

W. 7. E. 3

AGENDA COVER MEMO

DATE: August 4, 2005

TO: Lane County Board of Commissioners

DEPT.: Public Works

PRESENTED BY: Frank Simas
Real Property Manager

AGENDA ITEM TITLE: In The Matter of Accepting a Right of Way Grant Offer from the Bureau of Land Management for Panther Creek Road (County Road Numbers 10, 121 and 1121) and Granting the County Administrator Authority to Sign the Right of Way Grant Offer.

I. MOTION

THAT THE ORDER BE APPROVED ACCEPTING A RIGHT OF WAY GRANT OFFER FROM THE BUREAU OF LAND MANAGEMENT FOR PANTHER CREEK ROAD AND AUTHORIZING THE COUNTY ADMINISTRATOR TO SIGN THE RIGHT OF WAY GRANT OFFER.

II. ISSUE OR PROBLEM

A right of way grant offer from the BLM needs to be accepted for Panther Creek Road.

III. DISCUSSION

A. Background:

Lane County plans to replace an existing culvert under Panther Creek Road at M. P. 2.76 with a fish-friendly culvert and to place rock at the outlet of the culvert to prevent erosion. County survey records show that the existing road right of way at this location is 60 feet in width, and the work will extend the rock beyond the right of way limits. The land is under the jurisdiction of the Bureau of Land Management (BLM), and the County applied for a right of way grant for the permanent drainage easement needed. The BLM researched the status of Panther Creek Road across its lands and determined

that the existing road is not covered by an existing BLM Grant of Right of Way. Accordingly, the BLM has submitted a Right of Way Grant offer, which includes all those portions of Panther Creek Road that cross BLM lands, including the portion containing the existing culvert at M.P. 2.76. The Grant Offer includes portions of County Roads 10, 121 and 1121, and runs along Panther Creek Road for a distance of about 2.25 miles.

BLM has previously granted a Temporary Use Permit to allow entry to the work area on both the upstream and downstream sides of the road and will grant the permanent drainage easement on the downstream side when the necessary BLM environmental clearances have been obtained. Before they issue the Grant for the 2.25-mile section of County road, the County is required to indicate its acceptance of the terms of the Grant by signing it and returning it to the BLM for issuance. The right of way grant is perpetual and is granted at no cost to the County.

B. Analysis:

It is in the best interest of Lane County to accept the grant from the BLM in order to formalize the Panther Creek Road right of way across BLM lands.

C. Alternatives/Options

1. Approve the Order giving authorization to the County Administrator to accept the grant from the BLM.
2. Reject the offer from the BLM.

D. Recommendations

It is recommended that the Board approve this Order and authorize the County Administrator to accept the right of way grant offer from the BLM.

IV. IMPLEMENTATION/FOLLOW-UP

Upon authorization by the Board, the right of way grant offer will be processed for signature by the County Administrator and returned to the BLM for completion of the grant process.

V. ATTACHMENTS:

Cover letter from BLM - Right of Way Grant Offer

**IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY
STATE OF OREGON**

ORDER NO.

**(IN THE MATTER OF ACCEPTING A RIGHT
(OF WAY GRANT OFFER FROM THE BUREAU
(OF LAND MANAGEMENT FOR PANTHER
(CREEK ROAD (COUNTY ROAD NUMBERS 10,
(121 AND 1121) AND GRANTING THE COUNTY
(ADMINISTRATOR AUTHORITY TO SIGN THE
(RIGHT OF WAY GRANT OFFER.**

WHEREAS, Lane County has made application to the Bureau of Land Management for a grant of right of way over lands under its jurisdiction adjacent to Panther Creek Road (County Roads Nos. 10, 121 and 1121) for replacement of an existing culvert and placement of rock at the outlet of the culvert, and the Bureau of Land Management has offered Lane County a right of way grant which includes all those portions of Panther Creek Road that cross BLM lands, including that portion of road containing the culvert to be replaced; and

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

NOW THEREFORE BE IT ORDERED, that Lane County accept the right of way grant offer from the Bureau of Land Management; and

BE IT FURTHER ORDERED that the County Administrator is given the authority to sign the right of way grant offer.

DATED this _____ day of _____, 2005.

