

Idaho
Bureau of Land Management

Road Management and Maintenance Guidelines
for Public Lands in Idaho

Prepared by
U.S. Bureau of Land Management
Idaho State Office



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Purpose

Provide clarifying information. This document provides clarifying information about Idaho Bureau of Land Management's (BLM's) road authorizations, maintenance, and construction activities on public lands. Through a set of "Questions and Answers" and a series of attachments, the material offers BLM's cooperators and partners an opportunity to better understand how BLM carries out its road management responsibilities.

Enhance interagency efforts. The information will increase the reader's awareness about 1) coordination and consultation opportunities; 2) access and maintenance options; and 3) RS 2477 policies and issues. It does this by informing the reader about the federal laws, regulations, and policies that govern the management of roads on public lands administered by the BLM, and the applicability of state statutes to those public lands. The objective is to enhance interagency efforts by minimizing misunderstandings that can result from conflicting interpretations of state or federal statutory and regulatory road rights-of-way (ROWs) issues, especially RS 2477 ROWs.

Introduction

On March 15, 2002, the Idaho Association of Counties, Idaho Association of Highway Districts, the Local Highway Technical Assistance Council, and the BLM Idaho State Office signed a MOU to improve communication regarding road and highway activities (see Attachment 1). This document has been developed as a direct result of this MOU.

Idaho's highway and road system. In Idaho, there are 288 Local Highway Jurisdictions (192 of 200 cities, 33 of 44 counties, and 64 highway districts). In addition, the Idaho Transportation Department (ITD), U.S. Forest Service (USFS), and BLM have roads under their jurisdiction. Collectively, these agencies have responsibility for about 47,000 miles of road: cities, 5,000 miles; counties, 14,500 miles; highway districts, 11,800 miles; ITD, 5,000 miles; and USFS & BLM, 11,000 miles (see Attachments 2 and 3).

Public land management in Idaho. The BLM manages about 11.9 million acres of public land in Idaho, most of which is rangeland or canyon country. These lands are managed in accordance with the Federal Land Policy and Management Act (FLPMA) of 1976 (43 USC 1701 *et seq.*) under the principles of multiple use and sustained yield. The BLM also complies with a number of other applicable federal laws and with federal land use planning documents (see Attachment 4). Many of BLM's "special areas" are managed under special conditions, and activities in them may be restricted. Special areas include wild and scenic rivers, historical trails, designated national monuments, national conservation areas, areas of critical environmental concern, potential wilderness areas, etc.

Agency maintenance responsibilities. Maintenance responsibilities are generally carried out by each respective agency for the highways and roads under their jurisdiction. In some instances, interagency conflicts have resulted from a lack of understanding of the unique duties and responsibilities of these various public agencies and a lack of communication between them.

Questions and Answers:

Common issues and concerns. This section addresses common issues and concerns by answering a series of frequently asked questions. It provides information about 1) coordination and consultation opportunities; 2) access and maintenance options; and 3) policies and issues relative to RS 2477. This information serves as an overview of the policies that BLM must follow concerning construction and maintenance of roads crossing public lands, including 1) RS 2477 asserted roads; 2) what activities can or cannot be conducted on these roads; 3) options to accommodate access needs in lieu of RS 2477; and 4) BLM contacts for questions concerning RS 2477 or other road management issues.

Contacts for additional information. For additional questions and clarification, the following organizations are good resources for information and assistance: BLM, Idaho Association of Counties (IAC), Idaho Association of Highway Districts (IAHD), and the Local Highway Technical Assistance Council (LHTAC). (see Attachment 5)

Part I - Coordination and Consultation Opportunities

QI-1 What BLM offices or field personnel should be contacted for consultation and coordination of road maintenance activities?

Contact the field manager or realty specialist in the office having jurisdiction over the federal land where the road maintenance or new road construction is planned. If you do not know the appropriate office, call the BLM Idaho State Office and request to speak with Cathie Foster (208) 373-3863, John Thornburgh (208) 373-3866, or Jackie Simmons (208) 373-3867. They can help determine which BLM offices should be contacted.

QI-2. How can maintenance activities on existing BLM roads be authorized and coordinated between BLM and local highway jurisdictions?

Cooperative Road Maintenance Agreements or MOUs pursuant to Title III of FLPMA can be implemented which establish procedures for maintenance activities on existing roads. In addition to clarifying roles and responsibilities, these documents can also provide for equipment sharing, giving each cooperator the opportunity to be a party to contracts issued for road improvements, and other arrangements that will benefit both parties to the agreement/MOU. Attachment 6 provides a list of existing agreements between BLM and local highway jurisdictions. Attachments 7 and 8 provide an outline or format of a typical road maintenance agreement and MOU.

QI-3 How can I avoid penalties or issues associated with conducting surface disturbing activities on BLM lands?

The recommended approach is to establish and maintain close communication with the appropriate BLM Field Office concerning road and highway activities. The BLM recommends that the County Commissioners and the Highway District Commissioners develop and enter into a Memorandum of Understanding (MOU) with the appropriate BLM Field Office or District Office to establish formal procedures for improving communication, cooperation, and coordination of road and highway activities. See Part II-Access and Maintenance Options for a discussion of the options BLM had to authorize road maintenance activities on public lands.

QI-4. How should I address life-threatening emergencies?

In an emergency situation where a MOU or road maintenance agreement has not been developed, respond to the emergency and immediately notify the appropriate field office and if possible, the BLM Deputy State Director for Resource Services (see Attachment 5).

The best approach to address potential life threatening emergencies is to be proactive and develop a memorandum of understanding or road maintenance agreement with BLM that spells out in advance procedures for addressing such emergencies.

QI-5. What is the process BLM uses to temporarily or permanently close roads?

With the possible exception of an emergency situation, BLM field offices will request the participation of the appropriate Commissioners (County and/or Highway District) in the land use planning processes in which BLM analyzes road management options that may include temporary or permanent road closures or limitations. In emergency situations, BLM will inform the appropriate Commissioners as soon as practicable after the emergency action has been addressed.

Part II - Access and Maintenance Options

QII-1. What options exist for state, county, and local highway agencies to obtain ROW grants for public highways across public land?

1. **FLPMA Title V Right-of-Way:** Title V of FLPMA is the preferred authority for authorizing ROW grants for all types of roads and highways across public lands. Upon receipt of an application, BLM will conduct the necessary evaluations, including NEPA compliance, and make a decision on the request. The grant, if issued, will be subject to appropriate terms and conditions to mitigate environmental impacts or to resolve other concerns associated with the project. State and local governments are not subject to cost recovery fees for processing the application, or rent if the project is approved. When requested by the applicant, *BLM has and will continue to include language in the ROW grant that preserves any potential access rights that might later*

be found valid under RS 2477.

While these FLPMA ROWs are considered a “nonexclusive” easement across public land, they do transfer interest in the public lands to the holder. These ROWs can be granted in perpetuity and are not subject to termination, except for gross negligence in not complying with the terms and conditions of the grant.

2. **Title 23 of the Federal-Aid Highway Act:** The U.S. Department of Transportation can appropriate highway rights-of-way under Title 23 of the Federal-Aid Highway Act. The appropriation is subject to conditions deemed necessary by the Secretary of the Interior to protect the federal land and public interest.

QII-2. If I have a BLM right-of-way (ROW) on a road located on public land, do I need to obtain permission from BLM to perform maintenance on that road?

No. If the highway maintenance activities are within the authorized boundaries of the ROW grant and are consistent with the ROW grant stipulations, no consultation or coordination is required. However, it is always a good idea to contact the appropriate BLM field office prior to road maintenance activities to inform them of your maintenance activities and discuss any concerns that may be raised.

QII-3. If my organization has a road maintenance agreement with BLM, do I need permission from BLM to perform road maintenance?

No. If the highway maintenance activities are consistent with the terms of the agreement, no consultation or coordination is required. However, it is always a good idea to contact the appropriate BLM field office prior to road maintenance activities to inform them of your maintenance activities and to discuss any concerns that may be raised. Some cooperative road maintenance agreements include specific coordination provisions, such as the requirement to hold an annual meeting between the parties to plan that year’s road maintenance activities. Other notification provisions can also be incorporated into these agreements, including providing each cooperator the opportunity to be a party to contracts issued for road improvements. This provides each party an opportunity to benefit from the efficiency of larger quantity contracts.

QII-4. If I want to perform maintenance or construction activities on a RS 2477 road that BLM has acknowledged, do I need BLM’s permission to perform these activities?

