

**MEMORANDUM OF UNDERSTANDING**  
**between**  
**IDAHO DEPARTMENT OF PARKS AND RECREATION**  
**and**  
**IDAHO OUTFITTERS AND GUIDES LICENSING BOARD**

**concerning:**  
**Coordination of Outfitter and Guide Administration**  
**on public lands administered by the**

**IDAHO DEPARTMENT OF PARKS AND RECREATION**

This MEMORANDUM OF UNDERSTANDING is hereby entered into by and between the Idaho Department of Parks and Recreation, hereinafter referred to as the IDPR and the Idaho Outfitters and Guides Licensing Board, hereinafter referred to as the IOGLB.

**A. PURPOSE:**

This Memorandum of Understanding (MOU) provides procedures for coordination and cooperation between the Idaho Department of Parks and Recreation, hereinafter referred to as the IDPR and the Idaho Outfitters and Guides Licensing Board, hereinafter referred to as the IOGLB regarding the administration and operation of outfitters and guides on IDPR-administered lands.

**B. AUTHORITY:**

- IOGLB - Idaho Code (Title 36, Chapter 21, Sec. 36-2101 – 36-2119, et seq.)
- IDPR - Idaho Code (Title 67, Chapter 42, Sec. 67-4223, et seq.)

**C. STATEMENT OF MUTUAL BENEFIT**

The IDPR has responsibility to provide a variety of public recreation opportunities in the Idaho State Parks and permits commercial operators, some of whom are Outfitters, to provide certain recreational opportunities to the public. The IOGLB licenses to commercial outfitters and guides in the State of Idaho and regulates that industry within the state.

To achieve better management of outfitters providing service to the public in Idaho State Parks, the parties agree that it is to their mutual benefit and interest to work cooperatively when administering outfitter and guide operations in Idaho State Parks.

**D. IDPR SHALL:**

1. Recognize outfitting as a viable Idaho industry deserving full consideration in the planning process and to unify, so far as feasible, agency policy and procedures governing the outfitting industry on all land administered by the IDPR.
2. Recognize the IOGLB as the Idaho state agency responsible for the administration of the Idaho Outfitters and Guides Act (Title 36, Chapter 21, and Idaho Code) and the Rules promulgated under that Act. Technical terms used in this MOU refer to definitions in IOGLB Rules. This recognition includes acknowledgement of state designation, limitations and or exceptions of commercial outfitting opportunities identified in the Idaho Administrative Procedures Act, 25.01.01.
3. Recognize the following definitions provided in Idaho Code 36-2102, and IDAPA 25.01.01.002 when permitting commercial activities in the State Park system:
  - a. "Person" includes any individual, firm, partnership, corporation or other organization or any

combination thereof.

- b. "Individual" means any person other than a partnership, corporation or any other organization or combination thereof.
  - c. "Outfitter" includes any person who, while engaging in any of the acts enumerated herein in any manner: (1) advertises or otherwise holds himself out to the public for hire; (2) provides facilities and services for consideration; and (3) maintains, leases, or otherwise uses equipment or accommodations for compensation for the conduct of outdoor recreational activities limited to the following: hunting animals or birds; float or power boating on Idaho rivers and streams; fishing on Idaho lakes, reservoirs, rivers and streams; and *hazardous desert or mountain excursions*. Any firm, partnership, corporation or other organization or combination thereof operating as an outfitter shall designate one (1) or more individuals as agents who shall, together with the licensed outfitter, be held responsible for the conduct of the licensed outfitter's operations and who shall meet all of the qualifications of a licensed outfitter.
  - d. "Guide" is any natural person who is employed by a licensed outfitter to furnish personal services for the conduct of outdoor recreational activities directly related to the conduct of activities for which the employing outfitter is licensed. Any such person not employed by a licensed outfitter who offers or provides facilities or services as specified in subsection (b) of this section shall be deemed in violation of the provisions of this chapter, except: (1) any employee of the state of Idaho or the United States when acting in his official capacity, or (2) any natural person who is employed by a licensed outfitter solely for the following activities: caring for, grooming or saddling of livestock, cooking, woodcutting, and transporting people, equipment and personal property on public roads shall be exempt from the provisions of this chapter.
  - e. "License year" means that period of time beginning on the date an outfitter's or guide's license is issued and ending on the anniversary of the date of issuance in the following year. The last day of the license year for all licenses is March 31 of each year.
  - f. "Hazardous Excursions" are considered by the Board to be outfitted or guided activities conducted outside municipal limits in a desert or mountainous environment that may constitute a potential danger to the health, safety, or welfare of participants involved. These activities shall include, but are not limited to: day or overnight trailrides, backpacking, technical mountaineering/rock climbing, cross-country skiing, backcountry alpine skiing, llama and goat packing, snowmobiling, survival courses, guiding courses, rescue courses, fishing courses, motored and non-motored cycling, wagon rides, sleigh rides, and dog sled rides.
4. Communicate with the IOGLB using a Land Manager's Statement (attached) regarding the issuance by IDPR of concession agreements or permits on IDPR-administered lands when it appears that the permitted activities may fall within the jurisdiction of the IOGLB.
  5. Issue an outfitter a concession agreement or other permit only after IOGLB issues an outfitter license as represented by a copy of a completed license or IOGLB issues to the appropriate IDPR representative a statement indicating an outfitter license is not required.
  6. Inform and discuss with the IOGLB problems relating to the occupancy and use of state park land by licensed outfitters including any permitted activities that have been suspended or revoked.
  7. Assist the IOGLB in enforcement of Idaho law governing outfitting and guiding by reporting complaints, violations, or unsatisfactory performance by outfitters; and by advising the IOGLB of any revocation of concession agreements or permits issued to outfitters by IDPR;

