

MEMORANDUM OF UNDERSTANDING

Between

THE GOVERNOR OF IDAHO

ON BEHALF OF THE IDAHO MILITARY DIVISION (IMD)

and

THE IDAHO STATE DIRECTOR, BUREAU OF LAND MANAGEMENT (BLM)

I. DESCRIPTION OF SUBJECT

The Orchard Combat Training Center (OCTC), formally known as the Orchard Training Area (OTA), is located within the Morley Nelson Snake River Birds of Prey National Conservation Area (NCA), and contains approximately 143,000 acres of federal and state lands centered about 22 miles south of Boise, Idaho (Exhibits A and B). The OCTC is the second largest National Guard (NG) training range in the United States, and is used for armored vehicles, artillery, infantry, and helicopter training by all branches of NG and Reserve forces from across the nation. The OCTC is also used for cooperative training by local and regional law enforcement units.

The OCTC is one of the most advanced armored vehicle training ranges in the world, with 22 firing ranges located around the periphery of an approximate 53,500-acre Impact Area. The Impact Area is surrounded by an approximate 89,500-acre Maneuver Area in which tracked and wheeled vehicle training, on-foot maneuver, and bivouacs are conducted.

II. HISTORY AND BACKGROUND

The Idaho Military Division (IMD) began using the public lands in the NCA for military training in 1953.

In 1971, approximately 26,000 acres of public land along the Snake River Canyon were withdrawn by Public Land Order (PLO) 5133 as the Snake River Birds of Prey Natural Area (BPNA) to protect the densest known nesting population of birds of prey in North America. When the BPNA was established, the BLM initiated a research and monitoring program to study the habitat needs of raptors nesting in the area. In 1980, based on findings from this research, the

Secretary of Interior withdrew approximately 482,640 acres by PLO 5777 as the Snake River Birds of Prey Area (BOPA).

On June 25, 1979, the Governor of Idaho, on behalf of the IMD, and the BLM Idaho State Director first entered into a Memorandum of Understanding (MOU) to authorize continued NG military training activities on the public lands now known as the OTA. The latest MOU was signed in 2010, has a thirty (30) year term, and specifies that it be reviewed at five (5) year intervals.

On August 4, 1993, Congress established the NCA by Public Law 103-64 [16 USC 460iii, et. seq.], hereinafter referred to as “the Act,” for the purpose of conserving, protecting, and enhancing raptor populations and habitats, and the scientific, cultural, and educational resources and values of the public lands in the conservation area. Among other things, the Act set forth provisions for Reserve and NG use of the OTA. On March 30, 2009, Section 2301 of Subtitle D of the Omnibus Public Land Management Act (Public Law 111-11) renamed the NCA in honor of Morley Nelson.

On September 30, 2008, the BLM Idaho State Director signed a Record of Decision for the NCA Resource Management Plan (RMP), which provides for continued military training activities in the OCTC by NG and Reserve forces.

III. PURPOSE

- A. To authorize military use of the OCTC pursuant to the 2008 NCA RMP.
- B. To provide the IMD with continued long-term authorization, as required by Department of Defense and NG Bureau regulations, in order to allow for adequate amortization of developments and improvements.
- C. To provide for the continued use of the OCTC by the IMD at a level that is compatible with the protection for raptor populations and habitats, and the scientific, cultural and educational resources and values of the public lands in the NCA.
- D. To provide a mechanism for subsequent review of the MOU and to provide an amendment procedure to implement mutually acceptable modifications.

IV. OBJECTIVES

- A. To continue military use of the public lands in the OCTC consistent with Section 4(e) of the Act.
- B. To provide BLM and IMD clear operating procedures, responsibilities, and limitations for the use and management of the OCTC.
- C. To ensure the safety of the general public, BLM, and military units using the OCTC.
- D. To provide for the authorization and protection of IMD facilities in the OCTC.
- E. To provide for the rehabilitation of areas disturbed by military training or military training-related fires.
- F. To provide a means to control unauthorized use of the OCTC.

V. AUTHORITY

The authority for this MOU is contained in Section 4(e) of the Act of August 4, 1993 (PL 103-64); and the BLM/IDARNG MOU of March 19, 2002 (ID-237, Amendment 1).