Not necessarily, if the maintenance or construction activity is confined to the acknowledged road location and width. However, it is always a good idea to contact the appropriate BLM field office because of the confusion and misunderstanding surrounding RS 2477 ROWs and the potential for misunderstandings to lead to conflicts between agencies.

QII-5. If I want to perform maintenance or construction activities on a road that crosses public land and has been declared a “public highway” or “public ROW” by a highway

district or county (Idaho Code 40-203A), do I need BLM's permission to perform these activities?

Although BLM's desire is to work closely with the County and/or Highway District Commissioners to solve road and highway issues without infringing on existing highway district and county rights, in this situation, BLM's permission may be required.

Typically, maintenance or construction activities are authorized by a BLM ROW, a BLM road maintenance agreement, or a BLM acknowledged RS 2477 road, and no additional permission is required provided these activities are confined to the acknowledged road location and width. If, however, there is no BLM authorization or acknowledgement, BLM's permission is required.

QII-6. Are there any penalties for conducting surface disturbing activities on BLM lands without prior approval and authorization from the BLM?

Yes. Unauthorized activities on the public lands, including grading, blading, and other surface disturbance work on BLM administered roads, or the establishment of new roads, is prohibited and subject to penalties, including monetary fines and restoration of damages.

Part III - Policies and Issues Relative to RS 2477

QIII-1. What is RS 2477?

Section 8 of the Act of July 26, 1866 simply stated "that the right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." This Congressional grant was later codified as Revised Statute 2477 (43 U.S.C. 932). The law was enacted to facilitate the settlement of the western United States by the granting of ROWs for the construction of highways across unreserved public lands. The law was repealed in 1976 with the passage of the Federal Land Policy and Management Act (FLPMA). FLPMA did not terminate valid ROWs established under RS 2477 prior to its repeal. The existence and extent of valid ROWs previously established pursuant to RS 2477 remains an issue because many of these ROWs have not been adjudicated/legally determined.

QIII-2. After RS 2477 was repealed by FLPMA, was there any attempt by the BLM to formally recognize public highways that had been established under RS 2477?

Yes. After passage of FLPMA, the BLM, pursuant to then 43 CFR 2802.5(b), solicited public highway agencies (and individuals) which had constructed public highways under the authority of RS 2477 to submit maps showing the location of such public highways to the BLM. BLM then reviewed the submissions and either “acknowledged” or “did not acknowledge” these submissions as ROW grants for public highways. If these roads were acknowledged by BLM, the agency serialized and noted the ROW grants on the master title plats (the official land status records of the federal government).

QIII-3. What process did BLM use to “acknowledge” the existence of these public highways?

To constitute acceptance of the grant, three conditions must have been met prior to October 21, 1976 (date of repeal) for BLM to acknowledge the existence of an RS 2477 ROW:

1. At the time that the road was constructed, the lands involved must have been public lands, not reserved for public uses;
2. Some form of construction involving “intentional physical labor” of the highway must have occurred; and
3. The highway so constructed must be considered a public highway (a road freely open to everyone and that connects the public with identifiable destinations and places).

Where the above conditions could be documented, the BLM issued a letter of acknowledgment and treated the highway as a valid use of the public lands. Where the evidence did not support acceptance, the BLM informed the asserter that the highway was not recognized as a valid use of the public lands under RS 2477. Acknowledged RS 2477 ROWs were serialized and noted to the official records. A single case file was generally established for each entity (county or highway district) regardless of the number of separate RS 2477 ROWs held by that entity.

QIII-4. How many RS 2477 ROW cases and miles of roads were recognized in Idaho under this procedure?

Between 1976 and 1992, 51 cases were serialized and noted to the master title plats (See Attachment 9). These cases encompass over 2,300 miles of public highway ROWs across public lands managed by the BLM in Idaho.

QIII-5. Why would an entity want to obtain a right-of-way grant under FLPMA when BLM has acknowledged the existence of a grant for a public highway under RS 2477?

BLM's acknowledgment of an RS 2477 claim is only a recognition by the agency that conditions likely exist for the grant to have attached and, as such, will consider the highway as a valid use of the public lands. However, only a court of competent jurisdiction can determine the actual validity of an RS 2477 assertion. Absent a court decree that validates an assertion made under RS 2477, each claim or assertion, whether or not recognized by BLM, can potentially be challenged in court.

QIII-6. What has occurred since the repeal of RS 2477 regarding the Department of the Interior's (DOI) policy on RS 2477?

In the 1980's, the existence of ROWs under RS 2477 became major issues in Alaska (after passage of the Alaska National Interest Lands Conservation Act) and in Utah, where several thousand assertions were pending.

Responding to the RS 2477 issues raised in Utah and Alaska, the Secretary of the Interior issued a policy for Departmental recognition of claims for ROWs under RS 2477 in December of 1988. This new policy statement discussed Secretary Hodel's policy for making determinations on whether the Department would recognize claims for ROWs under RS 2477. This policy was revoked in January 1997 by Secretary Babbitt, and the BLM was instructed to defer the processing of RS 2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations.

At the request of Congress, the Department submitted a Report to Congress on RS 2477 in June 1993. In accordance with that Report's recommendations, the Department determined that regulations should be written for RS 2477, and a Notice of Proposed Rulemaking was published in 1994. Thereafter, Congress attached a provision to the Department's appropriation that first prohibited using funds to finalize the rulemaking, and later, prohibiting any final rulemaking from taking effect unless "expressly authorized by an Act of Congress...." (PL 104-208).

QIII-7. What is the BLM's current policy and status of these pending assertions of RS 2477 ROWs for public highways across public lands managed by BLM?

On January 22, 1997, the Secretary of the Interior revoked the Hodel policy and instructed the BLM to continue his policy in effect since May 1993 of deferring the processing of RS 2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations. The Secretary will approve or disapprove any recommendations that BLM may consider under this revised policy.

BLM has not taken action on these pending assertions in compliance with the Secretary's policy as described above. Legitimate access needs have been accommodated by issuance of ROW grants under the authority of Title V of FLPMA. When requested by the applicant, BLM has and will continue to include language in the ROW grant that preserves any potential access rights that might later be found valid under RS 2477.

QIII-8. How will administrative determinations be made by BLM in those cases where there is a demonstrated, compelling, and immediate need to make such determinations?

Those making claims of the existence of valid RS 2477 ROW continue to have the option of seeking to establish the validity of their claims in court. Nevertheless, it is possible that the Department may be asked, in advance of final rules taking effect, to make such determinations on the basis that a demonstrated, compelling, and immediate need is claimed to exist. If so, until final rules are published and take effect, determinations regarding RS 2477 ROW will be made by the Secretary of the Interior in consultation with the appropriate Interior agency, according to the following policy:

Claims. An entity wishing the Secretary or any agencies of the Department of the Interior to make a determination whether an RS 2477 right-of-way exists shall file a written request with the Interior agency having jurisdiction over the lands underlying the asserted right-of-way, along with an explanation of why there is a compelling and immediate need for such a determination. The request should be accompanied by documents and maps that the entity wishes the agency to consider in making its recommendation to the Secretary. If, based on the information provided, the agency does not believe a compelling and immediate need for the determination exists, it should without further examination recommend the Secretary defer processing until final rules are effective.

The following items must be analyzed once a written request has been submitted and will be the basis for the agency's ruling on the asserted right-of-way:

1. **Withdrawals and Reservations.** The agency shall consult the public land records maintained by the Bureau of Land Management to determine the status of the lands over which the claimed right-of-way passes. If such lands were withdrawn, reserved, or otherwise unavailable pursuant to RS 2477 at the time that the highway was allegedly constructed, the agency will recommend the Secretary deny the claim.

2. **Construction.** If the lands were not withdrawn, reserved, or otherwise unavailable pursuant to RS 2477, the agency shall examine all available documents and maps and perform an on-site examination to determine whether construction on the alleged right-of-way had occurred prior to the repeal of RS 2477 on October 21, 1976. If the agency determines that construction did not occur, the agency will recommend the Secretary deny the claim.

3. **Highway.** The agency shall evaluate whether the alleged right-of-way constitutes a highway. A highway is a thoroughfare used prior to October 21, 1976, by the public for the passage of vehicles carrying people or goods from place to place. If the agency determines that the alleged right-of-way does not constitute a highway, the agency will recommend the Secretary deny the claim.

