ROW Agent is expected to visit all IDL field offices regularly, to conduct training and broadcast ROW program policy.

The ROW Agent shall edit ROW instruments as necessary, coordinate an appraisal or market analysis associated with a ROW, consult with legal counsel when necessary or beneficial, consult with ROW Program Manager as necessary, review any appraisal or valuation associated with the ROW project, and coordinate with the IDL Staff Appraiser.

ROW Agents are familiar with Co-op's and regularly attend Co-op business meetings to better coordinate statewide Co-op efforts. Regarding the Statewide USFS 2003 Co-op and the Statewide BLM 1964 Co-op, the POC is the ROW Agent.

The ROW Agent is responsible for collecting, listing and verifying access acquisition needs and reporting IDL's access needs to the ROW Program Manager.

5. ROW Program Manager

At the direction of the Real Estate Services (RES) Bureau Chief and Division Administrator, the ROW Program Manager (PM) is responsible for the creation and implementation of ROW Program Policy and the development of tools and templates necessary to complement IDL Operations.

The ROW PM provides direction to the ROW Agent and, on a case-by-case basis, may delegate authority to the respective ROW Agent for approval for ROW instruments. The ROW PM consults with the RES Bureau Chief and legal counsel on priority or complex ROW projects as necessary.

The ROW PM is responsible for prioritizing and facilitating access acquisition projects. The ROW PM is responsible for staffing and budgeting for access acquisition and related reciprocal access exchanges. Additionally, the ROW PM is the department's POC for the 1994 Timberland Owners and Managers Co-op, relating to easement acquisition and reciprocation of temporary road use permits.

The ROW PM facilitates the annual review of the ROW Program.

6. Public Relations

The ROW PM works with IDL Public Information Officers and meets with other land partners (i.e., timber companies, Co-op partners, and utility companies) as necessary.

The ROW PM is the POC for ROW programmatic items, questions, and comments. The ROW PM works with other programs and bureaus to implement alignments and synergies according to department standards of practice.

7. Real Estate Services Bureau Chief

The RES Bureau Chief (BC) provides leadership, guidance, and support to the ROW Program staff. The BC may receive and evaluate sensitive ROW requests and coordinate requests from the Executive Staff or Land Board. Along with developing annual schedules, budgets, and training opportunities for the ROW Program team, the BC assists in coordinating work schedules, reviewing proposed policy document changes, obtaining legal review and counsel, and assisting with review of documents, communications, and policies.

Customer Service Standards

Public Involvement & Stakeholder Engagement Standards of Practice

All Right-Of-Way (ROW) projects (proposed projects and submitted ROW Applications) go through the ROW Project Evaluation Committee (PEC) to be ranked for priority. Only prioritized projects are processed. Low priority projects are not commenced due to limited resources.

For ROW applications that will likely take longer to process than the time indicated on the Customer Service Standard Flow Chart (e.g., A Road Use Permit takes up to 60 days; a priority Easement application may take more than 180 days). The Idaho Department of Lands (IDL) Area Office will endeavor to notify the applicant in writing within 10 calendar days upon the receipt of a complete application, indicating whether the application has been approved, and when the applicant can expect a priority ranking of the application. IDL will make every effort to process applications for ROWs in a timely manner.

During the initial review of a ROW application, IDL Area Office shall promptly deliver notification in writing to the applicant, of any additional or supplemental information required to complete the application.

An application submittal is considered to be received and ready for ranking, once IDL has received the following:

1. A completed application form;
2. All supplemental information requested by IDL (deed, construction drawings, survey, etc.).

Unless extended in advance by IDL, incomplete ROW applications automatically expire after 90 days.

Expected review timeframes for priority ranking by the PEC:

1. Initial presentation and proposed ranking is presented to the PEC by Area Office Point of Contact (POC) to be completed within 180 days of receipt of complete application;
2. Review and determination of ranking by the PEC after presentation by POC; within 30 days of POC presentation.

IDL Area Office POC shall provide updates to the applicant as necessary, and retain file notes on all pertinent facts and information for the ROW application.

A ROW application and all information associated with a ROW application is public record and readily available through a Public Record Request.

Public Involvement (PI) and Stakeholder Engagement (SE) regarding a ROW Application

IDL takes pride in customer service, and transparently conducts all ROW business and encourages public involvement. The ROW Program invites inquiries and input from stakeholders (internal and external) and the public.

Upon receiving an inquiry about obtaining a ROW over Endowment Lands, the IDL Supervisory Area Office should suggest an applicant promptly notify any potential stakeholders that may be interested in the ROW application, including, but not limited to, other right holders, other actual or anticipated users, adjacent and nearby landowners, jurisdictional agencies, and non-governmental groups. IDL shall make a ROW application available for review by any stakeholder or interested party.

The applicable Supervisory Area (Area) has the discretionary authority if, when, and how to conduct PI & SE. When processing a ROW application, the Area should exercise judgment when balancing PI & SE with timely, quality customer service. The Area processing the application should consider physically posting the ROW application on site and/or notifying stakeholders via email or other preferred medium. File notes should document these activities, especially all 'courtesy' phone calls or inquiries.

ROW Program Biennial Review

During the month of November every other year, the ROW Program members systematically evaluate the ROW Manual and the standards of practice, reviewing all program aspects. During December, programmatic adjustments are summarized and proposed to upper management for review and implementation as appropriate.

To submit comments, or to be notified of the ROW Program's biennial review, please contact the ROW Program. Anonymous comments are also welcome.

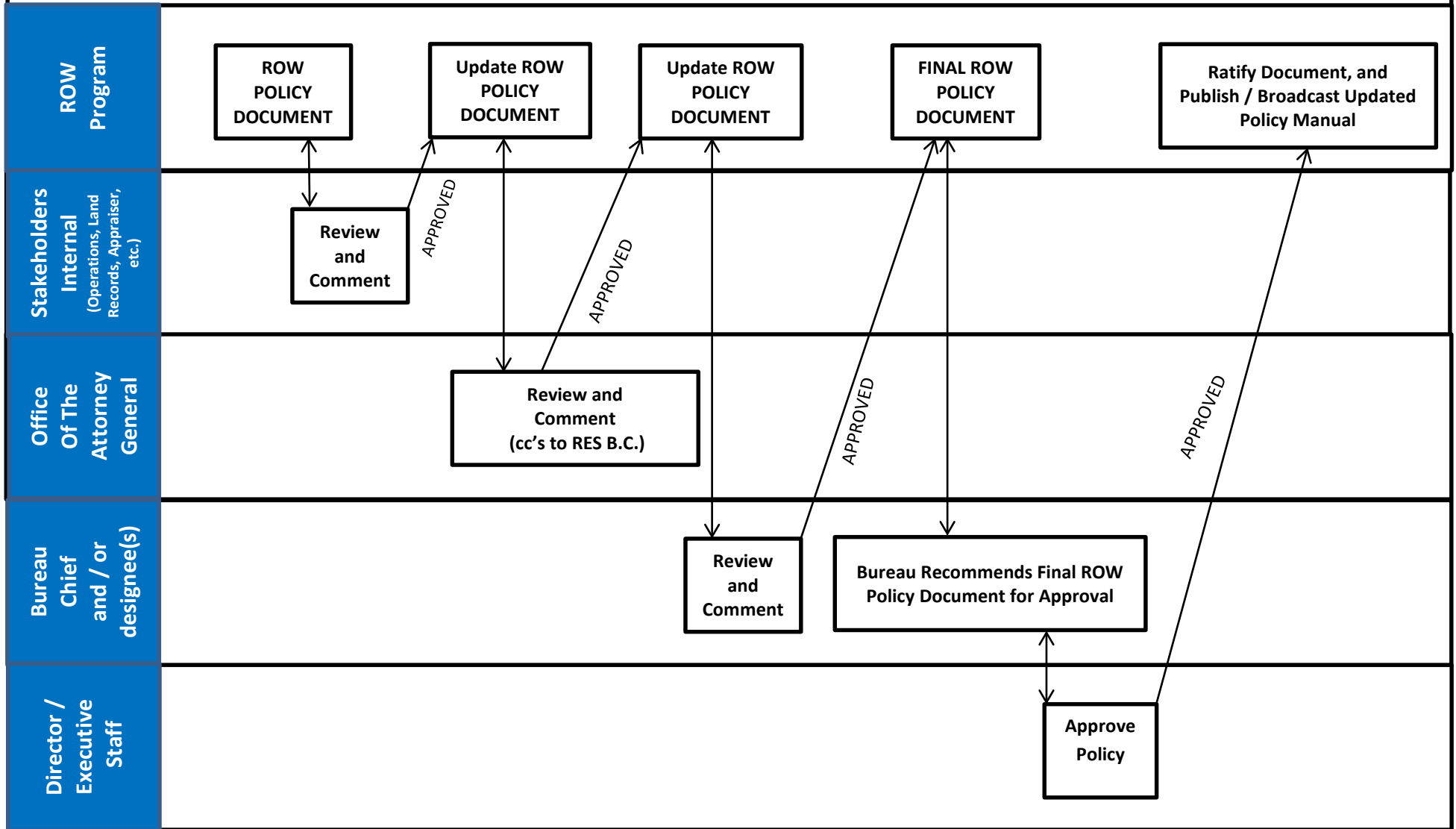
ROW PROGRAM
Real Estate Services Bureau
Idaho Department of Lands
300 N. 6th Street, Suite 103
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(208) 334-0200

Alternately, you may contact the manager of the ROW Program, Lawson Tate, directly at ltate@idl.idaho.gov.



