

## **Appendix A Stipulations for N-78443**

### **A. General Stipulations**

#### **1.0 Right of Way**

- 1.1. The right-of-way (ROW) is issued subject to all valid existing rights.
- 1.2. No signs of advertising devices shall be placed on the premises or on adjacent public lands, except those posted by or at the direction of the authorized officer.
- 1.3. The ROW shall be maintained in a sanitary condition at all times. Waste materials at those sites shall be disposed of promptly at an approved waste disposal site. "Waste", as used in this paragraph, shall mean all discarded matter of any kind.
- 1.4. The holder shall ensure that the road has a proper drainage system and should include the best combination of various design elements, such as ditches, culverts, drainage dips, crowns, low-water crossings, subsurface drains and bridges, per Clark County standards.
- 1.5. Holder shall mark the exterior boundaries of the ROW with stake and/or lath at 100 to 200 foot intervals. The intervals may be varied at the time of staking at the discretion of the Authorized Officer. The tops of the stakes and/or laths will be painted and the laths flagged in a distinctive color as determined by the Holder. Holder shall maintain all boundary stakes and/or laths in place until final cleanup and restoration is completed.
- 1.6. Holder shall conduct all activities associated with construction, operation, maintenance and termination of this ROW within its authorized limits.
- 1.7. Holder shall maintain the ROW in a safe, useable condition, as directed by the Authorized Officer. A regular maintenance program shall include, but is not limited to, soil stabilization.
- 1.8. Holder shall maintain copy of the authorization along with stipulations on construction site at all times. In the event that the public land underlying this ROW, encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the ROW, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part [2800][2880], including any rights to have the holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the ROW, or portion thereof, within the conveyed land and shall be subject to applicable State and

local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.

## **2.0 Air Quality**

- 2.1. The Holder shall not violate applicable air standards or related facility siting standards established by or pursuant to applicable federal, state, or local laws or regulations. The Holder shall be responsible for dust abatement within the limits of the ROW and is responsible for obtaining all necessary permits from appropriate authorities for acceptable dust abatement and control methods (e.g., water, chemicals). The Holder shall be solely responsible for all violations of any air quality permit, law or regulation, as a result of its action, inaction, use or occupancy of the ROW.

Notwithstanding whether a violation of any air quality permit, law or regulation results, the Holder will cooperate with the Authorized Officer in implementing and maintaining reasonable and appropriate dust control methods in conformance with law and appropriate to the circumstances at the sole cost of the Holder.

- 2.2. Ensure a dust control permit is obtained through Department of Air Quality (DAQ) for all soil disturbing activity of .25 acres or greater, in the aggregate, and permit stipulations are in compliance for the duration of the activity.
- 2.3. Prior to relinquishment, abandonment, or termination of this ROW, the Holder shall apply reasonable and appropriate dust abatement and control measures to all disturbed areas. The abatement and measures shall be designed to be effective over the long-term (e.g., rock mulch or other means) and acceptable to the Authorized Officer.
- 2.4. During excavation, backfilling, and contouring, the disturbed soil should be wetted sufficiently in order to effectively reduce airborne dust and reduce soil erosion.

## **3.0 Cultural**

- 3.1. Any cultural and/or paleontological resources (historic or prehistoric site or object) discovered by the Holder, or any person working on his behalf on public or Federal lands 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. Any decision regarding suitable mitigation measures will be made by the Authorized Officer after consulting with the Holder. Holder shall be responsible for the resultant mitigation costs.

## **4.0 Hazardous Material/Pesticides/Liability**

- 4.1. No hazardous material, substance, or hazardous waste, (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of

1980, 42 U.S.C. 9601, *et seq.*, or the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*) shall be used, produced, transported, released, disposed of, or stored within the ROW area at any time by the Holder. The Holder shall immediately report any release of hazardous substances (leaks, spills, etc.) caused by the Holder or third parties in excess of the reportable quantity as required by federal, state, or local laws and regulations. A copy of any report required or requested by any federal, state or local government agency as a result of a reportable release or spill of any hazardous substances shall be furnished to the Authorized Officer concurrent with the filing of the reports to the involved federal, state or local government agency.