4. **Role of State Law.** In making its recommendations, the agency shall apply state law in effect on October 21, 1976, to the extent that it is consistent with federal law. The agency will in no case recommend approval of claims that do not comply with the requirements of applicable state law.

The agency will make recommendations on the above-described issues to the Secretary. The Secretary will approve or disapprove those recommendations.

QIII-9. What has occurred since 1993 regarding how state, county, and local highway district agencies, in addition to individuals, view RS 2477 in Idaho?

In 1993, the Idaho Legislature passed HB 388 and SB 1108 which established “Federal Land ROWs” and “Public ROWs” and a process for any person or entity to assert and file with the county recorder an acknowledgment of RS 2477 roads. Since 1993, thousands of such assertions have been filed with county governments and at BLM offices. Although the BLM understands that the Idaho Legislature has established a validation process and that potential RS 2477 rights may exist on many roads on public lands, BLM does not recognize the filing of an assertion under RS 2477 in accordance with State Law (referred to as an acknowledgment in Idaho Code 40-204A) as a proper authorization to conduct maintenance or any surface disturbing activities on public lands. (See Attachment 10 for a list of Idaho Statutes on highways, public ROWs and RS 2477 and Attachment 11 for a History and Questions on Highways in Idaho.)

Attachment 1
Memorandum of Understanding

BLM MOU ID-402

MEMORANDUM OF UNDERSTANDING

among

Idaho Association of Counties,
Idaho Association of Highway Districts,
Local Highway Technical Assistance Council,
and the Bureau of Land Management, Idaho

concerning

Highway/Road Uses, Construction,
Reconstruction and Maintenance on Public Lands

I. PURPOSE. This Memorandum of Understanding (MOU), developed and entered into by the Idaho Association of Counties and the Idaho Association of Highway Districts (Associations), the Local Highway Technical Assistance Council (LHTAC), and the Bureau of Land Management, Idaho (BLM), sets forth understanding and procedures for improved coordination and cooperation. This coordination and cooperation is necessary for the protection of public land resource values and the efficient and effective management of highways/roads on public land in Idaho for the benefit of the public.

II. OBJECTIVES. The Associations, LHTAC, and BLM desire to improve communications, understanding, and relations among their members. Furthermore, the Associations, LHTAC, and BLM desire to set forth the basis for all parties involved with highway/road activities on public land in Idaho to work together in a cooperative fashion and to establish a mechanism for the identification and discussion of highway/road issues which may arise.

III. AUTHORITIES. The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701). Idaho Code, Sections 40-2403.

IV. UNDERSTANDING:

1. The Associations, LHTAC, and BLM will work cooperatively to share information and provide a platform to discuss issues concerning highway/road activities on public land in Idaho.
2. The BLM recognizes and respects state, county, and highway laws, regulations/ordinances, and processes to the extent allowable under federal law and agency policy. Upon notification, BLM field offices will participate in county and highway districts' public processes.
3. The Associations and LHTAC acknowledge that BLM manages public land within the authority of federal law and agency policy.

4. The Associations and LHTAC will consult with BLM in advance of issues and opportunities that will impact highway/road activities on public land.
5. The BLM will consult with the Associations, LHTAC, and the appropriate County Commissioners and/or Highway Districts in advance of issues and opportunities that will impact highway/road activities.
6. With the possible exception of an emergency situation, BLM field offices will request the participation of the appropriate Commissioner (County and/or Highway District) in the planning processes wherein BLM analyzes road management options that may include temporary or permanent road closures.
7. All parties will work together to clarify the various issues associated with roads through production of workshops, educational materials, etc.
8. The Associations, LHTAC, and BLM will encourage the Counties and Highway Districts to work with BLM's field offices to develop an MOU to coordinate their respective highway/road activities on public land or to develop cooperative road agreements.

V. PROCEDURES:

1. The Associations, LHTAC, and BLM agree to meet annually during the month of December to share information and to address broad statewide highway/road issues, concerns, and problems. The Associations, LHTAC, and BLM also agree to meet on an ad hoc basis.
2. Specific highway/road disagreements or unresolved issues between a BLM Field Office and Commissioners should be presented to the appropriate BLM District Manager and the appropriate Commissioners for resolution. Either party may request LHTAC's assistance in the resolution of unresolved issues.

VI. ADMINISTRATION:

1. The parties agree that this MOU is not intended to create any binding expectations for specific County Commissioners; Highway District Commissioners or BLM line officers. Nothing in this MOU is construed as creating any rights of enforcement by any person or entity.
2. This MOU does not relate to law enforcement issues.
3. This MOU becomes effective only upon its execution by all parties. The effective date of the MOU is the date of signature of the last of the subscribed parties. This MOU remains in effect until termination by any party upon written notice to the others.

4. This MOU may be amended by mutual written consent of all parties.
5. This MOU constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter contained herein. This MOU represents the totality of the agreement and understanding of the parties and supersedes all prior agreements, understandings, memoranda, or representations between and among all the parties, either oral or written, with respect to such subject matter.
6. The parties to this MOU confirm that they have negotiated this MOU for their mutual benefit. This MOU should not be construed in favor of any subscribed party, but should be construed to achieve the intent of the parties.
7. This MOU is subject to the laws of the State of Idaho, the laws of the United States, and the delegated authority assigned in each instance. This MOU does not obligate any party to the expenditure of funds or for future payment of money in excess of appropriations authorized by law.
8. Specific work projects or activities which involve the transfer of funds, services, or property among the parties to this MOU require the execution of separate agreements or contracts, contingent upon the availability of funds.
9. The parties to this MOU will review it five years from approval to determine its adequacy and effectiveness. This MOU is effective on the last signature date.

VII. DEFINITIONS. Public lands referred to in this MOU are lands administered by the BLM and includes any activity affecting public lands administered by BLM.

VIII. APPROVED:

U.S. BUREAU OF LAND MANAGEMENT
Idaho State Office

Martha G. Hahn
Idaho State Director

2/28/2002
Date

LOCAL HIGHWAY TECHNICAL
ASSISTANCE COUNCIL

Joseph K. Haynes, P.E.
Local Highway Administrator

3/15/2002
Date

IDAHO ASSOCIATION OF COUNTIES

Daniel G. Chadwick
Executive Director

3/8/2002
Date

IDAHO ASSOCIATION OF
HIGHWAY DISTRICTS

Stuart Davis
Executive Director

3/8/2002
Date

Attachment 2
Idaho's Local Highway Jurisdictions (cities, counties, highway districts)

In Idaho, there are 288 Local Highway Jurisdictions (192 of 200 cities; 33 of 44 counties; and 64 highway districts). The administration of non-city roads is split between county and highway districts in 12 counties; only county administration in 21 counties; and only highway district administration in 11 counties (See Attachment 11 for a Map of the Local Highway Districts). Currently local road mileage increases approximately 100 miles each year; local highway jurisdictions have responsibility for over 31,000 miles: Cities – 5,000 miles; Counties – 14,500 miles; and Highway Districts – 11,800 miles.

County Name	Jurisdictional Type	Jurisdictional Name
Ada	Highway District	Ada County H.D.
Adams	City	Council
Adams	City	New Meadows
Adams	County	Adams County
Bannock	City	Inkom
Bannock	City	Pocatello
Bannock	Highway District	Downey-Swan Lake H.D.
Bannock	County	Bannock County
Bannock	City	Arimo
Bannock	City	McCammon
Bannock	City	Downey
Bannock	City	Chubbuck
Bannock	City	Lava Hot Springs
Bear Lake	City	Saint Charles
Bear Lake	County	Bear Lake County
Bear Lake	City	Paris
Bear Lake	City	Montpelier
Bear Lake	City	Georgetown
Bear Lake	City	Bloomington
Benewah	Highway District	Plummer-Gateway H.D.
Benewah	City	Plummer
Benewah	City	Saint Maries
Benewah	City	Tensed
Benewah	County	Benewah County
Benewah	City	Parkline
Bingham	County	Bingham County
Bingham	City	Shelley
Bingham	City	Firth
Bingham	City	Basalt
Bingham	City	Aberdeen
Bingham	City	Atomic City
Bingham	City	Blackfoot