Right-Of-Way POLICY Documents

Review and Approval Flow Chart



Guidelines for Issuing a Right-of-Way

Purpose

To provide guidance in determining whether a request for a Right-of-Way (ROW) should be granted across State Endowment Trust Lands (Endowment Lands) and how to select the appropriate instrument for authorization.

A. Background

1. The Idaho Department of Lands (IDL) addresses requests for ROW (roads, utility lines, communication cables, trails, etc.) in conformance with its constitutional and statutory duties. IDL strives to be the premier organization for Endowment Land management, service, and regulatory oversight in the western United States. Priority is centered on customer service and land management practices that are in the best interests of the beneficiaries, now and in the future. To that end, IDL will process requests in a consistent, impartial, and defensible manner so that Endowment Lands are managed to achieve the greatest sustainable long-term return.
2. Granting a ROW across Endowment Lands involves transferring a real property right, either temporarily or permanently. Such right can have a significant value to the grantee. Conveying a ROW across Endowment Lands creates an encumbrance that may alter how the land may be utilized. This temporary or permanent encumbrance has the potential to burden or enhance land management practices.
3. Instruments for ROW must be issued in accordance with Idaho Code § 58-601 et seq., and Administrative Rule IDAPA 20.03.08. When considering which instrument should be used to create the ROW, consider the impact on the Endowment Lands, the increased burden of managing the land, and the potential benefits to the Endowment Lands. The general objective is to avoid encumbering Endowment Lands. ***“01. Easements Required. Easements shall be required for all rights-of-way of a permanent nature over state-owned land. Easements shall not be granted where temporary permits will serve the required purpose or where a lease is appropriate. (3-30-06)”***
4. Historically, IDL has issued easements in perpetuity which, in many cases, have negatively impacted the manageability and profitability of future land uses. IDL is not obligated to grant ROW's across Endowment Lands. If an application has merit, first consider using a Road Use Permit (RUP) or a ROW permit. Alternatively, consider a term easement to grant temporary access across Endowment Lands. Generally, this is a preferable alternative to creating a permanent encumbrance.
5. IDL has several ROW tools that will help Area Staff prudently process applications for ROW across Endowment Lands and draft instruments that will aid in maximizing long-term financial returns, and minimizing the impacts and/or burdens of the ROW. The guidelines in this document explain the variety of instruments that may be used to convey a ROW, either temporary or permanent. The ROW Agents or the ROW Program Manager are available for questions and comments.

6. A ROW associated with a leasing activity, or Land Use Permit (LUP) will be included in the lease instrument or LUP. For standalone access across Endowment Lands necessary for business opportunities, a RUP is the preferred instrument to issue, as explained in Section B.

B. Instrument Descriptions and Applicability

1. Road Use Permits

Road Use Permits (RUP) are issued for temporary use when a person, entity, or agency, requests ROW use of Endowment Lands or use of roads that are located upon Endowment Lands. RUP's should be utilized for existing roads, and trails, or for proposed new roads, and trails, which are to be constructed by the permittee. The RUP will authorize use of Endowment Lands for the time period defined in the instrument. The RUP should contain a provision for road maintenance and/or surface/rock replacement proportionate to the proposed use. Road maintenance can be completed by the permittee or through the collection of a fee for IDL to use, at IDL's discretion. The RUP may contain a provision for deferred maintenance and/or capital contribution (e.g.: such as a road "Buy-In"), proportionate to use, or tributary volume or acreage. At IDL's discretion, this contribution can be in the form of work in lieu of a fee, or a collected fee, or other negotiated term.

RUP's are used when:

- IDL does not want a long-term encumbrance on Endowment Lands.
- At the Area Manager's discretion, RUP's may be reissued.
- Activities permitted under a RUP, include, but are not limited to, resource harvest, mineral extraction, or other activities that are conducted on parcels not managed by IDL.
- The permit applicant may be generating revenue related to the requested use of the endowment road or lands, of which the Endowments are allowed a percentage of revenue generated by the permittee.
- It is appropriate to provide an initial authorization for temporary, conditioned use. Through monitoring of this use, determination of a longer term agreement could be considered sometime in the future. Such authorization may be re-issued.
- IDL desires to assist by authorizing a permit, while the applicant secures other access to their property.
- The permit applicant does not have legal access or physical access across adjacent land or land owned by others, to their property.

The duration of the RUP should match the length of the activity, but cannot exceed ten (10) years per IDAPA 20.03.08.010.09. Permit durations in excess of five (5) years require an IDL Operations Chief or Executive Staff member approval. The Area Manager has the authority to approve RUP's up to five (5) years in length, and may consult with the Operations Chief and/or a ROW Agent as necessary. The ROW Program Manager (PM) or a Deputy Attorney General (DAG) are also available for consultation.

RUP's may include a requirement for a permittee to carry the appropriate insurance (vehicular, commercial general liability, or other, and furnish proof upon request.) IDL

determines when insurance is appropriate and if it will be required for the activity. Permits should stipulate the size and details of the utility-line-pipe.

At the time of expiration, a new RUP may be issued, if it is in the best interest of the Endowments. At the sole discretion of IDL, any improvements made by the permittee must either be removed by permittee at the end of the term or allowed to remain in place, becoming the property of IDL.

A RUP requires an annual fee. The annual fee is tied to either the 1) ROW acreage and applicant's asset type (forestry, mining, residential, commercial, etc.) or 2) the estimated number of annual round trips or number of units hauled, or some other measurable unit. Road maintenance provisions and associated fees are not meant to replace annual revenue generation through an annual fee.

Road Use Permits are applicable for any activity that requires road access, including recreation, land administration, residential access, and other uses such as paths, or trails.

At the discretion of the Area Manager the summation of the annual fees (for the life of the RUP) may be collected prior to issuance of the permit.

The RUP template is available on the intranet (Programs; Real Estate Services; Rights-Of-Way on left hand side bar). Supervisory Areas may also use RUP or ROW templates associated with a Cooperative Agreement. Any other template to be issued, or received by IDL, should be reviewed by the ROW Program Manager, and/or legal staff.

Cooperative road use agreements, reciprocal use agreements, or negotiated access exchanges, may have temporary access permits or licenses unique to the specific agreements, and may vary from the guidance provided in this document.

2. ROW Permits

ROW permits are short term permissions for the use of Endowment Lands, not limited to roads. Similar to the RU permits for roads, these permits may or may not include the use of roads. ROW permits may include uses such as: utilities lines, and cables, pipelines, wind metering, temporary airstrips, heliport locations, event signs, private mobile radio towers, mushroom or root digging for profit, archery shoots, hunting, bear baiting, cross country ski trails, winter ski shelters, monitoring wells, activities or events, construction staging areas, outfitter and guide camps, or structures associated with a specific activity or use.

Provisions for maintenance, insurance, indemnification, etc., can be written into the instrument. As can stipulations of the size and details of the utility-line-pipe.

The permit templates and guidelines referenced above, are not intended for use in situations where current access authorizations are in place and active, such as cooperative agreements, cost share agreements, reciprocal access agreements, and negotiated access exchange agreements, which typically have unique templates for use with each specific agreement.

