

Special Award Conditions

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1) Compliance with Environmental Protocols and Measures

Special Award Condition

Compliance with Environmental Protocols and Measures

EAGLE-Net Alliance

Colorado Community Anchors Broadband Consortium Project

REVISED – April 3, 2013

This BTOP Grant Special Award Condition establishes requirements applicable to the Educational Access Gateway Learning Environment Network (EAGLE-Net) Alliance implementation of the Colorado Community Anchor Broadband Consortium Project. The funding of the Grant is dependent on compliance with the provisions of this Special Award Condition (SAC). This SAC is based on the original EA and Supplemental Environmental Assessment (EA) documentation dated April 3,, 2013 and supersedes the original SAC issued July 28, 2011.

Post-award environmental reviews of the Project included consultation with regulatory agencies related to the protection of biological and historic and cultural resources. These consultations identified specific protocols or environmental protection measures. These protocols or protective measures may be either required or recommended to be included in the implementation of the Project to minimize potential impacts to biological resources and effects on historic and cultural resources. The protocols and measures are listed below.

Note that this Special Award Condition does not distinguish requirements identified during the consultations from recommendations that were also provided. EAGLE-Net shall implement the identified protocols and measures without regard to this distinction and advise the Federal Project Officer (FPO) immediately if any issues arise related to the ability to fully comply with any requirement or recommendation listed below.

For each protocol or measure listed, EAGLE-Net shall include the following information in its periodic report to the FPO administering the grant:

- a. Specifically where and when the protocol has been used or a measure has been implemented during the reporting period, and
- b. Whether full compliance with the protocol or measure was achieved.

The FPO may, if they determine necessary, require additional information to ensure compliance with the protocol or measure. If, at any time, EAGLE-Net has questions or requires clarification regarding any of these protocols or measures, they shall notify the FPO, who will coordinate with the appropriate regulatory authority to provide the necessary information.

Biological Resource Protection Protocols and Measures

In consultation with the U.S. Fish and Wildlife Service (USFWS) for the Supplemental EA, the following stipulations were determined:

1. EAGLE-Net will use wireless microwave technology, instead of trenching, to avoid affecting the Pagosa skyrocket

(*Ipomopsis polyantha*) and clay-loving wild buckwheat (*Eriogonum pelinophilum*), and associated habitats located along the Durango to South Fork and Delta-and-Montrose extensions. EAGLE-Net will also install microwave equipment on existing structures, with no new ground disturbance to complete the broadband network through the Critical Habitats.

2. EAGLE-Net will install buried fiber via trenching for the remaining 82.6 miles of Highway 160, outside of Pagosa skyrocket habitats.
3. EAGLE-Net will continue consultation with the USFWS on the 7.1 miles of fiber installed before December 2012 along the Delta-and-Montrose extension through Critical Habitat of the clay-loving wild buckwheat.
4. EAGLE-Net will continue formal consultation with the USFWS to avoid and minimize potential impacts while preventing violations of the Endangered Species Act if the proposed Complete Core Network Alternative is implemented. This alternative includes burying or micro-trenching the fiber optic cable (1) along 19.4 miles within the Highway 160 road right-of-way (ROW) on the Durango to South Fork extension, which may impact the Pagosa skyrocket or its designated Critical Habitats and (2) along 11 miles of Highway 50 ROW on the Montrose to Delta extension, which may impact the clay-loving wild buckwheat.
5. Under the Complete Core Network Alternative, EAGLE-Net will hire a qualified expert skilled with both the Pagosa skyrocket and clay-loving wild buckwheat to conduct field surveys during the appropriate growing seasons. The expert will complete surveys for the Pagosa skyrocket along the Durango to Southfork extension and survey for the clay-loving wild buckwheat along Delta and Montrose extension, including along the previously installed Montrose RE-11 Segment. Following the field surveys, EAGLE-Net will finalize its Core Network Fiber Alternative project plans, which may include directional boring or microtrenching within the asphalt roadbeds of Highway 160 and Highway 50. NTIA will submit Biological Assessments for these extensions to the USFWS.