#### **E. THE IOGLB SHALL:**

1. Recognize the IDPR as the agency responsible for administration, management, and use of State Park lands according to applicable law, regulation, and policy and management direction.
2. Promptly respond to any IDPR inquiry as to whether a contemplated concession agreement or permit involves activities within the jurisdiction of the IOGLB.
3. Notify the IDPR of any licensed outfitter whose activities or areas or guide licenses have been suspended or revoked.
4. Notify the IDPR of proposed changes in rules, regulations, licensing procedures and policies of the IOGLB, before public notification, when the IDPR is involved.
5. Communicate with the IDPR where applicable to ensure resource management and protection.
6. Promptly process license applications from those individuals, partnerships, corporation or other organizations who have applied for an IDPR concession agreement or permit and who meet the definition of an outfitter and other requirements provided in Idaho Code (Title 36, Chapter 21).
  - a. Relative to this agreement, the IOGLB has determined that bicycle activities conducted statewide on class 4 & 5 trails as explained in Attachment A and on class 3, 4 & 5 roads as explained in Attachment B do not constitute a "hazardous excursion" and consequently, do not require licensure.
  - b. The IOGLB acknowledges that for purposes of this MOU the Trail of the Coeur d'Alenes, the Coeur d'Alene Parkway, and the Ashton-Tetonia Trail fall within the categories of class 4 or 5. When necessary to comply with this MOU, the classification of other trails in the State Park system will be determined by IDPR in consultation with the IOGLB.
7. Communicate with the IDPR relating to any background concerns found during the process of licensing outfitters requesting a permit to operate within the State Park system.
8. Assist the IDPR in enforcement of IDPR administered agreements or permits by reporting violations or unsatisfactory performance, and advise the IDPR of any convictions of outfitter and guides for violations of Title 36, Chapter 21., Idaho Code involving IDPR concessionaires and permittees.

#### **F. IT IS MUTUALLY AGREED AND UNDERSTOOD BY THAT BOTH PARTIES SHALL:**

1. Maintain cooperation with complete interchange of information in matters of mutual interest.
2. Communicate to the other agency any policy or management changes that effect outfitting or guiding opportunities on State Park lands and elsewhere.
3. Acknowledge individual outfitting proposals on state park land do not initiate the need for competitive applications or a public application process. When IDPR determines competitive applications are required, IOGLB will work cooperatively with them.
4. Acknowledge submission of a proposal does not convey any right to a state outfitter's or guide permit or license.
5. Resolve impasses through coordination by Directors with their respective Boards.


#### **G. ADMINISTRATION**

1. This MOU supersedes all previous agreements between the IDPR and the IOGLB relating to outfitter operations on lands administered by the IDPR.
2. Nothing contained in this document limits or affects in any way the authority of the IDPR to properly administer and protect IDPR-administered land, according to the purpose for which the land was reserved or acquired, nor limits or affects the authority of the IOGLB in administering the laws of Idaho.