3. Term and Perpetual Easements

IDL is not required to approve easement requests across Endowment Lands. Only those requests that benefit the endowment beyond mere financial compensation may be approved.

An easement is a non-possessory interest granted to the grantee as specified in the instrument, which includes the right to use the property for the specified purpose without interference by the grantor (IDAPA 20.03.08.010.05). Transferring a real property right may potentially alter how the Endowment Lands may be used in the future. An easement may negatively impact the Endowment Lands by making it harder to manage resources or may positively impact the Endowment Lands by enhancing the value and future opportunities for the Endowments.

When an easement is considered, a term easement should be the primary instrument used. A term easement provides the benefit, utility, or access to the grantee, for a limited time, while providing flexibility to the Endowments for long range planning.

Because of questions raised by some mortgagees (lenders) and title companies, perpetual ROW's may have been issued in the past for legal access. IDL policy will continue to consider granting reasonable access to private inholdings lacking other legal access, but a RUP or term easement shall be granted, rather than a perpetual easement, unless the applicant/holder can prove that a perpetual term is necessary to conform to a legal mandate or to mitigate an extreme hardship.

The term of the ROW may be set to coincide with the term of the mortgage to protect the mortgagee's interest, although proof of the term of the mortgage is required. The term of the ROW should coincide with the term of the purchaser's mortgage. A twenty-year term easement is recommended. A thirty-year term easement is another standard of practice. Details such as pipe size, buried or overhead utility emplacement must also be included in the easement language.

If the dominant property is sold, the purchaser may apply for a new ROW (RUP or term easement) rescinding and replacing the current instrument. Per IDAPA, this new instrument (if an easement) is considered a new application, subject to fees, and *Consideration Payment* calculated at the time of new grant.

Easements require a fee titled a *Consideration Payment* prior to issuance. That payment should include one hundred percent (100%) of land value as well as value of merchantable resources, impairment of rights or damage to the remainder, and may include proportionate value of improvements thereupon, if any. Consult with a ROW Agent for determination of proportional use, intensity of use, or tributary acreage or resources. The applicant may also incur costs relating to title examination, surveying, appraisal, and any other items or services related to processing the easement.

Easements should be issued when the use or improvements will benefit the Endowment Lands. This can be achieved when IDL gains new or improved legal access to Endowment Land or through a reciprocal easement. The reciprocal easement may benefit Endowment

Lands near the requested easement or at another location.

Permanent easements are only considered when:

- A government agency requests a ROW for a public road, or for their own private use, *or*
- An applicant is able to provide a reciprocal easement. If the reciprocal creates better or new access that either enhances the value of Endowment Lands or increases future revenue generation, or
- Issuing the easement will either enhance the value of Endowment Lands or increase future revenue generation, or
- The Endowment Lands being encumbered are already permanently encumbered or other unique situations exist. When considering such a scenario, the Real Estate Bureau Chief and ROW Program Manager must mutually agree and support variance from policy for a perpetual easement to be issued.,
Assignments and Amendments to existing instruments must be approved by the ROW PM, a ROW Agent, or the Real Estate Services Bureau Chief.

4. Authorization Letters

The Area Manager has the discretion to issue permission in the form of a written correspondence, to use or cross Endowment Lands. Authorization Letters should contain provisions protecting IDL and Endowment Lands, define time frames for expiration, are unilaterally revocable, and are to be used sparingly. Authorization Letters are intended as a mechanism to address scenarios that are not well-suited for a RUP, for scenarios with infrequent, irregular or single / short-term duration. The Area Manager should consult with the Operations Chief and/or a ROW Agent as deemed necessary. No fee shall be charged.

C. Rights-of-Way Maintenance and User Agreements

Use and maintenance agreements, commonly referenced as cooperative agreements, are not a substitute for vesting documents (see easements). The IDL director may, subject to the approval of the Land Board, enter into joint ownership and use agreements with entities or individuals for roads providing access to Endowment Lands and other lands managed by the Department. Such agreements must state that all landowners share proportionately in the cost of building and maintaining the shared road. The proportionate shares shall be calculated on timber volume, acreage, or other unit of value (IDAPA 20.03.08.035.01).

These types of agreements include Road User Associations (RUA), Cooperative Road Agreements (Co-ops) and other types of agreements that may occur from time to time.

Cooperative agreements have ROW provisions unique and specific to each agreement. Some operate using easements or permits with no requirement for notification of the use to the cooperators. Others require notification and approval in the form of issued permits or supplements. The specific agreement documents should be reviewed for respective requirements, as IDL is a member of numerous cooperative road use agreements.

Typically, a Cooperative Agreement and its associated easement documents is used between IDL and various agencies, including the U.S. Forest Service, Bureau of Land Management and/or private forest landowners. The agreement typically allows the cooperators to issue easements

and temporary permits to one another with mutually beneficial, predetermined terms. The easements are typically perpetual and may address road maintenance based upon preset terms. These easements may describe access limited to specific uses, or allow a broader use, such as use by the general public.

D. How to Conduct a Critical Evaluation of the Request for a ROW

1. Determine that the request is for a ROW (road or temporary use). If not, consider denying the request or directing the applicant to the appropriate program/instrument based on the proposed use.
2. Determine if the request may adversely affect threatened or endangered species or contains sensitive areas such as growing sites, spawning areas, nesting sites, etc. If it does have adverse impacts, consider denying the request, or determine an acceptable alternative route or other ways to mitigate the impacts.
3. Does the request split endowment ownership and cause detriment to the Endowment Land? If so, consider denying the request, or determine an acceptable alternative route that benefits the Endowment Land.
4. Will the request adversely affect existing easements, leases, LUP's, or resource management operation activities such as logging, mining, or commercial? If so, consider denying the request, or consider an acceptable alternative route or other ways to mitigate the impacts and enhance benefits to the Endowment Land.
5. Is the property in question involved in a proposed sale or exchange? If so, contact the Real Estate Services Bureau (RESB) Program Manager or RESB Bureau Chief for further guidance.
6. What are the potential future uses of the property in question? Does the proposed ROW adversely or favorably affect potential future uses of the property? If the impact is adverse, consider denying the request, or propose an acceptable alternative route. Try to investigate other ways to mitigate the impacts and enhance the value of the Endowment Land.
7. What are the long-term plans and foreseeable potential uses for the applicant's property? If there is a potential for an increased burden on the ROW, consider denying the request or drafting language in the instrument to address the additional use/burden. Include appropriate conditions and compensation.

E. Considerations

IDL is not required to issue a ROW across Endowment Lands. When considering the granting of a ROW, encumbrances should not interfere with IDL's constitutional obligation. Which is to manage the lands "in such a manner as will secure the maximum long-term financial return" to the Beneficiary Institutions.

1. To accomplish IDL’s land management objectives, IDL may reject the location of the proposed ROW, accept the location of the proposed ROW, or designate the location of the ROW, even if the IDL designated route is longer and more expensive to the ROW applicant.
2. IDL shall control the ROW specifications (which may include road width, road construction, type of surfacing, lines can be designated to be placed underground or overhead, set to a specific height, or depth, include insurance or security, etc.). Specifications shall be suitable for the proposed use. IDL may also reserve the right to relocate the ROW.
3. In most cases, it is preferable that ROW be located along property lines (if practical), with half the ROW on Endowment Land and the other half on the adjoining land. **Do not** fracture or bifurcate Endowment Land by leaving a small strip of endowment property between the ROW and the endowment property line.

F. Compensation

1. TEMP Permit Fees (Road use and right of way)

Application Fee: \$200 noncommercial activities;
\$500 commercial

Annual Permit Fee: \$150 noncommercial;
\$500 commercial, annually *or*

The Annual Fee is tied to revenue generated by the applicant. Either this can be determined by using the ROW Valuation Matrix, or Trip cost Calculator, which determines cost per measurable unit (e.g. usually units hauled per mile or number of round trips), **whichever is greater**.

Annual Permit Fee continued: Year #1 fee must be collected at time of RUP issuance. If desired, applicant may pay fees for all years of the permit in advance. IDL does NOT prorate the fees for any year in a Road Use Permit.

2. Term or Perpetual Easement fees and compensation for Endowment Land use – IDAPA Rules 20.03.08

Application Fee: \$100 - to be included in final consideration payment

Appraisal Fee: Per IDAPA Rules 20.03.08.020.05

Consideration: Per IDAPA Rules 20.03.08.020; including any impairment of rights or damage to the remainder.