- 4.2. The Holder shall immediately notify the Authorized Officer of any release of hazardous substances, toxic substances, or hazardous waste on or near the ROW potentially affecting the ROW of which the Holder is aware.
- 4.3. As required by law, Holder shall have responsibility for and shall take all action(s) necessary to fully remediate and address the hazardous substance(s) on or emanating from the ROW.
- 4.4. 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. The plan shall be submitted no later than December 1 of any calendar year that covers the proposed activities for the next fiscal year. Pesticides shall not be permanently stored on public lands authorized for use under this ROW. Coordinate construction activities with the BLM Weed Coordinator at 702-515-5000 regarding any proposed herbicide treatment. Prepare, submit, obtain and maintain a pesticide use proposal (PUP) for the work. Contact Sean McEldery or Ben Klink for assistance with the PUP.
- 4.5. The Holder shall comply with all applicable local, state, and federal air, water, hazardous substance, solid waste, or other environmental laws and regulations, existing or hereafter enacted or promulgated. To the full extent permissible by law, the Holder agrees to indemnify and hold harmless, within the limits, if any, established by state law (as state law exists on the effective date of the ROW), the United States against any liability arising from the Holder's use or occupancy of the right-of way, regardless of whether the Holder has actually developed or caused development to occur on the ROW, from the time of the issuance of this ROW to the Holder, and during the term of this ROW. This agreement to indemnify and hold harmless the United States against any liability shall apply without regard to whether the liability is caused by the Holder, its agents, contractors, or third parties. If the liability is caused by third parties, the Holder will pursue legal remedies against such third parties as if the Holder were the fee owner of the ROW.

Notwithstanding any limits to the Holder's ability to indemnify and hold harmless the United States which may exist under state law, the Holder agrees to bear all responsibility (financial or other) for any and all liability or responsibility of any kind or nature assessed against the United States arising from the Holder's use or

occupancy of the right-of way regardless of whether the Holder has actually developed or caused development to occur on the ROW from the time of the issuance of this ROW to the Holder and during the term of this ROW.

- 4.6. Mineral material generated, and not needed for the development of the proposed action within the ROW site, requires a specific BLM use authorization in accordance with regulations at 43 CFR 3600 prior to the removal of the excess mineral material.

## 5.0 Survey Monuments

- 5.1. Holder shall protect all survey monuments found within the authorization area. 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. Coast and Geodetic Survey benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. If any of the above are to be disturbed during operations, the holder shall secure the services of a Professional Land Surveyor or Bureau cadastral surveyor to perpetuate the disturbed monuments and references using surveying procedures found in the Manual of Instructions for the Survey of the Public Lands of the United States and Nevada Revised Statutes, Chapter 329, Perpetuation of Corners. 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 monuments, the holder shall be responsible for the survey cost.

## 6.0 Paleontology

- 6.1. If any paleontological resources are discovered during construction, the BLM Archaeologist will be notified prior to work commencing in the immediate vicinity of the find.

## 7.0 Fire Restrictions

- 7.1. Fire restrictions are generally enacted May through October. Compliance with fire restrictions is mandatory while fire restrictions are in place. Specific activities may be waived on a case by case basis by a line officer after review and approval by the Fire Management Officer.

# B. Special Stipulations

## 8.0 Vegetation

- 8.1. Limit the size of any vegetation and/or ground disturbance to the absolute minimum necessary to perform the activity safely and as designed.
  - 8.2. Demarcate the construction corridor with construction fence or flags. Construction equipment shall not operate beyond the demarcated area.
- Restore areas disturbed during construction (e.g., staging areas, construction easements, etc.) as well as existing segments of the unpaved access road outside of the

NPR alignment via installation of vertical mulch. Appropriately-sized large, medium and smaller rocks for this specific area would be placed within the disturbance area to restore a natural vista. Appropriately colored (the coloration in the area is black rocks on light brown soil) desert varnish would be applied to replicate the natural coloration in the area.