Chair
Lane County Board of Commissioners

8-11-05
[Handwritten signatures]



United States Department of the Interior



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

PLEASE REFER TO:

OR 62102
OR 62104

JUL 13 2005

Karl Oakes
Lane County Department of Public Works
3040 North Delta Highway
Eugene, Oregon 98408-1696

Dear Mr. Oakes:

Enclosed are two copies each of two right-of-way grant offers (Bureau Form 2800-14 and exhibits) for your proposed right-of-way for a portion of Cook and Panther Creek Roads. Grant OR 62104 documents in recordable form the authorization of the existing right-of-way for Panther Creek Road. Grant OR 62102 is a temporary use permit, facilitating culvert replacement on Cook Road. The grants are located on the following public land:

T. 19 S., R. 6 W., W.M.
Sec. 11: NW $\frac{1}{4}$ SW $\frac{1}{4}$
Sec. 13: S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$

T. 19 S., R. 5 W., W.M.
Sec. 17: S $\frac{1}{2}$ SW, SW $\frac{1}{4}$ SE $\frac{1}{4}$

T. 17 S., R. 7 W., W.M.
Sec. 1: SW $\frac{1}{4}$ SW $\frac{1}{4}$
Lane County, Oregon

Please review the offers, sign and date all copies in the space provided on Bureau Form 2800-14 and return them to this office. Upon receipt of the signed grant offers, the Bureau will be able to issue the right-of-way grants absent any other unresolved issues.

These right-of-way grants, and the authority to use the lands described in the document, becomes effective on the date it is signed by an authorized officer of BLM. Your copy of each right-of-way grant will be returned to you when signed by the authorized officer.

If you have any questions, please contact Cheryl Adcock at (541) 683-6145.

Sincerely,

Field Manager
Siuslaw Resource Area

Enclosures:

Right-of-Way Grant Offers

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

SERIAL NUMBER OROR 62104

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

- a. By this instrument, the holder:

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

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

T. 19 S., R. 6 W., W.M., Lane County, Oregon: Those portions of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 11 located within 20 feet either side of the centerline of County Road 4086, as shown on the attached Exhibit A. 10

T. 19 S., R. 6 W., W.M., Lane County, Oregon: Those portions of the S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 13 located within 30 feet either side of the centerline of County Road 4086, as shown on the attached Exhibit A. 121

T. 19 S., R. 5 W., W.M., Lane County, Oregon: Those portions of the S $\frac{1}{2}$ SW, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 17 located within 30 feet either side of the centerline of County Road 4086, as shown on the attached Exhibit A. 1121

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

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

3. Rental:

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

4. Terms and Conditions:

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

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

(Signature of Holder)

(Signature of Authorized Officer)

(Title)

(Title)

(Date)

(Effective Date of Grant)

AGENCY ACKNOWLEDGMENT

STATE OF OREGON)
)
COUNTY OF LANE)

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

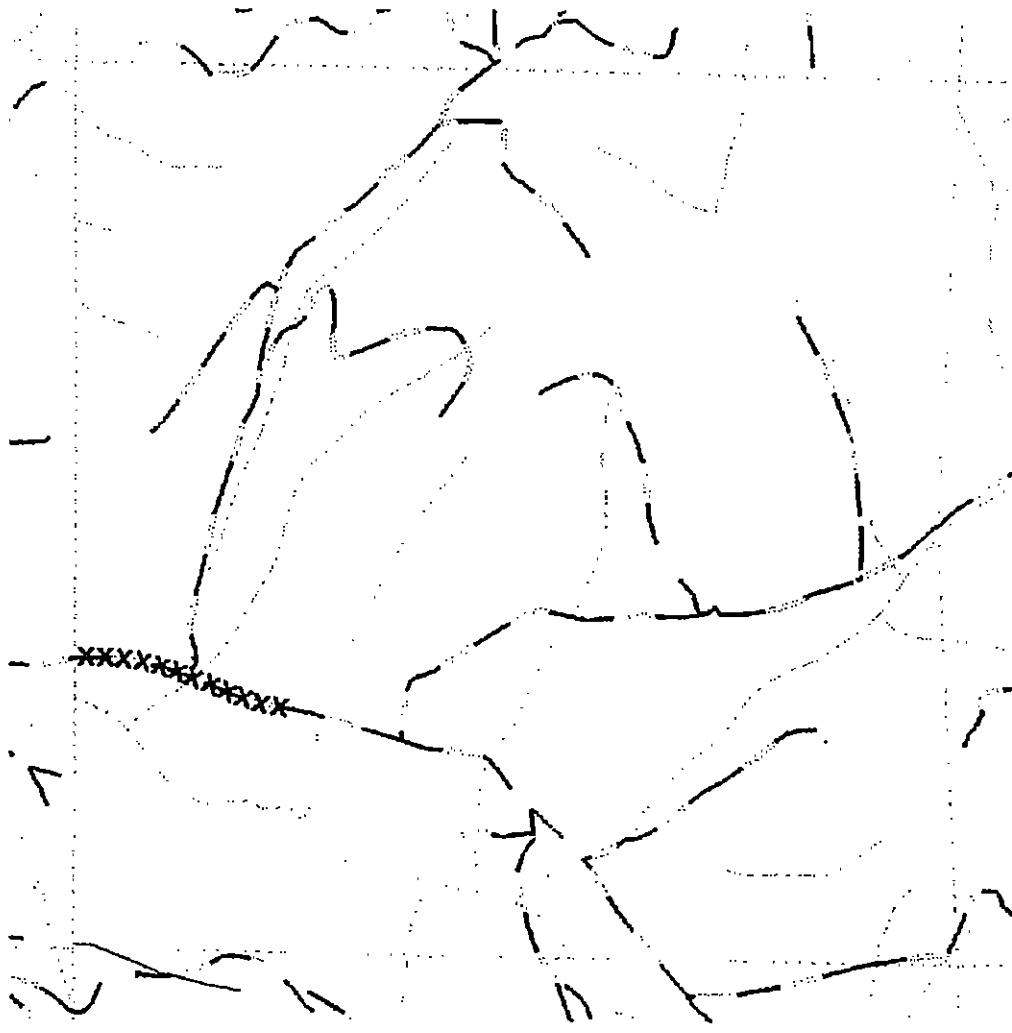
(SEAL)