County Name	Jurisdictional Type	Jurisdictional Name
Blaine	County	Blaine County
Blaine	City	Bellevue
Blaine	City	Carey
Blaine	City	Hailey
Blaine	City	Ketchum
Blaine	City	Sun Valley
Boise	County	Boise County
Boise	City	Placerville
Boise	City	Idaho City
Boise	City	Crouch
Boise	City	Horseshoe Bend
Bonner	City	Ponderay
Bonner	County	Bonner County
Bonner	City	Dover
Bonner	City	Sandpoint
Bonner	Highway District	Sandpoint Independent H.D.
Bonner	City	Priest River
Bonner	City	Old Town
Bonner	City	Kootenai
Bonner	City	East Hope
Bonner	City	Clark Fork
Bonner	City	Hope
Bonneville	City	Ammon
Bonneville	City	Idaho Falls
Bonneville	City	Iona
Bonneville	City	Irwin
Bonneville	City	Swan Valley
Bonneville	City	Ucon
Bonneville	County	Bonneville County
Boundary	City	Bonnors Ferry
Boundary	City	Moyie Springs
Boundary	County	Boundary County
Butte	City	Arco
Butte	City	Butte City
Butte	City	Moore
Butte	County	Butte County
Camas	City	Fairfield
Camas	County	Camas County
Canyon	Highway District	Nampa H.D. #1
Canyon	Highway District	Notus-Parma H.D. #2
Canyon	Highway District	Golden Gate H.D.
Canyon	Highway District	Canyon H.D. #4
Canyon	City	Wilder

County Name	Jurisdictional Type	Jurisdictional Name
Canyon	City	Parma
Canyon	City	Nampa
Canyon	City	Middleton
Canyon	City	Melba
Canyon	City	Greenleaf
Canyon	City	Caldwell
Canyon	City	Notus
Caribou	City	Grace
Caribou	City	Soda Springs
Caribou	County	Caribou County
Caribou	City	Bancroft
Cassia	City	Burley
Cassia	Highway District	Raft River H.D.
Cassia	Highway District	Oakley H.D.
Cassia	Highway District	Burley H.D.
Cassia	Highway District	Albion H.D.
Cassia	County	Cassia County
Cassia	City	Oakley
Cassia	City	Declo
Cassia	City	Albion
Cassia	City	Malta
Clark	City	Dubois
Clark	County	Clark County
Clearwater	City	Elk River
Clearwater	Highway District	Clearwater H.D.
Clearwater	County	Clearwater County
Clearwater	City	Orofino
Clearwater	City	Pierce
Clearwater	City	Weippe
Custer	City	Challis
Custer	City	Mackay
Custer	City	Stanley
Custer	County	Custer County
Custer	Highway District	Lost River H.D.
Elmore	City	Glenns Ferry
Elmore	City	Mountain Home
Elmore	Highway District	Atlanta H.D.
Elmore	Highway District	Glenns Ferry H.D.
Elmore	Highway District	Mountain Home H.D.
Franklin	City	Preston
Franklin	City	Weston
Franklin	City	Dayton
Franklin	City	Clifton

County Name	Jurisdictional Type	Jurisdictional Name
Franklin	County	Franklin County
Franklin	City	Franklin
Fremont	County	Fremont County
Fremont	City	Ashton
Fremont	City	Newdale
Fremont	City	Parker
Fremont	City	Saint Anthony
Fremont	City	Teton
Gem	City	Emmett
Gem	County	Gem County
Gooding	Highway District	West Point H.D.
Gooding	City	Bliss
Gooding	City	Gooding
Gooding	City	Hagerman
Gooding	City	Wendell
Gooding	County	Gooding County
Gooding	Highway District	Bliss H.D. #2
Gooding	Highway District	Gooding H.D. #1
Gooding	Highway District	Hagerman H.D.
Gooding	Highway District	Wendell H.D.
Idaho	Highway District	Union Independent H.D.
Idaho	Highway District	White Bird H.D.
Idaho	Highway District	Kidder Harris H.D.
Idaho	Highway District	Keuterville H.D.
Idaho	Highway District	Green Creek H.D.
Idaho	Highway District	Grangeville H.D.
Idaho	Highway District	Good Roads H.D. #2
Idaho	Highway District	Ferdinand H.D.
Idaho	Highway District	Fenn H.D.
Idaho	Highway District	Doumecq H.D.
Idaho	Highway District	Cottonwood H.D.
Idaho	County	Idaho County
Idaho	City	White Bird
Idaho	City	Stites
Idaho	City	Riggins
Idaho	City	Kooskia
Idaho	City	Grangeville
Idaho	City	Cottonwood
Idaho	City	Ferdinand
Idaho	Highway District	Winona H.D.
Idaho	Highway District	Deer Creek H.D.
Jefferson	City	Rigby
Jefferson	County	Jefferson County

County Name	Jurisdictional Type	Jurisdictional Name
Jefferson	City	Ririe
Jefferson	City	Menan
Jefferson	City	Lewisville
Jefferson	City	Roberts
Jefferson	City	Mud Lake
Jerome	Highway District	Hillsdale H.D.
Jerome	Highway District	Jerome H.D.
Jerome	City	Jerome
Jerome	City	Hazelton
Jerome	City	Eden
Kootenai	City	Post Falls
Kootenai	Highway District	Post Falls H.D.
Kootenai	Highway District	Lakes H.D.
Kootenai	Highway District	Eastside H.D. #3
Kootenai	City	Worley
Kootenai	City	Spirit Lake
Kootenai	City	Rathdrum
Kootenai	Highway District	Worley H.D.
Kootenai	City	Hayden Lake
Kootenai	City	Hayden
Kootenai	City	Hauser
Kootenai	City	Harrison
Kootenai	City	Fernan Lake
Kootenai	City	Dalton Gardens
Kootenai	City	Athol
Kootenai	City	Huetter
Kootenai	City	Coeur d'Alene
Latah	City	Juliaetta
Latah	Highway District	South Latah H.D.
Latah	Highway District	North Latah H.D.
Latah	City	Troy
Latah	City	Potlatch
Latah	City	Onaway
Latah	City	Kendrick
Latah	City	Genesee
Latah	City	Deary
Latah	City	Bovill
Latah	City	Moscow
Lemhi	City	Leadore
Lemhi	City	Salmon
Lemhi	County	Lehmi County
Lewis	Highway District	Central H.D.
Lewis	Highway District	North H.D.

County Name	Jurisdictional Type	Jurisdictional Name
Lewis	Highway District	Kamiah H.D.
Lewis	Highway District	Evergreen H.D.
Lewis	City	Reubens
Lewis	City	Nez Perce
Lewis	City	Kamiah
Lewis	City	Craigmont
Lewis	Highway District	Prairie H.D.
Lewis	City	Winchester
Lincoln	City	Shoshone
Lincoln	Highway District	Shoshone H.D. #2
Lincoln	Highway District	Richfield H.D. #1
Lincoln	Highway District	Dietrich H.D. #5
Lincoln	City	Richfield
Lincoln	City	Deitrich
Lincoln	Highway District	Kimama H.D.
Madison	City	Rexburg
Madison	City	Sugar City
Madison	County	Madison County
Minidoka	City	Paul
Minidoka	City	Minidoka
Minidoka	Highway District	Minidoka H.D.
Minidoka	City	Heyburn
Minidoka	City	Acequia
Minidoka	City	Rupert
Nez Perce	City	Culdesac
Nez Perce	City	Lapwai
Nez Perce	City	Lewiston
Nez Perce	City	Peck
Nez Perce	County	Nez Perce County
Oneida	City	Malad City
Oneida	County	Oneida County
Owyhee	City	Homedale
Owyhee	City	Marsing
Owyhee	County	Owyhee County
Owyhee	Highway District	Gem H.D. #3
Owyhee	Highway District	Homedale H.D.
Owyhee	Highway District	Three Creek Good Road H.D.
Owyhee	City	Grandview
Payette	City	Payette
Payette	County	Payette County
Payette	City	Fruitland
Payette	Highway District	Highway District #1
Payette	City	New Plymouth

County Name	Jurisdictional Type	Jurisdictional Name
Power	City	American Falls
Power	City	Rockland
Power	Highway District	Power County H.D.
Shoshone	City	Wallace
Shoshone	Highway District	Clarkia Better Roads H.D.
Shoshone	City	Wardner
Shoshone	City	Smeltonville
Shoshone	City	Pinehurst
Shoshone	City	Osburn
Shoshone	City	Mullan
Shoshone	City	Kellogg
Shoshone	County	Shoshone County
Teton	City	Driggs
Teton	City	Tetonia
Teton	City	Victor
Teton	County	Teton County
Twin Falls	City	Buhl
Twin Falls	City	Twin Falls
Twin Falls	Highway District	Murtaugh H.D.
Twin Falls	Highway District	Twin Falls H.D.
Twin Falls	Highway District	Filer H.D.
Twin Falls	Highway District	Buhl H.D.
Twin Falls	City	Murtaugh
Twin Falls	City	Kimberly
Twin Falls	City	Hollister
Twin Falls	City	Hansen
Twin Falls	City	Castleford
Twin Falls	City	Filer
Valley	City	Cascade
Valley	City	Donnelly
Valley	City	McCall
Valley	County	Valley County
Washington	Highway District	Weiser Valley H.D.
Washington	City	Cambridge
Washington	City	Midvale
Washington	City	Weiser
Washington	County	Washington County

Idaho State Map

Attachment 4
Federal Laws, Executive Orders, & Secretarial Orders

BLM must adhere to various laws, rules, and orders that include, but are not limited to, the following:

A. The Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 U.S.C. 1701 *et seq.*, provides the authority for the BLM land use planning, the execution of cooperative agreements, and the issuance of ROW for roads and highways.