3. This instrument in no way restricts the IDPR or IOGLB from participating in similar activities with other public or private agencies, organizations, and individuals.
4. Specific work project or activities which involve the transfer of funds, services, or property between the parties to this MOU require the execution of separate agreements or contracts, contingent upon the availability of funds.
5. MODIFICATIONS. Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed. Additions to, deletions from, and amendments to this agreement may be proposed by any of the parties and become effective upon approval by all parties.
6. TERMINATION. Any of the parties, in writing, may terminate the instrument in whole, or in part, at any time during the life of the MOU.
7. NON-FUND OBLIGATING DOCUMENT. This instrument is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.
8. COMMENCEMENT/EXPIRATION DATE. This instrument is executed as of the date of the last signature and is effective for 10 (ten) years past the date of execution, at which time it will expire unless extended.
9. LIABILITY. Nothing herein shall be interpreted to impose liability on IDPR or IOGLB. Further this Agreement is not intended to benefit any third party or otherwise be enforceable by a third party...

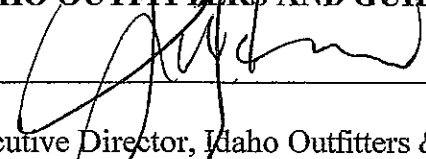
The authority and format of this instrument have been reviewed and approved for signature. In witness whereof, the parties have executed this agreement as of the last date listed below:

**IDAHO DEPARTMENT OF PARKS AND RECREATION**

  
\_\_\_\_\_  
Director, Idaho Department of Parks & Recreation

5-31-11  
\_\_\_\_\_  
Date

**IDAHO OUTFITTERS AND GUIDES LICENSING BOARD**

  
\_\_\_\_\_  
Executive Director, Idaho Outfitters & Guides Licensing Board

5/19/11  
\_\_\_\_\_  
Date

<b>OUTFITTERS &amp; GUIDES LICENSING BOARD</b>	<b>POLICY MANUAL</b>	<b>POLICY NUMBER: 2028 – 2011</b>	<b>Page: 1 of 7</b>
		<b>SUBJECT: Licensing Hazardous Excursions</b>	<b>Adopted: 3/19/2011 Revised: Reformatted:</b>

## **POLICY OF THE AGENCY**

It is the policy of the Board to balance its statutory responsibility and its administration of Idaho outfitter and guide licensing with maintaining an efficient and effective licensing and regulatory processes that are reasonable and fair; that makes sense to general public as a whole; and that is not overly burdensome to partnering agencies or private enterprise.

## **GENERAL INTENT**

Because strict interpretation of the definition Hazardous Excursion referenced in Idaho Code 36-2102 (b) and defined in IDAPA 25.01.01.002.20 can be inclusive; and because not all types of recreational activities possibly provided by commercial entities, can be listed in statute or rule, the Board must be adaptable and use common sense to determine which activities are truly hazardous and which put the public's health, safety and welfare at risk as provided in Idaho Code 36-2101 through 36-2119.

The intent of this policy is to provide direction to IOGLB staff as they response to interested parties in their effort to meet these requirements.

## **TABLE OF CONTENTS**

N/A

## **DEFINITIONS & REFERENCES**

**IC 36-2102.** (a) "Person" includes any individual, firm, partnership, corporation or other organization or any combination thereof. (b) "Outfitter" includes any person who, while engaging in any of the acts enumerated herein in any manner: (1) advertises or otherwise holds himself out to the public for hire; (2) provides facilities and services for consideration; and (3) maintains, leases, or otherwise uses equipment or accommodations for compensation for the conduct of outdoor recreational activities limited to the following: hunting animals or birds; float or power boating on Idaho rivers and streams; fishing on Idaho lakes, reservoirs, rivers and streams; and hazardous desert or mountain excursions....

**IDAPA 25.01.01.002.20. Hazardous Excursions.** Outfitted or guided activities conducted outside municipal limits in a desert or mountainous environment that may constitute a potential danger to the health, safety, or welfare of participants involved. These activities shall include, but are not limited to: day or overnight trail rides, backpacking, technical mountaineering/rock climbing, cross-country skiing, backcountry alpine skiing, llama and goat packing, snowmobiling, survival courses, guiding courses, rescue courses, fishing courses, motored and non-motored cycling, wagon rides, sleigh rides, and dog sled rides.