Notary Public in and for the

State of _____

Residing at _____

My commission expires: _____

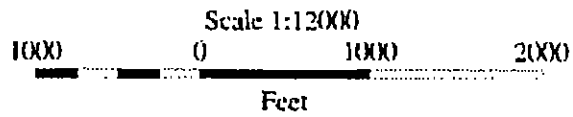


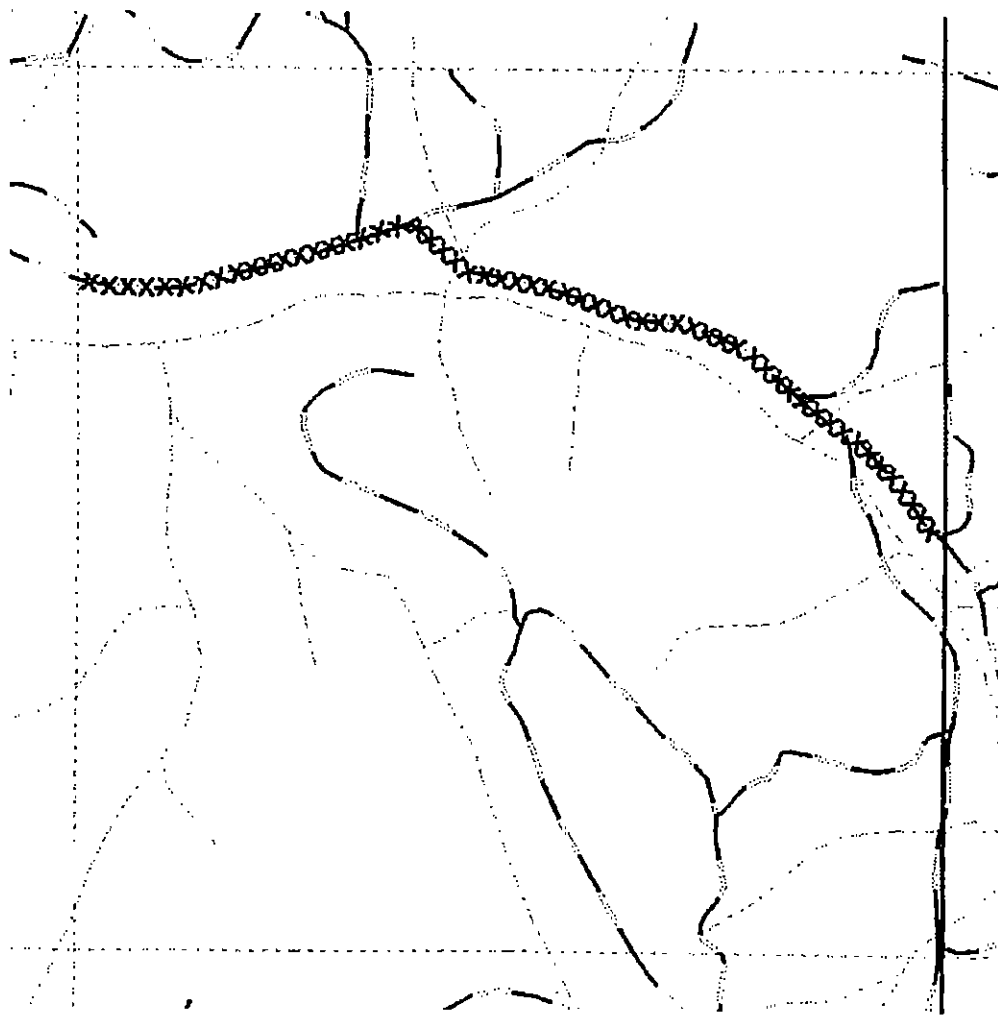
XXXXXXXX R/W AREA 40'