In letters dated February 24, 2011, the USFWS provided the following stipulations on the Project:

1. EAGLE-Net will follow guidelines in the USFWS Interim Guidelines for Communications Tower Siting, Construction, Operation, and Decommissioning Recommendations during tower construction activities (<http://www.fws.gov/HabitatConservation/CommunicationTowers.html>).
2. EAGLE-Net will avoid surface disturbance of wetlands or riparian areas, even if the intermittent streambeds or water bodies appear dry.
3. EAGLE-Net will survey all areas of ground disturbance for protected species, burrowing species and their dependent species (e.g., prairie dogs, Burrowing owls, Mountain plovers, Ferruginous hawks, Black-footed ferrets), and nesting species, if construction activities will occur during the primary nesting season. If protected species, burrowing species, or nests are observed during construction activities, EAGLE-Net must halt construction, consult with applicable agencies, and avoid sensitive areas temporally and spatially.
4. EAGLE-Net will coordinate with the U.S. Forest Service for portions of the route that travel through the Comanche National Grassland and the San Juan National Forest.
5. To the maximum extent possible, EAGLE-Net will perform Project construction outside of the nesting season for migratory birds (between April 1 and June 15). If construction must occur during nesting season, EAGLE-Net will ensure that a qualified biologist conducts pre-work field surveys of the affected habitats or structures to verify the presence or absence of active birds or nests. If active birds or nests are identified, EAGLE-Net will contact the USFWS Colorado Field Office for additional guidance.

In a letters dated July 1, 2011, October ,15, 2012 and November 6, 2012 the USFWS determined that the Project “may affect, but is unlikely to adversely affect” Federally listed species, including the Canada lynx, Least tern, Mexican spotted

owl, Piping plover, and Preble's meadow jumping mouse. However, the USFWS also made the following recommendations to protect these species:

1. Construction on the proposed "Las Animas-Lamar" route is restricted to the previously disturbed Highway 50 ROW.
2. To the maximum extent possible, EAGLE-Net will perform Project construction outside of the breeding season for the least tern, piping plover, and other migratory birds in Colorado, assumed to occur between April 1 and June 15.
3. EAGLE-Net will conduct pre-construction surveys for migratory birds on the "Las Animas-Lamar" route.
4. Construction on the proposed "Canon City-Cotopaxi" route is restricted to burying fiber optic cable on the previously disturbed ROW that borders Highway 50.
5. If construction must occur during the breeding season (April 1- June 15), EAGLE-Net will conduct pre-construction surveys for nesting migratory birds on the "Canon City-Cotopaxi" route.
6. To avoid disturbance of the Mexican spotted owl, EAGLE-Net will perform construction activity during daylight hours between 8:00 am and 7:00 pm on the "Canon City-Cotopaxi" route.
7. To minimize impacts to the Preble's meadow jumping mouse, proposed activities will occur only within the previously disturbed road ROW of along previously constructed bridges along Highway 85.
8. EAGLE-Net will not remove or destroy riparian or upland vegetation at any time or create new ground disturbance within or near riparian or upland habitats.
9. To the extent possible, EAGLE-Net will perform construction on the "Platteville to ILA Weld County School District" route during the Preble's meadow jumping mouse inactive period between November 1 and April 1.

In letters dated June 17, 2011 and December 11, 2012, the Colorado Parks and Wildlife (CPW) concluded that potential impacts to wildlife from planned Project activity will be "minimal," provided that the following protective measures are implemented:

1. EAGLE-Net will reclaim disturbed habitats with native shrubs, grasses, and forbs as soon as possible following construction.
2. EAGLE-Net will design and implement a noxious weed monitoring and suppression program for each disturbed site.
3. EAGLE-Net will use existing ROWs and utility corridors for laying underground fiber optic cable wherever possible.
4. EAGLE-Net will use directional boring techniques at all stream crossings and when crossing jurisdictional wetlands.
5. EAGLE-Net will avoid construction activity at the Meeker site during the major big game hunting season from October 1 to November 30.
6. EAGLE-Net will utilize originally disturbed soils and surface substrate during reclamation in order to promote future colonization of disturbed sites.