**IDAPA 25.01.01.002.10. Desert.** A region of scarce rainfall and vegetation in areas often having great differences between day, night and seasonal temperatures. A desert is a land surface ranging from level, plateau land, or undulating to sharply breaking hill-lands and sand dunes that, in addition, may be

<b>OUTFITTERS &amp; GUIDES LICENSING BOARD</b>	<b>POLICY MANUAL</b>	<b>POLICY NUMBER: 2028 – 2011</b>	<b>Page: 2 of 7</b>
		<b>SUBJECT: Licensing Hazardous Excursions</b>	<b>Adopted: 3/19/2011 Revised: Reformatted:</b>

*broken by poor to well-defined, deeply entrenched drainage systems, rims, cliffs, and escarpments.*

*IDAPA 25.01.01.002.29. Mountainous. A region receiving limited to abundant annual precipitation with an associated vegetative cover of grass, weeds, shrubs, or trees. Cool summer temperatures and cold winter temperatures prevail. A mountainous area is a land surface ranging from level to gently rolling low hills to elevated lands that are often broken with poor to well-developed, deeply entrenched drainage systems, rims, cliffs, and escarpments to steep sided landmasses of impressive size and height.*

**REFERENCES**

N/A

**PROCEDURE**

**1. General Considerations:**

- a. Exemptions listed under IC 36-2102 (c) and 36-2103 apply.
- b. The definition of “Desert” or “Mountainous” have proven to be confusing in that all of Idaho would be included in one or the other; consequently, determining whether the outfitted or guided activities are conducted outside municipal limits takes precedence.
- c. All hunting and fishing activities no matter where they are provided and all boating activities on rivers and streams require a license except on lakes and reservoirs only fishing from a boat requires licensure. Outfitted or guided activities falling under the definition hazardous excursion conducted outside municipal limits fall under the jurisdiction of the Board.
- d. All other activities listed as hazardous excursions other than those listed below require licensure. The Board may consider requests for clarification or exemption of other activities on a case by case basis. Requests must be submitted to the Board by the Executive Director.

**2. Survival, Rescue and Guiding Classes, Schools and Courses:**

- a. All survival, rescue and guiding classes, schools and courses are considered hazardous with the exception of those provided in a class room setting or on developed private land that is relatively flat (less than 5% grade) with well-defined and developed physical boundaries; where obstacles are infrequent and insubstantial, where vegetation is cleared from use areas with no access to lakes, reservoirs, rivers or streams.
- b. All survival, rescue and guiding classes, schools and courses conducted on a lake, pond, reservoir, river or stream require licensure.

**3. Fishing Classes, Schools and Courses:**

- a. All fishing classes, schools and courses are considered hazardous with the exception of those provided in a class room setting or provided on privately developed and maintained bodies of water of less than one acre in size or 5 ft in depth or any developed “swimming” type pools.

<b>OUTFITTERS &amp; GUIDES LICENSING BOARD</b>	<b>POLICY MANUAL</b>	<b>POLICY NUMBER: 2028 – 2011</b>	<b>Page: 3 of 7</b>
		<b>SUBJECT: Licensing Hazardous Excursions</b>	<b>Adopted: 3/19/2011 Revised: Reformatted:</b>

**4. Bicycling or Equestrian Activities:**

- a. All bicycling or equestrian activities provided within enclosed arenas, corrals, tracks, stadiums and etc. are not considered trail rides and are exempt from licensure.
- b. All bicycling rides and tours provided on Class 4 and 5 trails (attachment A) and Class 4 and 5 roads (attachment B) are considered non-hazardous and are exempt from licensure.
- c. All other equestrian rides are considered trail rides and considered hazardous and require licensure.

**5. Non-Motorized Sled (including dog sled) and Sleigh Rides:**

- a. Board has determined that non-motorized sled and sleigh rides provided on Class 4 and 5 trails (attachment A) and Class 3, 4 and 5 roads (attachment B) are considered non-hazardous and are exempt.

**6. Alpine, Various Forms of Nordic/Telemark Skiing, Snowshoeing and etc:**

- a. Alpine and various forms of Nordic/Telemark skiing activities occurring within developed resorts with specified, supervised ski runs are considered as being non-hazardous and not requiring licensure.
- b. All other Alpine, various forms of Nordic/Telemark skiing and snowshoeing activities. all ski touring and etc. addressed in IDAPA 25.01.01.044 are considered hazardous and require licensure.