- A. Additional BLM authority:
 - (1) Section 307(b) of the Federal Land Policy and Management Act of 1976 (Public Law 94-579; 43 USC 1732), as limited by Section 302(b)
 - (2) Section 2.10 of the 2008 NCA RMP
 - (3) Intergovernmental Cooperation Act (PL 90-577)
- B. Additional IMD authority:
 - (1) Idaho Code (Title 46)
 - (2) Executive Orders of the Governor of Idaho
 - (3) NG Bureau Directives

VI. DEFINITIONS

A. IA - Impact Area: That area within the perimeter of the Range Road marked on attached Exhibit A. This area is used for live firing of small arms, and various mortars, tank, and artillery weapons. All projectiles fired within the OCTC must land in the IA.

B. Artillery IA: That smaller (3 km x 3 km) area so marked on attached Exhibit A, which is located inside the IA and into which all high explosive artillery and mortar rounds must fall.

C. MA - Maneuver Area: That area of the OCTC located outside the IA.

D. OCTC – Orchard Combat Training Center: Entire training area used by IMD, encompassing both the IA and MA, generally shown on attached Exhibit A, and shown by the legal description attached as Exhibit B.

E. Training: All activities associated with IMD use of the OCTC, including managing resources, developing personnel skills, and improving proficiencies to meet military objectives.

F. Support to IMD: Those active components of the Armed Forces that support the NG by providing personnel, equipment, and logistical support utilized in training NG personnel, as projected in the annual operating plan and updates thereto.

G. The Act: The Snake River Birds of Prey National Conservation Area Act of August 4, 1993 (PL 103-64), and amendment thereto [Section 2301 of Subtitle D of the Omnibus Public Land Management Act of March 30, 2009 (PL 111-11)].

VII. MUTUAL RESPONSIBILITIES

BLM and IMD agree:

A. The level of military training activity will be compatible with the purpose of the enabling legislation in accordance with Sections 4(b)(1) and 4(b)(2) of the Act.

B. To meet annually during the first quarter (Oct. - Dec.) of the federal fiscal year to discuss and outline IMD's annual operating plan and review the prior year's activities.

C. To jointly assess, by the end of each calendar year, soil and vegetation disturbance (including fires) caused by training activities that require remediation.

D. To review this MOU at approximate five (5) year intervals beginning with the date of approval of this document.

E. To develop and keep current an annual OCTC Prescribed Fire Plan per BLM requirements (Interagency Prescribed Fire Planning and Implementation Guide PMS 484).

F. To protect and manage cultural resources within the OCTC in accordance with the 1989 Cultural Resources Memorandum of Agreement and subsequent amendments or revisions thereto.

G. To develop and keep current a Law Enforcement Standard Operating Procedures for the OCTC, Exhibit C.

VIII. INDIVIDUAL RESPONSIBILITIES

A. IMD:

- (1) Coordinate and control military use of the OCTC.
- (2) Provide BLM with information concerning major changes in operations or activities in sufficient time to ensure BLM can respond with appropriate and timely authorization.
- (3) Conduct all training activities in accordance with Section 4(e) of the Act and other applicable federal laws and regulations, as well as any Conservation Agreements and/or Conservation Strategies (and associated mitigation or conservation measures) to protect special status plant and animal species.
- (4) Install and maintain warning, safety, and closure signs around the perimeter of the IA, as required by County ordinance. BLM published in the Federal Register a federal closure order for the IA on January 9, 1986. The closure was subsequently adopted as an Ada County ordinance. IMD shall be responsible for control of unauthorized public access into the IA. However, BLM confers no law enforcement authority on IMD for this purpose.
- (5) Install and maintain temporary warning signs on roads likely used by the public to enter the OCTC when IMD temporarily closes the OCTC or portions thereof to enhance public safety during periods of concentrated use.
- (6) Conduct aerial and/or ground reconnaissance prior to all live firing or other military activities that pose a threat to public safety to ensure that humans are out of the IA or any other unsafe areas.
- (7) Take action to prevent fires from IMD activities, and to control or suppress all fires within the OCTC. In accordance with the annual OCTC Prescribed Fire Plan, and as soon as possible following containment, report all fires to the BLM Boise District fire dispatch office, giving location, size, time of containment, and cause (if known).
- (8) In accordance with federal law and regulations and subject to appropriated funds, reimburse all direct BLM suppression and rehabilitation costs incurred for fires caused by military activities, including: 1) inventorying for cultural resources and special status species as required by the National Historic Preservation Act and National Environmental Policy Act (NEPA), 2) if reasonably required by BLM, fencing and signing of treated sites to protect them from subsequent recreation use, livestock grazing, and military training activities, 3) reimbursing

BLM for reasonable costs expended for post-fire contracted NEPA compliance, project implementation, and post-implementation monitoring, plus other costs, including seed, herbicide, and direct equipment costs.