B. The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, requires the consideration and public availability of information regarding the environmental impacts of major Federal actions significantly affecting the quality of the human environment. This includes the consideration of alternatives and mitigation of impacts.

C. The Clean Air Act of 1990, as amended, 42 U.S.C. 7418, requires Federal agencies to comply with all Federal, State and local requirements regarding the control and abatement of air pollution. This includes abiding by the requirements of State Implementation Plans.

D. The Clean Water Act of 1987, as amended, 33 U.S.C. 1251, establishes objectives to restore and maintain the chemical, physical, and biological integrity of the Nation's water.

E. The Federal Water Pollution Control Act, 33 U.S.C. 1323, requires Federal land managers to comply with all Federal, State, and local requirements, administrative authorities, process, and sanctions regarding the control and abatement of water pollution in the same manner and to the same extent as any non-governmental entity.

F. The Endangered Species Act (ESA) of 1973, as amended, 16 U.S.C. 1531 *et seq.*:

1. Provides a means whereby the ecosystems upon which endangered and threatened species depend may be conserved and provides a program for the conservation of such endangered and threatened species (Sec. 1531 (b), Purposes).
2. Requires all Federal agencies to seek to conserve endangered and threatened species and utilize applicable authorities in furtherance of the purposes of the Endangered Species Act (Sec. 1531 (c)(1), Policy).
3. Requires all Federal agencies to avoid jeopardizing the continued existence of any species that is listed or proposed for listing as threatened or endangered or destroying or adversely modifying its designated or proposed critical habitat (Sec. 1536 (a), Interagency Cooperation).

4. Requires all Federal agencies to consult (or confer) in accordance with Sec. 7 of the ESA with the Secretary of the Interior, through the Fish and Wildlife Service and/or the National Marine Fisheries Service, to ensure that any Federal action (including land use plans) or activity is not likely to jeopardize the continued existence of any species listed or proposed to be listed under the provisions of the ESA, or result in the destruction or adverse modification of designated or proposed critical habitat (Sec. 1536 (a), Interagency Cooperation, and 50 CFR 402).

G. The Wild and Scenic Rivers Act, as amended, 16 U.S.C. 1271 *et seq.*, requires Federal land management agencies to identify potential river systems and then study them for potential designation as wild, scenic, or recreational rivers.

H. The Wilderness Act, as amended, 16 U.S.C. 1131 *et seq.*, authorizes the President to make recommendations to the Congress for Federal lands to be set aside for preservation as wilderness.

I. The Antiquities Act of 1906, 16 U.S.C. 431-433, protects cultural resources on Federal lands and authorizes the President to designate National Monuments on Federal lands.

J. The National Historic Preservation Act (NHPA), as amended, 16 U.S.C. 470, expands protection of historic and archaeological properties to include those of national, State, and local significance and directs Federal agencies to consider the effects of proposed actions on properties eligible for or included in the National Register of Historic Places. It also directs the pro-active management of historic resources.

K. The American Indian Religious Freedom Act of 1978, 42 U.S.C. 1996, establishes a national policy to protect and preserve the right of American Indians to exercise traditional Indian religious beliefs or practices.

L. The General Mining Law of 1872, as amended, 30 U.S.C. 21 *et seq.*, allows the location, use, and patenting of mining claims on sites on public domain lands of the United States.

M. The Taylor Grazing Act of 1934, 43 U.S.C. 315, authorizes the Secretary of the Interior “to establish grazing districts, or additions thereto and/or to modify the boundaries thereof of vacant, unappropriated and unreserved lands from any part of the public domain . . . which in his opinion are chiefly valuable for grazing and raising forage crops[.] . . .” The Act also provides for the classification of lands for particular uses.

N. The Public Rangelands Improvement Act of 1978, 43 U.S.C. 1901, provides that the public rangelands be managed so that they become as productive as feasible in accordance with management objectives and the land use planning process established pursuant to 43 U.S.C. 1712.

O. The Wild and Free-Roaming Horse and Burro Act, as amended, 16 USC 1331-1340, provides that wild horses and burros shall be considered comparably with other resource values in formulating land use plans, and that management activities shall be undertaken with the goal of maintaining free-roaming behavior.

P. The Native American Graves Protection and Recovery Act (P.L. 101-601; 104 Stat. 3048; 25 U.S.C. 3001) establishes rights of Indian tribes and Native Hawaiian organizations to claim ownership of certain “cultural items”, including human remains, funerary objects, sacred objects, and objects of cultural patrimony held or controlled by Federal agencies and museums that receive Federal funds.

Q. Executive Orders 11644 (1972) and 11989 (1997) establish policies and procedures to ensure that off-road vehicle use shall be controlled so as to protect public lands.

R. Executive Order 13007 (Indian Sacred Sites), 61 *Fed. Reg.* 26771 (1996), requires Federal agencies to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions to:

1. Accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners; and
2. Avoid adversely affecting the physical integrity of such sacred sites.

S. Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) provides, in part, that each Federal agency shall establish regular and meaningful consultation and collaboration with Indian tribal governments in developing regulatory practices on Federal matters that significantly or uniquely affects their communities.

T. Executive Order 13112 (Invasive Species) provides that no Federal agency shall authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk or harm will be taken in conjunction with the actions.

U. Secretarial Order 3206 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act) requires DOI agencies to consult with Indian tribes when agency actions to protect a listed species, as a result of compliance with ESA, affect or may affect Indian lands, tribal trust resources, or the exercise of American Indian tribal rights.

Attachment 5 - Organizations and Contacts

The following organizations are good resources for information and assistance: Bureau of Land Management (BLM-Idaho), Idaho Association of Counties (IAC), Idaho Association of Highway Districts (IAHD), and the Local Highway Technical Assistance Council (LHTAC). Specific contact information for each organization follows.

BLM Contacts: If you do not know the appropriate office, call the Idaho State Office and request to speak with Jimmie Buxton (208) 373.3861, Cathie Foster (208) 373.3863, John Thornburgh (208) 373.3866 or Jackie Simmons (208) 373.3867 and they can determine which field office should be contacted. In case of emergency, contact the Deputy State Director for Resource Services at (208) 373-3800.

Idaho State Office

1387 South Vinnell Way
Boise, ID 83709-1657
208-373-4000
<http://www.id.blm.gov>

Lower Snake River District

3948 Development Ave
Boise, Idaho 83705
(208) 384-3300
 Owyhee Field Office: (208) 384-3300
 Four Rivers Field Office: (208) 384-3300
 Jarbidge Field Office: (208) 736-2350

Upper Snake River District

1405 Hollipark Dr.
Idaho Falls, Idaho 83401
(208) 524-7500
 Burley Field Office: (208) 677-6641
 Malad Field Station: (208) 766-4766
 Pocatello Field Office: (208) 478-6340
 Shoshone Field Office: (208) 886-2206

Upper Columbia - Salmon Clearwater District

1808 N. Third Street
Coeur d'Alene, Idaho 83814
(208) 769-5000
 Cottonwood Field Office: (208) 962-3245
 Salmon Field Office: (208) 756-5400
 Challis Field Office: (208) 879-6200

Idaho Association of Counties:

700 W. Washington, Box 1623, Boise, ID 83701

Phone: (208)345-9126

FAX: (208)345-0379

web site <http://www.idcounties.org/>

Founded in 1976 the Idaho Association of Counties (IAC) is a non-partisan, non-profit service organization dedicated to the improvement of county government. IAC serves as a spokesperson for counties at the state and national levels and acts as a liaison between counties and other levels of government - through research, training and lobbying.