3. For further clarification on compensation, please consult with a ROW Agent or the ROW PM.

G. Resources Available for Assistance

Area staff should seek input from the Area Manager, the ROW Agent, and the ROW PM.

H. Glossary

AE: Acquired Easement. Prefix to IDL ROW instrument number used on instruments in which IDL acquires ROW from another property owner.

Amended Easement:	An easement which includes material change to the original executed instrument. An amended easement should be used when major errors exist in the executed document, or major changes are proposed that would materially affect the instrument; such as if the road or utility was placed in a location inconsistent with the legal description, incorrect owner of record, incorrect survey, or substantial terms have been re-negotiated.
Applicant:	The person, representative, or entity, applying for or requesting a ROW, negotiating terms, and authorized to sign the application.
Appurtenant Easement:	An easement, which grants rights that benefit a specific property. An appurtenant easement is usually associated with the dominant estate. When the dominant estate transfers to a new owner, the easement stays with the property, not the person to whom the easement was originally granted. This is typical of an ingress/egress easement for a specific property. The easement crosses one parcel (servient estate) to benefit another (dominant estate).
Assignment:	When privileges of an existing ROW transfer from one company or individual to another successor.
Consideration:	Anything of value promised to another when creating a contract. It can take the form of money, physical objects, services, promised actions, abstinence from a future action, or the like. Consideration is an essential element for contract enforcement.
Corrected Easement:	An easement which includes a minor change to the executed instrument. A corrected easement should be used when only minor errors exist in the executed document that upon correction by the maker of the error would not affect the intent of the instrument or its legal validity and therefore not require the consent of the signatories or reconsideration.
Consideration Payment:	Payment for calculated or appraised easement cost.
Dominant Estate:	The estate or property to which an easement, or right of use, is given; the property benefitting from the easement. (e.g.: <i>Lot 60, as the Dominant Lot, shall have the right of access and utilities over, across and under the Driveway on Lot 58 and 59 as the Servient Lot, to East Shore Road as described on the attached Exhibit 47.</i>)

Easement:	A non-possessory interest in the land of another for a specific purpose.
Easement in Gross:	An easement, which grants rights to a specific entity or individual. The limited right of one person or entity to use another's land when such right is not created for the benefit of any land owned by the owner of the easement (for example, a public roadway, or electrical transmission line).
Encumbrance:	Anything that affects or limits the fee simple title to a property, such as mortgages, deeds, leases, covenants, easements, or restrictions.
Endowment Lands:	Land grants made to the State of Idaho by the Congress of the United States, or real property subsequently acquired through land exchange or purchase, for the sole use, and benefit of the public schools, and certain other institutions of the State.
ES:	Easement Sold. Prefix to IDL ROW instrument number used on instruments in which IDL grants right of way to another property owner or entity.
Exhibit - Map:	Map or drawing, referred to, and made a part of a ROW agreement referencing and illustrating the easement location. The Exhibit map must show the easement relative to at least one, preferably two, Public Land Survey System corners. The Exhibit map describes the boundary of the easement parcel or centerline courses by bearing and distance. Additionally, it must have a north arrow, scale, a basis of bearing, and a reference to a township, range, and aliquot part of a section.
Exhibit - Parcel:	Map, or drawing, referred to and made a part of ROW agreement referencing and illustrating the dominant estate or <u>parcel(s) of record</u> benefiting from the Right-of-Way. The Exhibit Parcel map must show the easement relative to at least one, preferably two, Public Land Survey System corners. Additionally, it must have a north arrow, scale, a basis of bearing, and a reference to a township, range, and aliquot part of a section.
Fee Simple Estate:	An unconditional, unlimited estate of inheritance that represents absolute ownership in real estate and the most extensive interest in land that can be enjoyed. It is of perpetual duration. Fee simple ownership affords owners the most rights of any property owner, and gives complete possession.
Grantee:	The person to whom an interest in real property is conveyed.
Grantor:	The person conveying an interest in real property.

Improvements:	Valuable additions made to property or existing upon property. These can amount to more than repairs, costing labor, and capital, and are intended to enhance the value of the property. Improvements of land would include grading, roads, utilities, buildings, gates, fences, etc.
Interested Party:	The person or representative expressing an interest in obtaining ROW across Endowment Lands, and entering into <u>pre</u> -application discussions with Area Staff.
Instrument:	A formally executed written document that records, and expresses a legally enforceable act, process, or contractual duty, obligation, or right. Examples of some IDL instruments are easements, land use permits, and leases.
Parcel of Record:	The legal description as incorporated in the ROW document depicting the parcel of land benefitting from the proposed easement (dominant estate).
Reciprocal Easement:	When easements are granted from each party to each other. Often complementary and expressing mutual terms, such as similar acreage, similar distance, or similar dollar amount. Easement terms do NOT have to be identical for all parties.
ROW:	Right-of-Way. The right or privilege to pass over a designated portion of the property of another.
RU:	Road Use. Prefix to IDL ROW instrument number. Used on instruments where IDL grants a Road Use Permit or Right of Way (ROW) Permit to another property owner.
RUA:	Road Users Association. Organization registered with the Idaho Secretary of State that is required to accept new members who share use of the road and proportionate maintenance costs.
RUP:	Road Use Permit. The permission to <i>use</i> the property of another for a specific purpose for a period of up to ten (10) years (with Executive Staff approval.) RUP's can be issued for five (5) years or less with Area Manager approval. Unlike an easement, a permit can be revoked and is not appurtenant to any property. The two parties in a permit are the <i>Permitter</i> and the <i>Permittee</i> .
Servient Estate:	The estate or property on which the easement is imposed, is called the Servient Estate; the property being crossed by the easement. (e.g.: <i>Lot 60, as the Dominant Lot, shall have the right of access and utilities over, across and under the Driveway on Lot 59 as the Servient Lot, to East Shore Road as described on the attached Exhibit 47.</i>)

Successor:	A person or entity who takes over, and continues the role or position of another. The successor expressly or impliedly assumes the ROW obligations of the predecessor.
Survey:	A drawing or map showing the precise legal boundaries, and area of a property, the location of improvements, easements, rights-of-way, encroachments, and other physical features. Surveys are required to be stamped by a Licensed Surveyor.
Term Easement:	An easement that grants interest to the grantee as specified in the instrument. Term Easements are issued for a specific time period of ten (10) to fifty-five (55) years.
Termination of Easement:	The cancelation, relinquishment, or abandonment, of an existing easement, which is on record in the IDL Director's Office or of public record. The termination of an easement occurs for non-use, mutual agreement, breach of contract, incorrect use, or if the easement area is presumed, abandoned.
Title Search:	An examination of public records to determine ownership, encumbrances, and defects, in the chain of title, if any.
Utility emplacements:	All utility documents should stipulate the size and details of the utility-line-pipe emplacement.
Vesting documents:	Any document proving ownership and chain of title

Guidelines for Issuing ROW to a Road Users Association

Purpose

To clearly state the requirements when granting an easement to a Road Users Association (RUA) while ensuring that the IDL will address easement requests in a consistent, impartial, and reasonable manner.

This document is intended to supplement [Guidelines for Issuing Rights of Way](#) and [Processing Applications for Easements](#).

- To give IDL a single point of contact with the easement users;
- To issue an appurtenant easement that need not be administratively assigned when the dominant estate ownership transfers; and
- To reduce the number of overlapping encumbrances on Endowment Lands.

A. Background

The IDL has historically issued road easements across Endowment Lands to individual landowners. At times, numerous easements have been granted over the same roadway. This stacking of easements can cause confusion about road maintenance, rights transferred, and accountability of permitted and unpermitted road users on roads crossing Endowment Lands. Some easements also contain conditions addressing the transfer of easement rights, commonly known as assignment, often causing unnecessary complexities when IDL processes full or partial assignment requests. This becomes multifaceted when numerous easements exist. The redundant issuance of easements over the same roadway has created problems for land management, administration, and record keeping.

CONSULT THESE RUA GUIDELINES WHEN:

- A) IDL receives an easement request on a road crossing Endowment lands where an existing easement of a similar nature exists, or
- B) More than one landowner requests an easement, or
- C) It is evident to IDL staff that more than one easement request is imminent (i.e. dominant property is subdivided), or
- D) More than one dominant parcel is likely to need legal access, as no other reasonable legal access exists for dominant parcel.