(9) Following the joint assessment discussed in Section VII.C. above, develop proposals to rehabilitate areas within the OCTC disturbed by military training-related fire and other military activities, and submit the proposals to BLM for review and approval. Project proposals shall be submitted timely, and shall include areas to be treated, species to be planted, seeding application rates, control of competing vegetation, timing of treatment(s), and post-treatment monitoring and site protection.

(10) Repair or replace range improvements, including fences and cattle guards, damaged or destroyed by military activities. All range improvements must be kept in good repair during the period of April 1 - June 30 and October 16 - February 28, the normal periods of authorized livestock use.

(11) Annually remove debris and litter generated by IMD activities unless otherwise agreed by the BLM Boise District Manager.

(12) Take reasonable efforts to locate and destroy all unexploded munitions within the area, and eliminate any other similar hazards that may result from military use of the OCTC.

(13) Subject to future federal legislative appropriation, if use of the OCTC is abandoned or this MOU is terminated, decontaminate the affected public lands in accordance with federal law.

(14) Defend, indemnify, and hold harmless the BLM from all lawful damages and claims for damages caused by military activities within the OCTC in accordance with the provisions of the Federal Tort Claims Act.

(15) Obtain appropriate BLM authorization for removal and use of cinders or other mineral materials from deposits on public lands and perform timely reclamation of disturbed sites following expiration of permits.

(16) Obtain appropriate BLM authorization prior to construction of facilities, structures, or roads on public lands in the OCTC. Conduct compensatory mitigation and enhancement associated with each new RoW approval per mutually agreed process.

(17) Reasonably assist and cooperate with BLM in the form of available funding and/or staff assistance for monitoring studies required under Section VIII.B(5) of this MOU.

(18) With BLM concurrence, IMD may take actions to retire Animal Unit Months (AUMs) and reduce grazing preference in the Sunnyside Spring/Fall and Winter Allotments by purchasing AUMs from existing permittees.

(19) IMD will continue with periodic and annual reporting of usage, incidents, wildfires, etc. in the OCTC. As required by the 2008 Law Enforcement Standard Operating Procedures, the IDARNG Security Operations Center Supervisor will, at least quarterly, provide the BLM District Law Enforcement Ranger with an electronic copy of incidents in the OCTC for statistical data sharing purposes. Likewise, in accordance with the annual OCTC Prescribed Fire Plan, as discussed in Section VIII.A.(7), IMD will report all fires in the OCTC as soon as possible to the BLM Boise District fire dispatch office.

B. BLM:

(1) Give prior notice to OCTC Range Control and receive escort from OCTC Range Control when entering the IA. Give prior notice to OCTC Range Control when entering the training area.

(2) Provide law enforcement in a timely manner when requested by the IDARNG SOC.

(3) Review and approve IMD proposals for facilities, structures, and roads on public lands in the OCTC in accordance with federal law and subject to Section IX.C. of this MOU.

(4) Pursuant to the 2008 NCA RMP, either annually conduct or provide for monitoring studies to ensure that military vehicular maneuver training does not adversely affect vegetation communities in the OCTC with 10% or greater shrub canopy cover.

(5) Pursuant to the BLM-IDARNG Cooperative Fire Agreement, Exhibit D, may take actions to aid in suppressing wildfires within the OCTC and will notify OCTC Range Control immediately when taking such actions.

(6) Provide IMD with a breakdown of all direct reimbursable costs being requested as a result of military training-related fire suppression and emergency habitat

rehabilitation, or other mutually agreed upon projects.

IX. LIMITATIONS

A. Nothing in this MOU shall be construed as limiting or modifying in any way the authority, or statutory or regulatory responsibilities of the Governor of Idaho or BLM State Director, or as binding either the State or BLM to perform beyond their respective authorities, or as requiring either party to assume or expend any sum in excess of available appropriations. Each and every provision of this MOU is subject to applicable laws of the State of Idaho and of the United States, and applicable federal regulations.

B. Active components of the Armed Forces may only use the OCTC when conducting joint operations with Idaho Military Division (IMD) or when those exercises are either supervised, coordinated, and approved by IMD.

C. IMD may be authorized new levels or types of training, additional land use authorizations, or rights-of-way within the OCTC if it can be demonstrated that the proposal is compatible with the enabling legislation.

X. EFFECTIVE DATE

This MOU will be effective upon approval by the signatures of the Governor of Idaho and the BLM Idaho State Director and will remain in full force and effect for 30 years after the date of the last approving signature, unless either formally terminated by mutual consent or by either party upon five (5) years advance written notice to the other party.