Idaho Association of Highway Districts:

315 E. 38th Street Garden City, Idaho 83714

Telephone (208) 345-5176;

Facsimile (208) 345-5214;

E-mail iahd@iahd.com

web site www.iahd.com

The Idaho Association of Highway Districts (IAHD) is a non-partisan, non-profit organization providing an effective, unified voice to promote the interests of all Highway Districts in the state of Idaho. The voluntary membership of IAHD is comprised of Idaho's Highway Districts - each District in good standing, regardless of size - has an equal vote in the Association. IAHD is funded solely through member dues and assessments. Businesses, individuals, or other associations with similar interests are invited to be associate (non-voting) members.

Local Highway Technical Assistance Council

3330 Grace Street, Boise, ID 83703

Ph:(208) 344-0565; 800-259-6841,

Fax: (208) 344-0789

web site <http://www.lhtac.org/>

The Local Highway Technical Assistance Council (LHTAC) is a public agency representing local highway jurisdictions in Idaho (cities, counties, and highway districts). The Idaho Legislature created LHTAC in 1994.

Attachment 6 - Current List of County Cooperative Road Agreements

Lower Snake River District:

ID-01-201	BLM / Twin Falls County Highway District
ID-01-164	BLM / Owyhee County Commissioners
ID-01-98	BLM / Ada County Highway District
ID-132	BLM / Payette and Washington Counties

Upper Snake River District:

ID-036-9901	BLM / Butte County
ID-030-7601	BLM / Fremont County
ID-030-7602	BLM / Jefferson County
ID-03-14	BLM / Butte

Attachment 7 - Cooperative Road Maintenance Agreement

COOPERATIVE ROAD MAINTENANCE AGREEMENT

between

**(Highway District)
(_____) County, Idaho**

and

**(BLM Field Office)
Bureau of Land Management, U.S. Department of the Interior**

AGREEMENT No. _____

I. Purpose:

The purpose of this agreement is to provide a process for the maintenance of road(s) belonging to the above parties through execution or road maintenance responsibilities or operations for the mutual benefit of the cooperating parties.

II. Authority:

The Bureau authority to enter into this agreement is contained in Public Law 94-579, 43 U.S.C 1737. This agreement is also made pursuant to the Memorandum of Understanding between ____ Highway District and BLM which provides a foundation for coordination and compliance with State and Federal law.

The District authority is contained in Idaho Code _____.

III. Recitals:

Whereas, _____ Highway District maintains roads in _____ County, (see attached Exhibit A) that connect to roads maintained by and under the jurisdiction of the Bureau of Land Management (hereinafter referred to as BLM); and,

Whereas, BLM uses roads within the _____ Highway District boundary and maintained by _____ Highway District to connect the BLM Transportation System to a State and/or Federal Highway; and,

Whereas, _____ Highway District and BLM desire to cooperate by exchanging maintenance and equipment, coordinating contracts and performing maintenance on roads within the jurisdiction of the other party where it is mutually advantageous to both parties.

Whereas, BLM is on a three year cycle wherein the first year roads needing maintenance are identified and the budget process is initiated; during the second year, the environmental analyses are written and other preparation is made; in the third year, construction commences.

Whereas, this MOU applies to the highway activities by _____ Highway District and BLM on the public lands administered by the BLM within the jurisdictional boundaries of the _____ Highway District.

Whereas, the _____ Highway District and BLM will work cooperatively, within the limits of their funding, to provide the most safe and efficient highway system possible for the public.

Whereas, highway activities include reconstruction and maintenance work on the parties authorized roads as depicted herein. It does not include construction, validation, or vacation of roads.

Whereas, BLM has completed a programmatic environmental analysis covering road maintenance in the (BLM) District as shown on attached Exhibit B.

Whereas, this agreement will improve efficiency and result in improved road conditions and access to private and federal lands.

IV. Procedures:

Maintenance (highway activities) shall include the preserving and keeping of each roadway, road structure (structures being cattle guards, bridges/culverts), road facility, etc., as nearly as possible in its existing condition as constructed, or as mutually agreed upon, to provide satisfactory and safe service to all vehicles using such roadways, road structures, or road facilities.

In the event conditions require extraordinary repairs, removal of unusually extensive slides, flooding, or similar work outside the scope of normal maintenance, work to be performed will be determined by agreement between the parties.

All materials utilized by each party in the maintenance performed under this agreement shall become the sole property of the party who has jurisdiction.

Roads where cooperative or joint maintenance will be performed or where maintenance and/or equipment will be exchanged will be identified on Exhibit C attached hereto and made a part hereof. Exhibit C will be updated at a joint meeting held annually. A written report of maintenance performed by each party will be filed as an annual addendum to this agreement. The (BLM) Field Manager and BLM (District) Operations Chief or Designate will attend that meeting.

In all of its activities under this agreement, _____ Highway District, its employees, agents and contractors shall take care to comply with the fire laws of the State of Idaho applicable to individuals engaged in such activities, and to obtain any necessary permits required by the State of Idaho. _____ Highway District shall immediately report to the BLM and the appropriate fire fighting organization, any fires it observes which are on or threaten public land in the areas covered by this agreement.

Issues: The first issues to address are:

1. Currently, BLM has noted the following road rights of way to _____ Highway District:
 - A. IDI-XXXX, authorized in 1976, which covers that portion of the _____ Road from the intersection of the _____ road to the access to _____.
 - B. IDI-XXXXX, authorized in 1962, which covers that portion of the _____ road from the _____ County Line to the south boundary of the NE¼SE¼, T. 15 S., R. 11 E., B.M..

V. Discussion of individual Roads or road segments involved in the maintenance for the coming year. Specifically identified by map or table.

(To be inserted when decided upon.)

VI. Administration:

_____ Highway District and BLM shall discuss specific proposed highway activities and/or other related issues at the annual meeting prior to conducting any highway activities on the public lands of the United States that has not been heretofore addressed.

BLM shall, within 30 days of the annual meeting respond in writing with any concerns or issues BLM has with respect to any highway activity proposed by _____ Highway District. Should BLM desire to prohibit, limit, or condition any highway activity proposed by _____ Highway District, BLM shall state the reasons for the prohibition, limitation, or condition, including any steps or tasks to be performed to satisfy BLM's concerns.

_____ Highway District shall, within 30 days of the annual meeting respond in writing with any concerns or issues _____ Highway District has with respect to any highway activity proposed by BLM. Should _____ Highway District desire to prohibit, limit, or condition any highway activity proposed by BLM, _____ Highway District shall state the reasons for the prohibition, limitation, or condition, including any steps or tasks to be performed to satisfy _____ Highway District's concerns.

Should either party object to the other's prohibition, limitation, or condition, negotiations shall be made in an attempt to resolve the issue(s). If a resolution cannot be found at the local level, both parties shall elevate the negotiations to each of their next higher authorities for resolution. For BLM, the next higher level is the _____ District Manager. For _____ Highway District, the next higher level is _____.

On issues for which a resolution is pending, no highway activities shall be conducted on the public lands of the United States.

Each party will notify the other of any changes on jurisdiction, standard, or abandonment of the roads specified herein.

In emergency situations where potential loss of life is eminent, the parties to this agreement will work cooperatively to ensure life nor property is not lost.

Nothing in this agreement shall be considered to limit the right of the BLM to retain full jurisdiction and control of the subject roadways, road structures, or road facilities listed in Exhibit D.

Nothing in this agreement shall be construed as binding BLM or _____ Highway District to perform beyond their legal authority, or to require them to assume or expend any sums in excess of monies which the parties determine to be available for purposes of this agreement.

In the event either party decides to terminate this agreement, each party has the responsibility pursuant to this agreement for repair or replacement of all roadways, road structures, and road facilities to their existing condition at the time of this agreement or to a standard which the road has been improved after that date.

_____ Highway District and BLM agree to provide each other the opportunity to be a party to contracts issued for road improvements such as crushing and stockpiling surfacing materials, placing surfacing materials, and general maintenance. This will afford each party to the agreement opportunity to the benefits and efficiency of larger quantity contracts.

All applicable national policy requirements and administrative management standards as set forth in Office of Management and Budget, Financial Management Division, Directory of Policy Requirements and Administrative Standards for Federal Aid Programs are hereby incorporated by reference.