<b>OUTFITTERS &amp; GUIDES LICENSING BOARD</b>	<b>POLICY MANUAL</b>	<b>POLICY NUMBER: 2028 – 2011</b>	<b>Page: 4 of 7</b>
		<b>SUBJECT: Licensing Hazardous Excursions</b>	<b>Adopted: 3/19/2011 Revised: Reformatted:</b>

<b>Attachment A – IOGLB Trail Class Matrix</b>				
<b>Trail Attributes</b>	<b>Class 1 Trail Minimally Developed</b>	<b>Class 2 Trail Moderately Developed</b>	<b>Class 3 Trail Developed</b>	<b>Class 4 Trail Highly Developed</b>
	<ul style="list-style-type: none"> <li>♦ Trail Class 1 includes the least developed and most challenging trails.</li> <li>♦ Trails in this category are typically very rugged and steep, with little or no defined tread or clearing and many or continuous obstacles.</li> </ul>			
<b>Tread &amp; Traffic Flow</b>	<ul style="list-style-type: none"> <li>♦ Tread intermittent and often indistinct.</li> <li>♦ May require route finding.</li> <li>♦ Single lane, with no allowances constructed for passing.</li> <li>♦ Predominantly native materials.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Tread continuous and discernible, but narrow and rough.</li> <li>♦ Single lane, with minor allowances constructed for passing.</li> <li>♦ Typically native materials.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Tread continuous and obvious.</li> <li>♦ Single lane, with occasional allowances for passing</li> <li>♦ Traffic volume low.</li> <li>♦ Native or imported materials.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Tread relatively smooth with few irregularities.</li> <li>♦ Single lane, with allowances constructed for passing where required by traffic volume in places where there is no reasonable opportunity to pass.</li> <li>♦ Typically imported materials. Occasionally may be hardened.</li> </ul>
<b>Obstacles &amp; Threats</b>	<ul style="list-style-type: none"> <li>♦ Obstacles common, naturally occurring, often substantial, and intended to provide increased challenge.</li> <li>♦ Narrow passages; brush, steep grades, rocks and logs present.</li> <li>♦ Adjoining rapidly flowing waterways with no separation or barrier.</li> <li>♦ Close proximity to cliffs or drop offs.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Obstacles may be common, substantial, and providing increased challenge.</li> <li>♦ Blockages cleared to define route and protect resources.</li> <li>♦ Often steep</li> <li>♦ Physical separation from cliffs or drop offs.</li> <li>♦ Vegetation may encroach into trailway.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Obstacles may be common, but not substantial and providing minimal challenge.</li> <li>♦ Vegetation cleared outside of trailway.</li> <li>♦ Occasional steep inclines</li> <li>♦ Cliffs or drop offs not a concern.</li> <li>♦ Adjoining river, stream or lake with physical separation less than 20 ft or no barrier.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Obstacles infrequent insubstantial.</li> <li>♦ Vegetation cleared outside of trailway.</li> <li>♦ Grades less than 8%.</li> <li>♦ Adjoining river, stream or lake with physical separation of 20 ft or more or a barrier.</li> </ul>



<b>OUTFITTERS &amp; GUIDES LICENSING BOARD</b>	<b>POLICY MANUAL</b>	<b>POLICY NUMBER: 2028 – 2011</b>	<b>Page: 5 of 7</b>
		<b>SUBJECT: Licensing Hazardous Excursions</b>	<b>Adopted: 3/19/2011 Revised: Reformatted:</b>