B. Considerations

Upon receiving a road easement request, IDL staff will search the current IDL ownership mapping system for other easements along the same roadway.

- A. If there is an existing road easement(s) with similar easement rights to those being requested, IDL staff shall notify the requesting party that a RUA should be formed with the landowner(s) holding the existing easement or requesting additional easement(s). The

requesting party is responsible for contacting the other easement holder(s) and for facilitating RUA formation. IDL may assist.¹ A new easement replacing the existing easement(s) may be issued to the RUA.

- i. If any easement with substantially different easement rights exists, consult ROW Agent for guidance.
 - ii. If an existing easement holder(s) does not agree to terminate their easement(s) and join an RUA receiving a new easement, consult ROW Agent.
- B. If IDL and / or the requesting party identifies other landowners who lack legal access, and the road in question is the only reasonable means of legal access, IDL should identify and attempt to contact² the property owners in question. No landowner without a valid right (such as an easement or permit) or part of a RUA should be allowed access over Endowment Lands.
- i. If there are other road users, and no existing easements, the party requesting an easement will notify existing landowner(s) of the request for an easement, and suggest a RUA be created to receive an easement.
- C. It is common for IDL to discover an existing easement(s) as well as numerous parcels lacking legal access that have no other reasonable means of legal access. Some of these parcels lacking legal access may be using the road, while others do not, as they are undeveloped. Consult the ROW Agent in these scenarios. Lack of legal access to a landowner's parcel is not sufficient cause for the landowner to be granted access. Only access that benefits the endowment beneficiaries should be granted.
- i. IDL and the party requesting an easement should encourage initial membership of all landowners believed to have a reasonable necessity for an easement and who desire to benefit from the easement. Subsequently added members owning parcels that were not originally part of the RUA constitute an easement amendment and should be processed as a new easement, under policies in effect at such time.
 - ii. Remember, future changes to parcels comprising the dominant estate of a RUA may require a new easement or an amended easement processed under policies in effect at

¹ Prior to IDL Staff conducting any research for RUAs, the requesting party shall submit a complete easement application, accompanied by the applicable application fee. Upon confirmation of a complete application, and if IDL staff determines the easement is likely to be approved and most likely would be issued to a RUA, the applicant shall submit an appraisal fee per Rule 20.03.08.021.05. After the appraisal fee is submitted, IDL may commence valuation and research, and contact landowners of other lands potentially benefitting from the formation of a RUA, thus gaining legal access using the road in question. Market value data collection, proportional road (improvements) value, and evaluating possible damage to adjacent Endowment Lands involves substantial staff hours. IDL must collect fees in advance of commencing valuation and research activities. Consult ROW Agent for guidance.

² IDL may make reasonable attempts to contact property owners who appear to have no other legal access and who are suspected of using the road. However, the burden is *not* on IDL to determine property rights, act as a real estate consultant, or contact landowners. IDL is not obligated to provide access to: landlocked parcels; any parcels lacking legal access; or parties requesting legal access.

such time, including, but not limited to, application fee, appraisal costs, and consideration costs paid by landowners within the RUA.

C. Articles of Incorporation Requirements

- A. The Road Users Association (RUA) must be a registered entity with the Secretary of State's office.
- B. The RUA shall be required to accept all new/future members reasonably needing access over the easement and who are willing to join the RUA.
- C. The RUA may not unreasonably withhold or deny membership of new members.
- D. The RUA shall have the ability to record liens against members' properties (or other enforcement capabilities) for non-payment of fees, assessments and road damage.

D. Easement Document

- A. The easement should state that the RUA must maintain its legal status, and upon IDL's request, shall provide a Certificate of Good Standing from the Idaho Secretary of State's office within three (3) business days. Further, the easement shall require that the RUA notify IDL about any change resulting in a change in the dominant estate, or the creation of an additional parcel comprising the dominant estate benefitting from the easement.
- B. A Road Maintenance Plan shall either be included in the easement, or consist of a separate agreement held on file with IDL, and shall be incorporated by reference in the easement.

At times a Road Maintenance Plan addresses a road that crosses more than one parcel. The paragraph above is intended to specifically address that portion of road on Endowment Lands.

- C. The easement will be issued to the RUA, and shall specifically identify all parcels comprising the dominant estate in written and visual exhibits within the easement.
- D. The RUA shall prepare a list of the RUA members' respective legal descriptions comprising the dominant estate, and an illustrative map or survey (at IDL's discretion) depicting the parcels shall be included in an exhibit to the easement.
 - i. The appropriate exhibit(s) may be amended from time to time to reflect additions, deletions, modifications (changes³) of the dominant estate (parcels of record) served by the easement. Any recording of such amendments shall only be done by IDL. **No amendments to the easement exhibits are necessary if / when ownerships of a parcel comprising the dominant estate change.**

³ Any *additional* parcel, lot, or tract assessed for inclusion within the parcels comprising the dominant estate is considered a "change" and requires an amendment of the appropriate exhibit(s) within the easement.
20.03.08.025. EASEMENT AMENDMENT.

- E. **Amending any exhibit within the easement is an amendment of the easement**, and shall be treated as a new application and a new easement, as per IDAPA 20.03.08.025.
EASEMENT AMENDMENT.
- i. New ROW (easement) application accompanied by application fee.
 - ii. Payment of any appraisal costs and payment of easement consideration, as with any new easement (processed under the policies, terms, and templates in place at such time).
- F. The easement shall state that the IDL Supervisory Area Office shall be notified immediately upon any proposed addition, deletion, alteration or change in the RUA's dominant estate. Failure to inform such a change could result in termination of the easement.
- i. Upon a change to the dominant estate, a new easement replacing the existing easement will be required and will be issued under the policies in place at such time.
 - ii. The new easement will clearly state that it is replacing and terminating any and all affected existing easement(s).
- G. The Easement, including any attached Road Maintenance Plan / Agreement (if part of the easement) shall be recorded by IDL in the appropriate County recorder's office.
- i. **If deemed necessary by IDL** the easement shall state that the RUA shall maintain certain type(s) of insurance during any periods the easement is used to conduct commercial activities or other activities where insurance is legally required or where it is ordinary and customary for such activities upon the easement to carry insurance. Proof of insurance, including, but not limited to, an annual insurance certificate, and a copy of any and all such policies, shall be provided to IDL within three (3) business days, upon request.
- H. An RUA easement will generally be a twenty (20) year term. A thirty (30) year term easement be approved if circumstances justify.

Project Evaluation Committee Guidelines

Purpose

The purpose of the Rights-of-Way (ROW) Project Evaluation Committee (PEC) is to approve and prioritize ROW projects involving State Endowment Trust Lands.

Only ROW projects that align with ROW Policy guidelines should be submitted to and reviewed by the PEC. The PEC generally makes one of three decisions when evaluating proposed ROW projects. Those three decisions are: commence the project, deny the project, or shelve the project for future consideration.

The PEC should not review ROW applications for merit, as IDL's ROW Policy Manual defines such policy. The PEC evaluates ROW projects involving easements and significant ROW related studies or reports administered by the Idaho Department of Lands (IDL).

Temporary ROW permits and ROW agreements associated with cooperative road use and maintenance agreements (Co-op's) administered by Supervisory Area Managers are not required to go through the PEC for evaluations, only for scheduling.

A. Rights-of-Way Project Evaluation Committee

The PEC members consist of:

- Chief Operations Officer - chairperson
- Two Operations Chiefs – Northern and Southern
- Real Estate Bureau Chief
- ROW Program Manager

B. ROW Project Proposal Process

The Supervisory Area should collect or complete a ROW Application (Note: no application fee is collected until PEC determination) to initiate a ROW request for review by the PEC. ROW proposals must include a project description, estimate of time and staff required to complete project, calculation of fees, proposed revenue, helpful maps, and the Area's recommendation(s) regarding the proposed project. The ROW Scoring Matrix should accompany the package of information submitted to the PEC. The Supervisory Area should develop the aforementioned information and/or the party interested in acquiring a ROW from IDL.

A Point of Contact (POC) or project proponent from the Supervisory Area should become thoroughly familiar with the proposed ROW project to present the project to the Project Evaluation Committee. The ROW Program Manager schedules the PEC meetings and is responsible for agendas and the ROW project list database, which tracks active and inactive ROW projects.