This agreement shall become effective on the date of the last signature and shall remain in effect for a period of twenty years, unless terminated as follows: (1) operation of law; (2) mutual consent; (3) by BLM giving _____ Highway District one hundred eighty (180) days prior written notice; or, (4) by _____ Highway District giving BLM one hundred eighty (180) days prior written notice. This road agreement may be renewed by mutual written agreement of all parties to this agreement.

BLM and District will meet annually, in January, to review and revise, as needed, where maintenance and equipment will be exchanged and arrive at maintenance costs for each party for work performed the previous year.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the _____ day of _____, 200____ .

_____ HIGHWAY DISTRICT

(Name) Date
Commission President

(Name) Date
_____ Field Manager

(Name) Date
Commissioner

(Name) Date
Commissioner

CRMA Exhibits:

- A - _____ Highway District Maintained Facilities
- B - BLM Road & Trail Programmatic Environmental Analysis 1994
- C - Cooperative Maintenance or Joint Maintenance Facilities
- D - BLM Maintained Facilities

Attachment 8
Model Communication MOU for Counties, Highway Districts & BLM

MEMORANDUM OF UNDERSTANDING
between

and the Bureau of Land Management
concerning
Highway/Roads Uses on Public Lands

I. PURPOSE:

This Memorandum of Understanding (MOU), developed and entered into by _____, and the _____ Field Office of Bureau of Land Management, Idaho (BLM), sets forth understanding and procedures for improved coordination and cooperation necessary to protect public land resource values and efficiently and effectively manage highway/roads on public lands in Idaho for the benefit of the public.

II. OBJECTIVES:

The _____ and the BLM desire to improve the communication, understanding and relations between members of _____ and BLM. Furthermore, the _____ and the BLM desire to set forth the basis for all parties involved with highway/road activities on public lands in Idaho to work together in a cooperative fashion and to establish a mechanism for the identification and discussion of highway/road issues which may arise.

III. AUTHORITIES:

The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701).

IV. UNDERSTANDING:

1. The _____ and BLM will work cooperatively to share information and provide a platform to discuss issues concerning highway/road activities on public land in Idaho.
2. The BLM will notify the _____ of any action that will impact highway/road activities and request their comments.
3. Counties and Highway Districts are required to notify abutting property owners for validation or abandonment of highways. The BLM recognizes, and respects State, County, and Highway District laws, regulations/ordinances, and processes to the extent allowable under federal law. Upon notification, BLM will participate in _____ public processes.

4. With the exception of an emergency, BLM will notify the _____ if BLM plans on a road closure (temporary or permanent), and request their participation in the public process.
5. _____, and BLM Field Office understand that the Secretary of the Interior, Department of the Interior has deferred processing any RS 2477 assertions, thus preventing the BLM from taking action on pending assertions except in cases of a demonstrated compelling and immediate need.
6. The BLM recognizes that the _____ may have RS 2477 assertions filed with the BLM which have not been acknowledged because of the current moratorium on processing assertions. In the event the BLM issues a ROW to the _____ for these roads, the BLM will preserve the _____ rights under their RS 2477 assertion.
7. _____, and BLM understand that RS 2477 assertions under state law do not constitute a formal BLM acknowledgment or authorization.

V. PROCEDURES:

1. The _____, and BLM agree to meet on an annual basis to share information. The date, time and place of such meetings shall be set, and notification given, at least thirty (30) days in advance of each meeting.
2. The _____ and the BLM also agree to address broad highway/road issues, concerns, and problems. The date, time and place of such meetings shall be set, and notification given, at least thirty (30) days in advance of each meeting.
3. Specific highway/road disagreements or unresolved issues between a BLM, and _____ should be presented to the BLM District Manager and the _____ Commissioners for resolution.

VI. ADMINISTRATION:

1. The parties agree that this MOU is not intended to create any third party beneficiary. Nothing in this MOU is construed as creating any rights of enforcement by any person or entity.
2. This MOU becomes effective only upon its execution by all parties. The effective date of the MOU is the date of signature of the last of the subscribed parties. This MOU remains in effect until termination by any party upon sixty (60) days written notice to the others.
3. This MOU may be amended by mutual written consent of both parties.

4. This MOU constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter contained herein. This MOU represents the totality of the agreement and understanding of the parties and supersedes all prior agreements, understandings, memoranda, or representations between and among all the parties, either oral or written, with respect to such subject matter.
5. The parties to this MOU mutually confirm that they have negotiated this MOU for their mutual benefit. This MOU should not be construed in favor of any subscribed party, but should be construed to achieve the intent of the parties.
6. This MOU is subject to the laws of the State of Idaho, the laws of the United States, and the delegated authority assigned in each instance. This MOU does not obligate either party to the expenditure of funds or for future payment of money in excess of appropriations authorized by law.
7. Specific work projects or activities which involve the transfer of funds, services, or property between the parties to this MOU requires the execution of separate agreements or contracts, contingent upon the availability of funds.

VII. PRINCIPAL CONTACTS:

_____, Bureau of Land Management (208) .
 _____, _____ (208) .

VIII. APPROVED:

U.S. BUREAU OF LAND MANAGEMENT
 Field Office

LOCAL HIGHWAY Jurisdiction

 Officer

 Chair

 Date

 Date

Attachment 9 - Acknowledged RS 2477 ROWs on BLM in Idaho

Lower Snake River District

Serial #	Holder	Date Ackn.	Width	Mention of Clearances
IDBL-055642	Owyhee Co.	2/21/1951	100'-200'	No
IDI-08860	Mtn. Home	6/10/1958	30'	No
IDI-20029	Glenns Ferry HD	4/28/1983	80'	No
IDI-20038	Ada County HD	4/28/1983	65'	No
IDI-20716	Payette Co.	6/20/1984	50'	No
IDI-20724	Owyhee Co.	4/3/1984	60' (SRP)	Unknown-file at MTP
IDI-20731	Gem Co.	5/17/1984	60'	No
IDI-21022	Washington Co.	9/19/1984	50'	No
IDI-21033A	Boise Co.	12/7/1984	70' on apln Non on Ackn	No
IDI-21406	Mtn. Home HD	5/6/1986	60'	No
IDI-23661	Twin Falls HD	2/2/1987	50'	No

Upper Columbia - Salmon Clearwater District

Serial #	Holder	Date Ackn.	Width	Mention of Clearances?
IDI-019997	Caribou Co.	5/29/1984	Various	No
IDI-020147	Cluster Co.	2/5/1982	50'	No
IDI-020154	Lemhi Co.	8/16/1982	60'	No
IDI-020682	Caribou Co.	8/21/1984	60'	No
IDI-031263	ITD	Still pending as of 4/2002		

Upper Snake River District

Serial #	Holder	Date Ackn.	Width	Mention of Clearances
IDI-020105	Pocatello City of	9/14/1983	60'	No
IDI-020533	Bear Lake Co.	12/19/1983	50'	No
IDI-020720	Power Co Hwy. Dist.	4/5/1984	60'	No
IDI-023322	Bingham Co.	10/1/1986	Variable	No
IDI-023323	Bingham Co.	10/1/1986	Variable	No
IDI-023324	Bingham Co.	10/1/1986	Variable	No
IDI-023337	Oneida Co.	9/23/1986	60'	No
IDI-0254332	Bonneville Co.	11/30/1987	60'	No
IDI-025828	Teton Co.	10/18/1988	Variable	No
			all road widths 45' except: T.6N., R.44E., - 40' T. 5 N., R. 44 E., - 60'	
IDI-026349	Madison Co.	8/19/1988	45'	No
IDI-026753	Bonneville Road & Bridge	3/24/1989	40'	No
IDI-027099	Twin Falls Hwy. Dist.	9/13/1989	50'	Yes
IDI-027140	Blaine Co.	9/26/1989	60'	No
IDI-027768	Clark Co.	4/25/1990	Variable 50'-80' Most 66'	No
IDI-028624AA	Fremont Co.	3/9/1992	66'	No
IDI-028624AB	Fremont Co.	3/9/1992	28'	No
IDI-028624AC	Fremont Co.	3/9/1992	30'	No
IDI-028624AD	Fremont Co.	3/9/1992	66'	No
IDI-028624AE	Fremont Co.	3/9/1992	30'	No
IDI-028624AF	Fremont Co.	3/9/1992	16'	No
IDI-028624AG	Fremont Co.	3/9/1992	28'	No
IDI-028624AH	Fremont Co.	3/9/1992	66'	No
IDI-028624AI	Fremont Co.	3/9/1992	30'	No
IDI-028624AJ	Fremont Co.	3/9/1992	66'	No
IDI-028624AK	Fremont Co.	3/9/1992	66'	No
IDI-028624AL	Fremont Co.	3/9/1992	30'	No
IDI-028624AM	Fremont Co.	3/9/1992	25'	No
IDI-028624AN	Fremont Co.	3/9/1992	25'	No
IDI-028624AO	Fremont Co.	3/9/1992	66'	No
IDI-020608	Lost River HD	7/6/1984	50'	No
IDI-023188	Lost River HD	9/11/1986	60'	No
IDI-023522	Raft River HD	12/2/1986	60'	No
IDI-026286	Oakley City of	8/10/1988	45'	No
IDI-026679	Oakley City of	2/10/1989	45'	No
IDI-029091	Lost River HD	5/20/1992	50'	No