Historic and Cultural Resource Protection Protocols and Measures

In a letter dated May 25, 2011, the Colorado SHPO determined that the Project will have no adverse effect on historic and archaeological resources, provided that the following stipulations are met:

1. EAGLE-Net will conduct plowing and directional boring only on public land in public ROW along previously disturbed roadways and utility corridors.
2. EAGLE-Net will avoid known archaeological sites by ensuring that a state-permitted archaeologist flags such sites within 100 feet of the currently planned cable corridor, and having an archaeologist meeting the Secretary of the Interior's Professional Qualification Standards brief construction supervisors on how to identify cultural resources.
3. If unidentified archaeological resources are discovered during construction, EAGLE-Net will halt work until the resources have been evaluated for National Register of Historic Places eligibility and additional SHPO and Tribal Historic

Preservation Office (THPO) consultation is completed. In the event of the discover of unidentified archaeological resources, EAGLE-Net may proceed 100 linear feet away from the immediate area of discovery after an archaeologist meeting the Secretary Standards has been called and is on site. However, EAGLE-Net must contact NTIA, the SHPO, and interested Tribes within seven day to relate findings, and work may not proceed within in the 100-foot area until consultation with the SHPO is completed.

4. If ground-disturbing activities uncover skeletal remains, EAGLE-Net will immediately stop all work in the area, secure the area around the discovery, and notify relevant law enforcement personnel (e.g., local police or county coroner) and NTIA. In the event of a finding of this nature, EAGLE-Net may proceed to continue project construction an appropriate distance from the discovery. However, EAGLE-Net may not commence construction in the area of discovery until consultations is completed with all applicable agencies including the SHPO.

5. EAGLE-Net will provide the SHPO with construction drawings, photographs, and inventory forms for attachments and/or penetrations to all buildings built in 1965 or before, and those buildings built after 1965 that are in a National Register historic district or within a site boundary of a property for which the SHPO has an inventory form in its library. If the SHPO deems necessary, EAGLE-Net will coordinate with the SHPO for additional Section 106 consultation.

On July 1, 2011, EAGLE-Net entered into a Programmatic Agreement (PA) with the Colorado SHPO and NTIA detailing stipulations related to construction monitoring and inadvertent discovery notification (as detailed above). As result, EAGLE-Net must adhere to the following stipulation:

1. EAGLE-Net shall complete all stipulations and conditions as described in the Programmatic Agreement. See attached PROGRAMMATIC AGREEMENT AMONG THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, THE COLORADO STATE HISTORIC PRESERVATION OFFICER, AND EAGLE-NET ALLIANCE (July 7, 2011).

In a letter dated March 14, 2011, the Wyoming SHPO concurred that the portion of the Project being implemented in Wyoming will have no effect on historic properties. However, because there is a possibility that prehistoric or historic materials may be found in the Project corridor, the Wyoming SHPO also stipulated:

1. If any cultural resources are discovered during construction, EAGLE-Net must immediately halt work in the area and notify NTIA and the SHPO so that the materials can be evaluated by an archaeologist or historian meeting the Secretary of the Interior's Professional Qualification Standards.

EAGLE-Net is required to continue consultation with the SHPO and Federal agencies for portions of the Project crossing USFS and BLM lands, as well as:

1. Flagging and avoidance of historic and cultural resources,
2. Flagging archaeological sites located with 100 feet of the project corridor, and
3. Using qualified and properly permitted archaeologists to flag sites.

Additional Protection Protocols and Measures

1. EAGLE-Net will continue working with the Bureau of Land Management (BLM), US Forest Service (USFS), and Bureau of Reclamation (BOR) on the ROW permitting process for fiber installation activities on Federal land.
2. EAGLE-Net will follow permitting and regulatory requirements outlined and required by the USFWS, BLM, USFS, CPW, and other applicable state agencies for all Project activities.

Mitigation Measures identified in the Environmental Assessment as being required to avoid potential significant environmental impacts:

None