If the project is denied or shelved, the Supervisory Area may consider whether an alternate solution exists, such as selling a temporary ROW permit.

NOTE: The PEC shall be notified of all Co-op projects for communication and scheduling considerations. The POC or respective Operations Chief can brief the PEC. An Operations Chief may unilaterally approve any Co-op project.

C. PEC Review Cycle for Proposed New Projects

The PEC will meet via conference call once every other month to review proposed ROW projects and share status updates on current ROW projects. Example PEC Agenda:

- A. Project status updates
- B. Review of shelved ROW projects
- C. New proposed projects presented by IDL's proponent / POC
 - a. Committee decides whether to:
 - i. Commence,
 - ii. Deny, or
 - iii. Shelve.

If approved, PEC identifies project's required personnel and assigns duties, with project's time estimate.

The ROW Program Manager keeps records for the PEC.

D. Criteria for Project Evaluation

The PEC determines the priority for ROW projects based on criteria including, but not limited to the following:

- Meets department strategic goals
- Consistency with ROW Policy
- Access into endowment lands
- Enables IDL to issue a lease or product sale
- Solves an urgent IDL access or other need
- All lawful purpose access to endowment land
- Selling a term easement
- Provides economies of scale
- Utilizes a Co-op agreement for acquisition or reciprocal access
- High revenue generation project
- Avoiding projects with low to no revenue generation, especially easement assignments, corrections, amendments, and replacements.
- Avoiding perpetual ROW grants
- Exercising caution and restraint before getting involved in complex ROW and land transaction projects, with parties who are not members of Co-ops

Instructions and Procedures for Road Use and Right-of-Way Permits

*(Road Use and Rights-Of-Way (ROW) Permits - use the prefix RU)
Please read carefully before drafting a permit using one of the Permit Templates.*

General Information

- A pre-application meeting or phone conference with a representative of the Idaho Department of Lands (IDL) is required prior to submitting a Rights-Of-Way (ROW) Application (check the box for a Temporary Permit on the All Inclusive Rights-Of-Way Application).
- The IDL Supervisory Area (Area) may process a temporary permit without involving the Lands & Waterways Processing Center (LWPC) or Real Estate Services (RES) Bureau. If the Area desires to have the permit tracked by LWPC, simply drop the completed All Inclusive Rights-Of-Way Application (with RU permit number already assigned by the Area included) into the LWPC Document Exchange in the LWAdminSupport inbox in the appropriate file folder (e.g.: RES_Road Use (RU)).
- Permit Tracking: At the discretion of the Area Manager, a copy of an executed permit may be submitted to LWPC via the Document Exchange RES_Road Use (RU) drop box. LWPC will enter the information into the Instrument Management System. The permit metrics can then be tracked and queried, such as ROW type, asset type, acreage / length, initial date or expiration date, fees, insurance, bonding, etc.
- RU permits typically involve existing roads, but may also be issued for road construction or reconstruction, skid trails, paths, trails, and other ROW uses, as an Area deems useful.
- Checks shall be made payable to IDAHO DEPARTMENT OF LANDS.
- Permits can have multiple permittees, and can be issued jointly or separately.
- Permits cannot be renewed or extended. All ROW applications will be processed as a new application.
- Permits are not recorded, and are not appurtenant to real property.
- Permits should not be issued to timberland owners who purposefully avoid buying into IDL roads. In such cases, additional charges shall be calculated and collected for proportional road buy-in, surface replacement, and both traffic and non-traffic generated maintenance.

Commercial or Noncommercial

- Determine whether the use or activity is of a commercial or noncommercial nature (e.g. a commercial activity wherein the user of the ROW is engaged in making or intending to make a profit).
- The default permit type is commercial.

Important Considerations

- All Endowment Lands of the State of Idaho must (per the State Constitution) be managed “in such manner as will secure the maximum long term financial return” to the trust beneficiaries.
- A permit is a limited, short-term permission to use a portion of Endowment Lands, and issued at the discretion of IDL.
- The Application Fee (\$200 non-commercial or \$500 commercial) compensates IDL for evaluation, preparation, and administration of a permit.
- Total Permit Fee: The sum of annual fee(s) and application fee for the entire duration of a permit is (generally) due and payable prior to issuance of the permit. At the Area Manager’s discretion, all or a portion of Total Permit Fee may be paid as services in kind, but shall not be in place of proportional road buy-in, surface replacement, and traffic and non-traffic generated maintenance fees.
- The minimum term of a permit is a single use (day). The annual fee is calculated as one (1) year.
- The maximum standard term of a permit is 5 years from the date of issuance, and in special circumstances may be 10 years with executive staff approval. Permit expiration dates do not have to fall on the end of a calendar year.
- Each permit includes general terms applicable to all permits. Specific terms and conditions should be tailored to the specific use being permitted. Examples include terms addressing maintenance, surface rock replacement, drainage, noxious weeds, ROW clearing, non-exclusive use, security or bonding, insurance, and the possibility of services performed in lieu of the payment of fees. Further restrictions and conditions (dry season use, no snow plowing, winter use only, etc.) can be addressed within the permit.
- A permit may be amended or assigned, and may also be amended to include additional permittees upon approval of the Area Manager.

Guidance on Permit Template Terms and Conditions

DISCRETIONARY INSURANCE CONDITIONS

Insurance coverage appropriate to the proposed use, may be required. At the discretion of the Area Manager, liability insurance coverage may be required as a condition of the permit. IDL holds discretionary authority to require the appropriate type and level of insurance coverage for activities related to land management that cross lands managed by IDL. Individuals and entities must provide IDL with the appropriate documentation confirming the required coverage is in effect. Standard insurance terms are expected to be included in the permit. Any non-standard insurance terms or edits must be approved by IDL legal staff.

Permit Exhibit Map: IDL will prepare an exhibit map that clearly displays the Endowment parcel(s) to be crossed, showing Section/Township/Range, and Quarter-Quarter designations as applicable, including

specific locations of all roads, and terrain features. The location of the proposed permit should show all adjacent properties with ownerships, and show the property(ies) being accessed (if applicable). Surveys are generally not required for permits.

All terms and conditions within the permit template that are highlighted in grey, are a menu of terms, or pre-scripted suggestions, and are discretionary items that are editable by the Area Manager as needed.

The Permit Templates and Guidelines are not intended for use in situations where current access authorizations are in place and active, such as cooperative agreements, cost share agreements, reciprocal access agreements, and negotiated access exchange agreements, which typically have unique templates for use with each specific agreement.

Additional information may be required on a case-by-case basis. Costs for supporting documents are the responsibility of the applicant.

Note: When the Area calculates the:

- 1) Annual Fee
- 2) Road maintenance fee / service (if any)
- 3) Road Buy-in fee / service (if any)

Include a summary and all calculations within the permit's file, which the Area will retain.

Annual Permit Fee Determination

The Annual Fee is the required compensation to the Endowment. The Annual Fee is the greater of:

- The minimum Annual Fee (\$150 / year for non-commercial use, \$500 / year for commercial use) or
- Trip Cost Calculator which uses a rate per number of trips / units hauled or
- ROW Valuation Matrix method that determines a percentage of land value occupied by the permit's ROW corridor.

TRIP COST CALCULATOR

The Annual Fee calculation is based on the estimated round trip count. The trip count is based upon the assumed round trips of ingress and egress. Regardless of which leg of the trip carries the load, ingress and egress is counted as one (1) round trip. As an example, the Unit shown below under dump truck hauling is considered to be one (1) averaged sized dump truck, capable of a 10 to 12 cubic yard load.