XI. REVIEW OF THE MOU

A. A review of the MOU will commence on January 1 every fifth year following the date of the last signature hereto. The review period will extend from January 1 through June 30. One issue to be discussed at each five (5) year review will be the extension of the MOU to maintain a thirty (30) year life. Issues not discussed during the prescribed review period will be reviewed during the next five (5) year review period, unless addressed in the amendment process outlined in Section XII of this MOU.

XII. AMENDMENTS

Amendments to this MOU may be proposed by either party at any time and shall become effective upon approval by the BLM Boise District Manager and the Adjutant General, State of Idaho.

② Recommended for approval this 25 day of August, 2017

Y. DM
District Manager, BLM Boise District

① Recommended for approval this 18 day of August, 2017

Harry Sawyer
Adjutant General, State of Idaho

④ Approved by the State of Idaho this 24th day of October, 2017

Eric Butcher
Governor, State of Idaho

③ Approved by BLM this 22nd day of September, 2017

John J. Dutton
For BLM Idaho State Director

Exhibit C
Public Lands Lying Within the Orchard Combat Training Center

PLSS BLM 2012

Boise Meridian, Idaho:

Acres

T. 1 S. R. 1 E.

Sec. 1 thru 2, all	1,261.86
Sec. 11 thru 14, all	2,565.34
Sec. 23 thru 25, all	1,926.29
Sec. 26 ,that portion lying north of the Sunnyside Spring/Fall - Winter Division Fence	479.54

6,233.03

T. 1 S. R. 2 E.

Sec. 1 thru 15, all	9,488.73
Sec. 17 thru 35, all	12,093.70

21,582.43

T. 1 S. R. 3 E.

Sec. 6 thru 7, all	1,370.75
Sec. 17 thru 20, all	2,677.07
Sec. 29 thru 33, all	<u>3,323.27</u>

7,371.09

T. 2 S. R 1 E.

Sec. 1, all	<u>659.06</u>
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659.06

T. 2 S. R. 2 E.

Sec. 1 thru 6, all	3,184.23
Sec. 7, N1/2	311.10
Sec. 8, N1/2	319.65

Sec. 9 thru 15	4,485.21
Sec. 21 E1/2	320.07
Sec. 22 thru 35, all	8,300.64
	<u>16,920.90</u>
<u>T. 2 S. R. 3 E.</u>	
Sec. 1 thru 15, all	8,955.56
Sec. 17 thru 35, all	12,018.22
	<u>20,973.78</u>
<u>T. 2 S. R. 4 E.</u>	
Sec. 18 thru 19, all	1,398.83
Sec. 28, W1/2	320.21
Sec. 29 thru 33, all	3,308.73
Sec. 34, W1/2NW1/4, SW1/4	<u>239.87</u>
	<u>5,267.64</u>
<u>T. 3 S. R. 2 E.</u>	
Sec. 1 thru 15, all	9,868.38
Sec. 17,18, 20,21 (those portions lying north of the powerline- FPC Project No. 2055	1,623.63
Sec. 22 thru 25, all	2,559.72
Sec. 26, 27, 28, 35 (those portions lying north of powerline - FPC Project No. 2055	942.58
	<u>14,994.31</u>
<u>T. 3 S. R. 3 E.</u>	
Sec. 1 thru 15, all	9,617.22
Sec. 17 thru 35, all	12,047.54
	<u>21,664.76</u>
<u>T. 3 S. R. 4 E.</u>	

Sec. 2, that portion lying west of the Simco Road right-of-way No. IDI-21406	17.50	
Sec. 3 thru 10, all	5,186.03	
Sec. 15, all	639.26	
Sec. 17 thru 22, all	3,844.50	
Sec. 27, that portion lying west of the Simco Road right-of-way No. IDI-21406	603.43	
Sec. 28 thru 33, all	3,815.76	
Sec. 34, that portion lying west of the Simco Road right-of-way No. IDI-21406	<u>468.58</u>	
		<u>14,575.06</u>
<u>T. 4 S. R. 3 E.</u>		
Sec. 1 thru 4, all	2,558.55	
Sec. 5 and 6 (those portions lying north of powerline - FPC Project No. 2055	<u>759.25</u>	
		<u>3,317.80</u>
<u>T. 4 S. R. 4 E.</u>		
Sec. 3, that portion lying west of the Simco Road right-of-way No. IDI-21406	337.21	
Sec. 4 thru 6, all	<u>1,943.76</u>	
		<u>2,280.97</u>
<u>Total Acreage</u>		<u>135,840.83</u>