<b>Constructed Features &amp; Trail Elements</b>	<ul style="list-style-type: none"> <li>♦ Structures minimal to non-existent.</li> <li>♦ Drainage natural without structures.</li> <li>♦ Natural fords.</li> <li>♦ Typically no bridges.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Structures of limited size, scale, and quantity; typically construction of native materials.</li> <li>♦ Natural fords.</li> <li>♦ Drainage typically provided without structures.</li> <li>♦ Structures adequate to protect trail infrastructure and resources.</li> <li>♦ Bridges as needed for resource protection.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Structures may be occasional with construction of imported or native materials.</li> <li>♦ Natural or occasional constructed fords.</li> <li>♦ Drainage managed with occasional structures.</li> <li>♦ Bridges occasional as needed for resource protection and appropriate access.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Structures frequent and substantial; typically construction of imported materials.</li> <li>♦ Constructed fords.</li> <li>♦ Bridges as needed for resource protection and user convenience.</li> <li>♦ Drainage structures typical.</li> <li>♦ Trailside amenities may be present.</li> </ul>
<b>Signs</b>	<ul style="list-style-type: none"> <li>♦ Route identification signing infrequent.</li> <li>♦ Route markers present when trail location is not evident.</li> <li>♦ Regulatory and resource protection signing infrequent.</li> <li>♦ Destination signing not present.</li> <li>♦ Information and interpretive signing not present.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Route identification signing limited to junctions.</li> <li>♦ Route markers present when trail location is not evident.</li> <li>♦ Regulatory and resource protection signing infrequent.</li> <li>♦ Destination signing typically infrequent.</li> <li>♦ Information and interpretive signing uncommon.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Route identification signing at junctions and as needed for user reassurance.</li> <li>♦ Route markers as needed for user reassurance.</li> <li>♦ Occasional regulatory and resource protection signage.</li> <li>♦ Occasional destination signage.</li> <li>♦ Information and interpretive signs may be present.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Route identification signing at junctions and as needed for user reassurance.</li> <li>♦ Route markers as needed for user reassurance.</li> <li>♦ Regulatory and resource protection signing common.</li> <li>♦ Destination signing is common.</li> <li>♦ Information and interpretive signs may be common.</li> <li>♦ Accessibility information likely displayed at trailhead.</li> </ul>

<b>OUTFITTERS &amp; GUIDES LICENSING BOARD</b>	<b>POLICY MANUAL</b>	<b>POLICY NUMBER: 2028 – 2011</b>	<b>Page: 6 of 7</b>
		<b>SUBJECT: Licensing Hazardous Excursions</b>	<b>Adopted: 3/19/2011 Revised: Reformatted:</b>

<b>Typical Recreation Environment &amp; Experience</b>	<ul style="list-style-type: none"> <li>♦ Natural and unmodified.</li> <li>♦ Typically Primitive</li> <li>♦ Very remote areas or wilderness areas.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Natural and essentially unmodified.</li> <li>♦ Primitive to Semi-Primitive.</li> <li>♦ Very remote areas or wilderness areas.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Natural and primarily unmodified.</li> <li>♦ Semi-Primitive, Natural.</li> <li>♦ Rural to remote areas.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Some modification.</li> <li>♦ Natural to developed rural. Typically Portal Transitional.</li> <li>♦ Not present in Wilder areas.</li> </ul>
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<b>OUTFITTERS &amp; GUIDES LICENSING BOARD</b>	<b>POLICY MANUAL</b>	<b>POLICY NUMBER:</b> 2028 – 2011	<b>Page:</b> 7 of 7
		<b>SUBJECT:</b> Licensing Hazardous Excursions	<b>Adopted:</b> 3/19/2011 <b>Revised:</b> <b>Reformatted:</b>

**Attachment B – IOGLB Road Class Matrix**

<b>Trail Attributes</b>	<b>Class 1 Road Minimally Developed</b>	<b>Class 2 Road Moderately Developed</b>	<b>Class 3 Road Developed</b>	<b>Class 4 Road Highly Developed</b>
<b>Typical Recreation Environment &amp; Experience</b>	<ul style="list-style-type: none"> <li>♦ Basic Custodial Care</li> <li>♦ Intermittent service roads often closed to vehicular traffic.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Suitable for High Clearance Vehicles</li> <li>♦ A primitive road with minimal to no maintenance that is not suitable for anything other than high clearance vehicles, four wheel drive or ATVs.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Suitable for Passenger Cars</li> <li>♦ Roads operated and maintained for travel by a prudent driver in a standard passenger car.</li> <li>♦ A gravel road that could be driven in a car but where poor surfaces such as ruts would be common,</li> <li>♦ The road is narrow surface likely 16 feet or less in width.</li> </ul>	<ul style="list-style-type: none"> <li>♦ Roads that provide a moderated degree of user comfort and convenience at moderate travel speed</li> <li>♦ A surfaced road with a 16 to 24 foot width surface.</li> <li>♦ A well maintained gravel or possibly surfaced road.</li> <li>♦ Seldom marked double lane where traffic volume is low to moderate.</li> </ul>