## 9.0 Invasive Species/Noxious Weeds

- 9.1. Follow direction and guidance established by the RMP and LVFO Weed Management Plan as appropriate.
- 9.2. Complete a weed inventory and weed risk assessment of the project area prior to ground breaking activities.
- 9.3. Prioritize weed infestations for treatment within the project foot print. Should the weed spread beyond the project foot print then these weeds will be treated as a part of the project. This will include access routes. Report any new weed infestations to the BLM Weed Coordinator.
- 9.4. Coordinate project activities with the BLM Weed Coordinator (702-515-5000) regarding any proposed herbicide treatment. All pesticide use must have an approved Pesticide Use Proposal (PUP). All PUPs must meet environmental compliance standards and may require additional NEPA and/or Section 7 consultation. In addition, herbicide use is subject to the BLM's Programmatic EIS (PEIS) for Vegetation Treatment Using Herbicides on BLM Lands in 17 Western States (BLM 2007).
- 9.5. Limit the size of any vegetation and/or ground disturbance to the absolute minimum necessary to perform the activity safely and as designed. Avoid creating soil conditions that promote weed germination and establishment.
- 9.6. Begin construction in weed free areas whenever feasible before operating in weed-infested areas.
- 9.7. Locate equipment storage, machine and vehicle parking or any other area needed for the temporary placement of people, machinery and supplies in areas that are relatively weed-free. Avoid or minimize all types of travel through weed-infested areas or restrict major activities to periods of time when the spread of seed or plant parts are least likely.
- 9.8. Establish equipment-cleaning sites (if equipment is infested with weed seeds, plant parts or mud and dirt). Clean project related equipment and machinery (this especially includes the nooks and crannies of undercarriages) using compressed air or water to remove mud, dirt and plant parts before moving into and from relatively weed-free areas. Collect, bag and deposit seeds and plant parts in dumpsters destined for local landfills as practical.
- 9.9. Inspect, remove, and dispose of weed seed and plant parts found on personnel clothing and personal equipment. Bag and dispose of seeds and plants in a

dumpster for deposit in local landfills. Disposal methods may vary depending on the project. If you have questions consult with the BLM Noxious Weed Coordinator.

- 9.10. Evaluate options, including area closures, to regulate the flow of traffic on sites where native vegetation needs to be established.
- 9.11. Utilize certified weed free materials in construction, restoration reclamation activities when and where possible.
- 9.12. Invasive annual species such as red brome burn rapidly and are difficult to control. Fire prevention measures must be established where problematic annual grass infestations are present. Compliance with fire restrictions is mandatory while fire restrictions are in place. Fire restrictions are generally enacted between May and October. Specific noncompliant activities may be waived on a case by case basis by the District Manager after review and approval by the Fire Management Officer and Field Manager.
- 9.13. Coordinate and collaborate weed management activities with the City of Henderson and Clark County Vector Control. Work with the Southern Nevada Cooperative Weed Management Area or other entities as appropriate to prevent and control invasive and noxious weeds.

#### **10.0 Fish and Wildlife Excluding Federally Listed Species**

- 10.1. Immediately report any Gila monster encounters during construction to the Nevada Division of Wildlife NDOW at (702) 486-5127.
- 10.2. Capture and detail live Gila monsters found in harms way in a cool, shaded environment (<85°F) using a qualified biologist trained in handling venomous reptiles until a BLM biologist can arrive for documentation purposes. A clean 5-gallon plastic bucket with a secure, ventilated lid; an 18"x 18"x 4" plastic sweater box w/ a secure, vented lid; or, a tape-sealed cardboard box of similar dimension may be used for safe containment. Provide written information identifying mapped capture location, date, time, and circumstances (e.g. biological survey or construction) and habitat description (vegetation, slope, aspect, substrate) will also be provided to the NDOW biologist.
- 10.3. Transport injured Gila monsters within the construction footprint to a veterinarian proficient in reptile medicine for evaluation of appropriate treatment. Rehabilitation or euthanasia expenses will not be covered by NDOW. However, NDOW will be immediately notified during normal business hours. If an animal is killed or found dead, the carcass will be immediately frozen and transferred to NDOW with a complete written description of situation circumstances, habitat, and mapped location.
- 10.4. Should NDOW be delayed to assist, biological personnel on site may be requested to remove and release the Gila monster out of harms way. Should NDOW not be immediately available to respond for photo-documentation, provide to the NDOW good quality photographs of the Gila monster in situ at the location of live encounter or dead salvage. The pictures, will be provided to NDOW and will include:

- 10.4.1. Encounter location (landscape overview with Gila monster in clear view)
- 10.4.2. A clear overhead shot of the entire body with a ruler next to it for scale (Gila monster should fill camera's field of view)
- 10.4.3. A clear, overhead close-up of the head (head should fill camera's field of view).

## **11.0 Federally Threatened, Endangered, Proposed, or Candidate Animal Species and Critical Habitat**

- 11.1. Since the majority of this project occurs in the Las Vegas Field Office, Section 7 Consultation for this project is covered under the Programmatic Biological Opinion (84320-2010-F-0365.R003, see Appendix B) contingent on compliance with the terms and conditions. The project proposes to disturb 21.66 acres of tortoise habitat. The proponent will be required to pay remuneration fees of \$18,259.38 based on the current year's rate of \$843/acre of disturbance. Terms and conditions and minimization measures in the above Biological Opinion contain measures to avoid and minimize potential impacts, including take, to desert tortoise. A copy of the terms and conditions has been uploaded to ePlanning (Sec 7 Log # NV-052-15-135).
- 11.2. Install temporary suction fencing on the perimeter of the area where there is active construction. Once fencing is installed, clear the work area inside the fencing for tortoise and burrows using a US Fish and Wildlife Service-authorized desert tortoise biologist.
- 11.3. US Fish and Wildlife Service-authorized desert tortoise biologist shall remain on call and report to the site as needed.

## **12.0 Migratory Birds**

- 12.1. Scheduled habitat-altering activities outside the bird breeding season, which generally occurs from February 15th through August 31st. If such an activity has to occur during the breeding season, then a qualified biologist must first survey the area for nests immediately prior to commencement of construction activities. This shall include burrowing and ground nesting species in addition to those nesting in vegetation. If any active nests are found, an appropriately-sized buffer area must be established and maintained until the young birds fledge. This buffer must connect to other suitable undisturbed habitat. As the above dates are a general guideline, if active nests are observed outside this range they are to be avoided as described above.
- 12.2. If a project that may alter any breeding habitat has to occur during the breeding season, then a qualified biologist must survey the area for nests prior to commencement of construction activities. This shall include burrowing and ground nesting species in addition to those nesting in vegetation. If any active nests (containing eggs or young) are found, an appropriately-sized buffer area must be avoided until the young birds fledge. As the above dates are a general guideline, if active nest are observed outside this range they are to be avoided as described above.

## **13.0 Recreation (for BLM public lands managed under the Sloan Canyon NCA Resource Management Plan)**

- 13.1. Establish a temporary pedestrian pathway within the 200 foot wide corridor to allow access to the Petroglyph Management Area during construction. The temporary pathway shall be located at a sufficient distance from active construction to avoid injuries.

**14.0 Visual Resources - (for BLM public lands managed under the Sloan Canyon NCA Resource Management Plan)**

- 14.1. The proposed action is in VRM Class III. VRM Class III aims to partially retain the existing character of the landscape. Levels of change to the landscape can be moderate, but should not dominate the view of the casual observer.
- 14.2. Restore areas disturbed during construction (e.g., staging areas, construction easements, etc.) as well as existing segments of the unpaved access road outside of the NPR alignment. Place appropriately-sized large, medium and smaller rocks within the disturbance area to restore a natural vista. Apply appropriately colored (the coloration in the area is black rocks on light brown soil) desert varnish to replicate the natural coloration in the area.