Trip Cost Calculator EXAMPLE			
Operations: <i>How the Road User will Benefit</i>	Per Unit rate *	# of miles	# of units
Dump Truck hauling: (e.g.: Hog fuel or mill chips, pit run, crushed rock, boulders, soil, beauty bark)	\$2 or \$4		
Timber hauling:	\$2 or \$4		
Truck and pup, side dump, belly dump, semi-tractor trailer van:	\$4 or \$8		
* Choose either Low or High Rate based on product being hauled, and market conditions. (i.e. Firewood or pulp vs saw logs or poles)			

Trip Cost Calculator WORKSHEET			
Operations: <i>What is the activity / use?</i>	Per Unit rate *	# of miles	# of units

TRIP COST CALCULATOR EXAMPLES

(Commercial) Hauling 50 semi-loads of hog fuel / mill chips at \$4 over 5 miles IDL road = \$200. (vs Minimum Annual Fee \$500)

(Commercial) hauling 20 loads pulp / firewood (80 Thousand Board Foot) at \$2 / mbf over 2 miles IDL road = \$320 (vs Minimum Annual Fee \$500)

(Commercial) 35 loads Truck & pup, at \$8 per load over 1 mile IDL road = \$280 (vs Min Annual Fee \$500)

(Commercial) 30 dump trucks of landscape boulders / rip-rap at \$4 per load over 5 mile IDL road = \$600 (vs Minimum Annual Fee \$500)

(Commercial) 150 side & belly dumps sand and crushed aggregates at \$8 per load over ½ mile IDL road = \$1200 (vs Minimum Annual Fee \$500)

ROW VALUATION MATRIX

The Annual Fee calculated as a percentage of land value (based on permittee’s asset class or activity and respective target return percentage ranging from 5% to 18% depending on asset type, multiplied by the permit area (in acres), and multiplied by the permit term (number of years). Land value is determined by recent comparable land sales, Comparative Market Analysis, land valuation data on hand, or internal or external appraisal. As demonstrated in the Permit ROW Valuation Matrix example below, the per-year cost breakdown is \$226.40; therefore, the minimum \$500 a year fee would apply (x 5 years = \$2,500)

Generally, non-commercial activities should use the ROW Valuation Matrix, not the Trip Cost Calculator

EXAMPLE Permit Total Permit Fee - Land Valuation Matrix							
Permittee's Land Classification	Use	Land Value \$ / Acre	ROW Area (Acres)	% ROA (return on asset)	# Years	Total	vs Min / Year
Rangeland	RU	\$1,600	2.83	5%	5	\$1,132	\$500 (commercial)

$\$1,600 \times 2.83 = \$4,528. \times 0.05 = \$226.40$ (per year) $\times 5$ years = \$1,132

Minimum Annual Fee \$500 per year fee $\times 5$ years = \$2,500

Project calculations may be placed into the permit file records, evidencing the annual fee calculation and comparative analysis using the worksheet provided below:

WORKSHEET Total Permit Fee Calculation Table - Land Valuation Matrix							
Permittee's Land Classification	Use	Land Value \$/Acre	ROW Area (Acres)	% ROA (return on asset)	# Years	Total	Min / Year
	RU	\$		%		\$	\$150 or \$500
Asset Classification, Valuation and Proposed Benchmarks						TABLE 1	
Asset Class: Road User's land classification						Peer ROA*	
Forestland						8%	
Agriculture						5%	
Rangeland						5%	
Commercial Real Estate						15%	
Residential Real Estate						12%	
Minerals (gravel, mining, etc.)						18%	
<p>* The Peer Return On Asset (ROA) is, in essence, capitalized rent loss, percent of fee simple estate, and proposed benchmarks including the returns currently demonstrated in the market and the recommended valuation method based upon independent and internal appraisals.</p>							

ROW VALUATION EXAMPLES

(Non-Commercial) residential driveway using 1 Acre of IDL road $\times \$1500 / \text{Acre} \times 12\% \times 5$ year = \$900 total permit fee

(Non-Commercial) access to County Emergency Management System communications tower using IDL forest road: $\$1500 / \text{acre} \times 4.5$ ROW acres $\times 8\% \times 5$ years = \$2,700. (Total permit fee \$150 / yr. $\times 5 = \$750$ Min Fee)

*use IDL's asset class since RU use was noncommercial, and there is not an asset class for non-commercial communications tower.

(Commercial) access to Century Link communications tower using IDL forest road: \$1500 / acre x 4.5 ROW acres x 15%* x 5 years = \$5,063. (Total Permit Fee \$500 / year x 5 = \$2,500 Min Fee)

*use Commercial Real Estate asset type since RU use was commercial real estate use.

(Commercial) access to commercial rock quarry using IDL range road: \$1000 / acre x 7 ROW acres x 18%* x 5 years = \$6,300. (Total Permit Fee \$500 / yr. x 5 = \$2,500 Min Fee)

*use minerals asset type since RU use was minerals use.

NOTE: The Trip Cost Calculator may also be used for comparison, if RU were for hauling. In this example the quarry needed an additional access road to mobilize equipment and to develop the pit, stockpile crushed rock, while resource extraction (hauling) was not expected to commence for seven or more years.

(Commercial) Access to hunting outfitter cabins & base camp using IDL range road: \$1000/acre x 2.5 ROW acres x 12%* x 5 years = \$1,500. (Total Permit Fee \$500/yr. x 5 = \$2,500 Min Fee)

*use Residential Real Estate asset type since RU use accessing quasi-residential real estate.

Standards for Creating Legal Descriptions and Exhibit Maps

Purpose

To provide guidance when the Idaho Department of Land's (IDL) staff is creating legal descriptions and exhibit maps for permit and easement documents.

A. Background

Legal Description: The need for accurate legal description using industry standards is a legal requirement.

Exhibit Map: IDL will prepare an Exhibit Map that clearly displays the Endowment parcel(s) to be crossed, with Section/Township/Range and Quarter-Quarter designations if applicable, including specific locations of all roads, and terrain features. The location of the proposed easement or permit should show all adjacent properties with ownerships, and show the property (ies) being accessed (if applicable).

B. Legal Description Standards

1. Land Records Staff are available to provide initial review and assistance with drafting the legal description for an easement or temporary permit. Land Records issues written approval of the legal description, verifies the beneficiary and asset type.
2. Land Records can also help determine the location of existing easements and deeds (if any) that may conflict with the request. Land Records will work to address any problems with the legal descriptions.
3. The legal description document or record of survey, stamped and signed by a licensed surveyor, must be submitted with any review of metes and bounds legal descriptions provided by external parties.

C. Exhibit Map Standards

The Exhibit Map must show the easement relative to at least one (1), preferably two (2), Public Land Survey System (PLSS) corners. Minimally, it must have a north arrow, scale, a basis of bearing and a reference to a township, range, and aliquot part of a section. Include linear footage of easement and locate the easement dimensioned from a PLSS section point.

Surveys are acceptable to be used as additional support information along with the Exhibit Map.

Add "Safety Language" to GRANTED exhibits only, which show the Dominant Parcel. This language reads as: "Dominant Parcel comprised as a single parcel, in its current composition." Use a text box somewhere on the exhibit map.

Add the following language to ACQUIRED exhibits only. This language reads as: "Easements are intended to benefit lands under the State of Idaho's control now and in the future." Use a text box somewhere on the exhibit map.

All maps will be executed in Black and White, as this is the most legible, upon replication and execution.

1. North Arrow
2. Scale
3. Vicinity map showing location of easement within State boundaries
4. Township Range Sections indicated
5. Terrain or land features (not topography)
6. Waterways
7. Trails, Roads, Highways, Interstate, (if shown)
8. County Roads should have names and distinctive line type
9. Servient Parcel (the property the easement is located upon)
10. Dominant Parcel (the property the easement is accessing)
11. Property lines (parcels)
 - a. Optionally use different hatches to indicate ownership
12. Property owner titles
13. Location of easement by distance from known monuments (e.g.: Section corners)
14. Supervisory Area, name and boundary
15. Legend with:
 - a. IDL disclaimer
 - b. Subject easement
 - c. Supervisory Area Title
 - d. County Title
 - e. Hatch Titles
 - f. Line type Titles
 - g. Easement line type Title
16. Additional or Optional Exhibit Map items:
 - a. Detail inset