Attachment 10
Idaho Statutes on Highways, Public Rights-of-Way, and RS 2477

HIGHWAYS

Abandonment:

County 40-203
Highway District 40-203

Acceptance:

County 50-1306, 40-202, 40-203A
Highway District 50-1306, 40-202, 40-203A
Defined 40-109 (5)
Mapping 40-202 (1)

Validation:

County 40-203A
Highway District 40-203A

PUBLIC RIGHTS-OF-WAY

Abandonment 40-203
Acceptance 40-203A
Definition - (Open For Travel) 40-117(3)
Definition - (Plat) 50-1301
Designation 40-202
Gas Lines 62-1101 62-1103
Mapping 40-202 (6)
Plats and Vacation 50-1301 - 50-1330
Validation 40-203A

RS 2477 - FEDERAL LANDS RIGHTS-OF-WAY

Abandon 40-203 (1) I, 40-204A (2)
Acceptance as a Highway 40-203, 40-204A (5)
Acknowledgment 40-204A (6)
Defined 40-107 (5)

Attachment 11 History and Questions on Highways in Idaho

This attachment was prepared from information provided by the Local Highway Technical Assistance Council and with the assistance of Lorna Jorgensen, Deputy Attorney General, Department of Lands.

The first session of the Idaho Territories Legislative Assembly convened at Lewiston, Idaho, on December 7, 1863. Later that month, Council Bill Number 7 was passed, consisting of 14 sections. Section one (1) stated that all roads and trails, streets, and thoroughfares shall be considered as public highways, which are or have been used as such at anytime within two (2) years prior to the passage of this act. That was the beginning of public highways in what is now the state of Idaho.

It is difficult to determine where all the public highways in Idaho are located. Over the years, the counties have accepted many subdivision plats that contained fee simple title roads, even though the counties did not have road departments to develop and administer these dedicated roads. Also, since statehood many counties were divided and highway districts were developed, consolidated, or dissolved. In the transition of jurisdiction from place to place, many road records were lost. In addition, even to this day, many of the local roads being used by the public and maintained by a county or highway district were never properly surveyed, laid out and/or recorded.

Idaho did not pass legislation mandating that surveys of roads be recorded until 1978. Since that time, Idaho Code has been amended to allow counties and highway districts to hold title to an interest in real property for right-of-way purposes without incurring an obligation to construct or maintain a highway until it is determined the necessities of public travel justify opening a highway within that right-of-way.

The following is a brief and general outline of how roads were created, and how they lost their public status by means other than petition:

- 1863-1875: Two (2) years of public use or action by county commissioners.
- 1875-1881: Two (2) years of public use or action by county commissioners, and lost public status through failure to open a highway within four (4) years, or non-use - no time frame specified.
- 1887-1893: Five (5) years of use by the public or action by commission, and lost its public status by failure to open a highway within four (4) years, or non-use for 5 years.
- 1893: Added requirement for expense of public to attaining public status through prescription.
- 1939: The definition of highways was expanded to include areas and objects associated with highways.

- 1963: Legislation provided for the first time, that public use of access roads to public lands or waters can not be restricted without first petitioning the appropriate board of commissions for abandonment.
- 1967: Legislation added the requirement that dedication of property to the public was not perfected, unless it was formally accepted and confirmed by the cities, counties, or highway districts.
- 1993: Public rights-of-way and federal land rights-of-way (RS-2477) defined in Idaho Code.

What is a Local Highway Jurisdiction, (LHJ)?

Local Highway Jurisdiction (LHJ) means a city, county, or highway district with jurisdiction over a highway system (§ 40-113(3)).

What is a Highway System?

A highway system means all the public highways under the jurisdictions of a city, county, or highway district. A highway system includes both highways and public rights-of-way (§ 40-109).

What is a Highway?

Highways mean roads, streets, alleys, bridges, and including the necessary culverts, sluices, drains, ditches, waterways, embankments, retaining walls, bridges, tunnels, grade separation structures, road side improvement, adjacent lands or interest lawfully acquired, pedestrian facilities, and any other structures, works, or fixtures incidental to the preservation or improvement of the highways (§ 40-109(5)). Highways can be improved or unimproved.

What is a Federal Land Right-of-Way?

A federal land rights of way means a right of way on federal land within the context of Revised Statute 2477, codified as 43 United States Code 932, and other federal access grants and shall be considered to be any road, trail, access or way upon which construction has been carried out to the standard in which public rights of way were built within historic context. These rights of way may include, but not be limited to, horse paths, cattle trails, irrigation canals, waterways, ditches, pipelines or other means of water transmission and their attendant access for maintenance, wagon roads, jeep trails, logging roads, homestead roads, mine to market roads and all other ways.

What is a Public Right-of-Way?

A public right-of-way means a right-of-way open to the public and under the jurisdiction of a public highway agency; there is no obligation to construct or maintain them for vehicle travel. That means there is no liability for not maintaining it, or for the lack of highway signs, and it means not having to construct a highway in that right-of-way, (§ 40-202(2)b & (4); § 40-117(6); § 40-1334).

What is an improved highway?

According to § 40-110(1) an improved highway is a highway that is graded and drained; however this can be a natural grade and drainage. Improved road mileage is one of three factors used to determine the portion of funding that a county or highway districts receives of Idaho highway user revenue.

What is road “maintenance,” and how much is necessary?

Maintenance means to preserve or repair, refurbish, repaint, or otherwise keep an existing highway or structure in a suitable state for use (40-114(3)). It is not necessary that it be worked throughout its entire length, and it doesn't need to be worked at places where it isn't necessary. Further, it is up to the local highway jurisdiction to determine if maintaining it as gravel or asphalt surface is appropriate.

How does a Highway or a Public Right-of-Way become “Public” in Idaho?

Highways and public rights-of-way become “public” in two ways: They are either 1) dedicated to the public, or 2) they become public by prescription or eminent domain. “Highways located and recorded” or “Highways laid out, recorded and opened” by order of county or highway district commissioners is a method commonly used in the early years of Idaho’s history. A person called a “viewer” visually inspected an area determined where a road should go using a narrative description. The road was typically declared to be “open” (refers to actual construction) by the commissioners, and then the road supervisor constructed it (§ 40-109(5); § 40-202(3)). The following statutes are examples of laid out, recorded and opened:

- ! “Highways opened” by cities according to § 50-311.
- ! “Acceptance of plats” showing highways or public rights-of-way that cities, counties or highway districts have accepted (§ 50-1309; § 50-1312; § 50-1313; § 50-1315). This is the most common method of gaining jurisdiction over highways today.
- ! “Abandoned and vacated” as a highway and reclassified as a public rights-of-way by county or highway district according to § 40-203(4).

Why is validation important?

The essential function of the validation statute in Idaho Code (§ 40-203A) is to clarify whether a highway or right-of-way is public. The validation process does not create new public rights. The process is used when there is doubt regarding whether an existing highway or public ROW is public. During the process, the commissioners will have a report prepared, there will be a hearing and testimony can be given. Those who disagree with a validation decision may appeal to district court.

Highway By Prescription

In the early years of territorial government and statehood some of our highway system was created by prescription. Highways created by prescription are not specified in Idaho Code. Prescription is a legal concept; a highway by prescription exists by virtue of use and not on the theory of a grant or dedication. For example, public use of a highway for the statutory period and the keeping of it in repair at public expense established a highway by prescription, whether or not the road is recorded (see *Meservy v. Gullifor*, 14 Idaho 133, 93, P.780 (1908)).

The frequency, nature and quality of the public's use, and how much maintenance of a road is required for prescription are very fact specific. There is no "one size fits all" criteria to determine whether or not a particular highway met or meets the definition; it's a matter to be determined by researching state law, the actions of the local highway jurisdiction during that time period as well as public use.