BLM
Streams

————— Roads

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

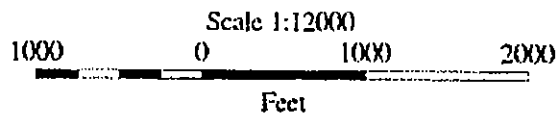


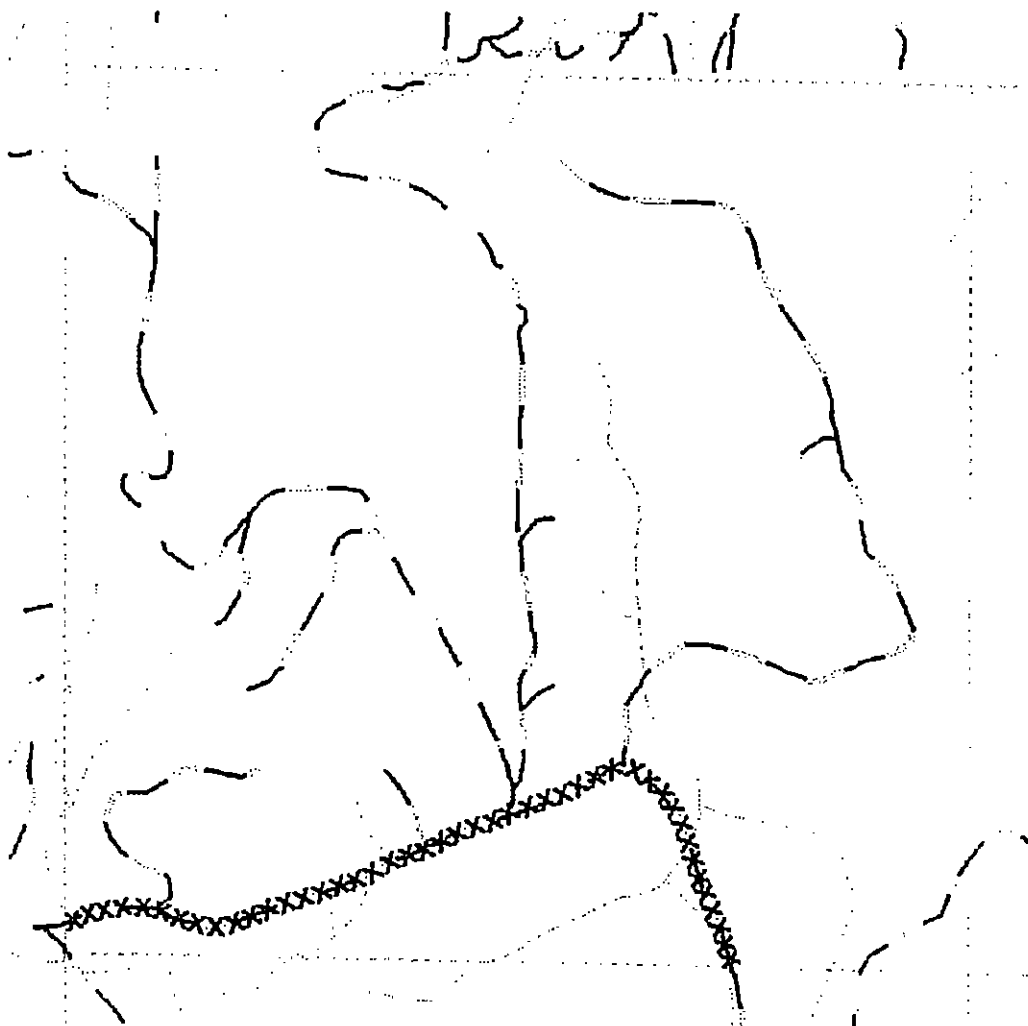


XXXXXXXX R/W AREA 60'

— BLM
Streams
- - - Roads

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

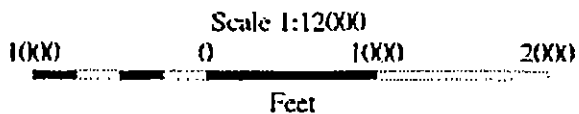




XXXXXXXX R/W AREA 60'

----- BLM
Streams
----- Roads

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



Date: June 29, 2005

EXHIBIT B

ADDITIONAL TERMS, CONDITIONS, AND STIPULATIONS

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

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

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

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