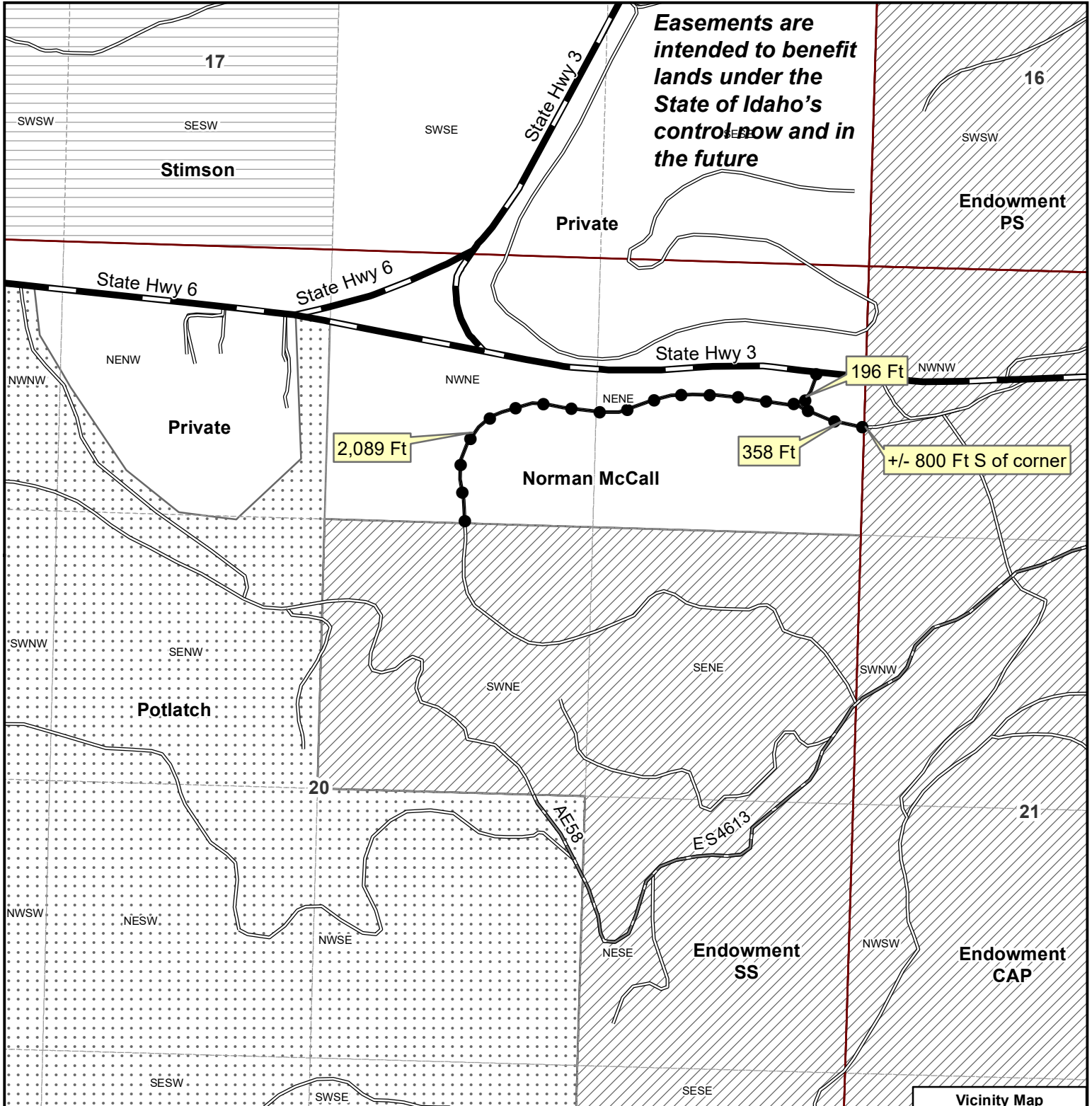
EXHIBIT INSTRUCTIONS AND EXAMPLES FOLLOW



EXHIBIT A

Easement - AE 200055

T44N R01W Sec 20



Legend

- Acquired Easement
- Existing Easement
- Local Road
- Stimson
- Potlatch
- Private
- Endowment
- CAP - Capital Permanent
- PS - Public Schools
- SS - School of Science

St. Joe Area Kootenai County

R. Dunn
9/27/2019

Scale 1:8,000



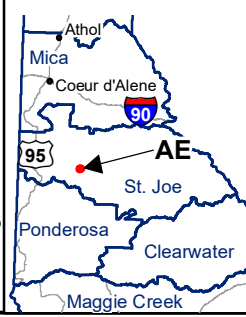
Disclaimer:

Easement lines shall be adjusted, extended and/or shortened to begin on, end on, and conform to Grantor's property lines.

This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice.

In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.

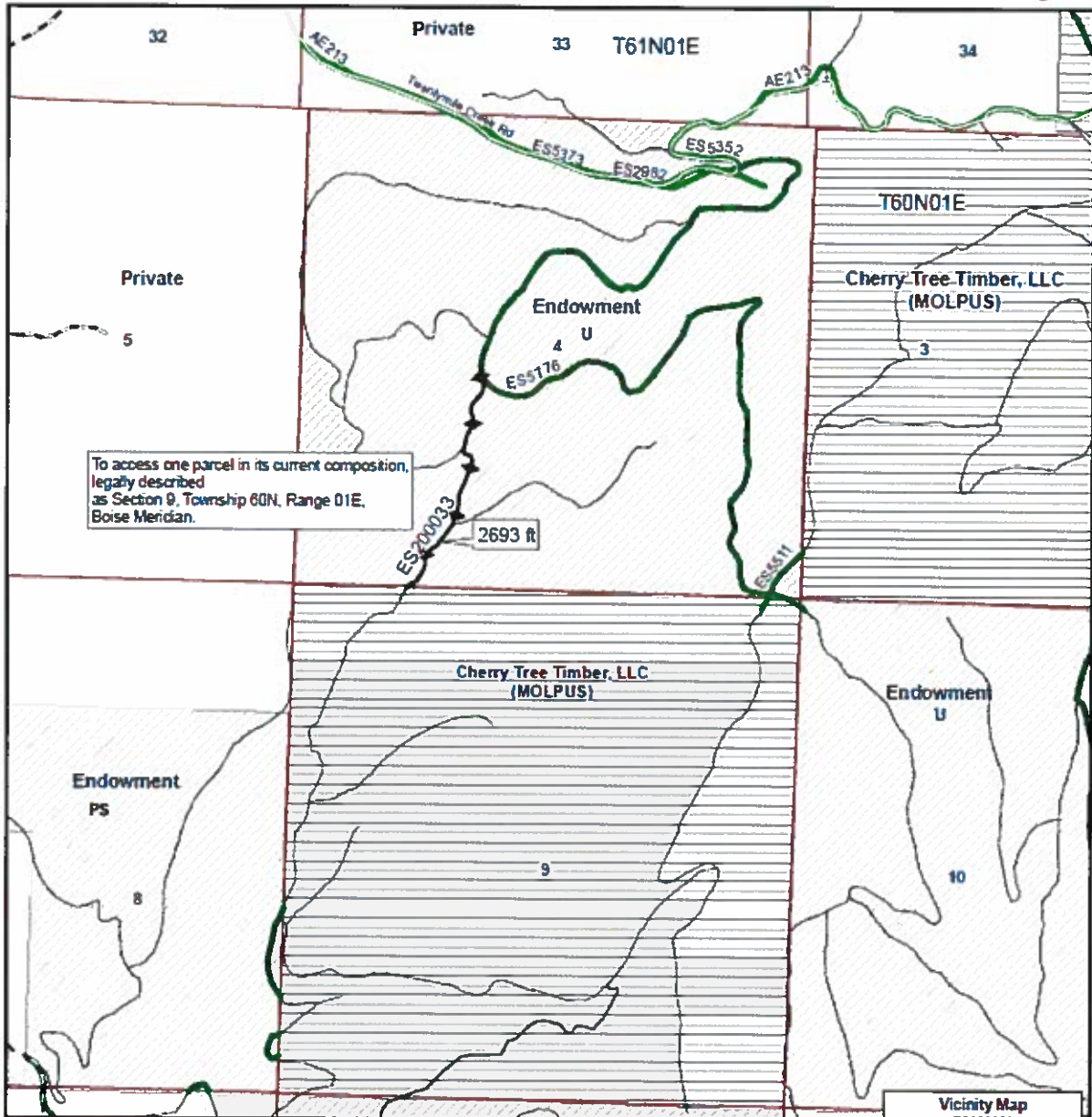
Vicinity Map



269081



EXHIBIT A - MAP 1 Cherry Tree Timber, LLC ES200033 T60N01E Sec 4



To access one parcel in its current composition, legally described as Section 9, Township 60N, Range 01E, Boise Meridian.

2693 ft

Legend

- Granted Easement
- Main Road
- County Road
- Local Road
- Existing Easement
- Private
- Cherry Tree Timber, LLC
- Endowment
- PS - Public Schools
- U - University

**Pend Oreille Lake Area
Boundary County**

R. Dunn
9/1/2016
Scale 1:17,000

Disclaimer
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Vicinity Map
ES200033