Standard Operating Procedures for Trespass Investigation Template

**(*Your Agency or Tribes Name Here)***

**Standard Operating Procedures**

**for**

**Trespass Investigation**

Definitions:

Trespass Officer - Officer in charge of trespass case

LEO – Law Enforcement Officer

LE - Law Enforcement

LO - Line Officer

INVF - Wildfire Investigator

BIA-OJS – Bureau of Indian Affairs-Office of Justice Services

Agency Having Jurisdiction – The law enforcement organization with primary responsibility and authority for enforcement at a location or for a particular crime.

Background:

The purpose of this Standard Operating Procedure is to guide the participating Trespass Officer, LEO and LO in making rational and defensible decisions about authority, responsibility, scene processing, evidence collection and processing and case handling of trespass actions in Indian Country.

Authority:

The Trespass Officer has the authority to investigate reports of forest trespass for use in developing fire trespass cases as described in 25 CFR 163.29 and 25 CFR 166.800 as requested by the Line Officer, Agency Administrator, Agency Administrator’s designee. The Trespass Officer is authorized to initiate a civilian investigation into a suspected trespass as a part of the Bureau’s trust responsibility. If no trespass damages are found or if in the instance of wildfire, it is determined to have been the result of arson, the LE Agency having jurisdiction must be contacted. The Trespass Officer may continue or assist with the investigation at the request if the Agency Having Jurisdiction.

Jurisdiction:

*Guiding Principles* – Jurisdiction is established by the ownership where the origin of the trespass is located or suspected to be located. When ownership is restricted Indian Land or “trust” land, the Tribe and the Bureau of Indian Affairs (BIA) have jurisdiction to investigate trespass, including wildfires for origin and cause determination. If a major crime such as Arson is suspected or identified as the cause of a wildfire, contact the LE immediately.

*Indian Land* – includes Tribal trust, individual allotments, and restricted Indian lands and any other lands administered by the BIA. BIA and Tribal Trespass Officers have authority to investigate alleged trespass actions, including wildland fires originating on Indian lands. Qualified investigators from other agencies and jurisdictions may also investigate wildland fires on Indian lands upon request by BIA-***(insert agency or region here)***

*Non-Indian lands* – includes fee lands, non-Indian lands, Tribal fee lands, state, county or other federal lands. BIA Trespass Officers have no independent authority to enter or investigate non-Indian lands without landowner’s permission. Trespass Officers will cooperate with a local jurisdictional authority or state investigator to legitimize the investigation. In the case of a wildfire trespass where the wildfire originates on non-Indian jurisdiction, but burns across Indian land, the BIA-***(insert your agency or region here)*** will request an investigation by the jurisdictional authority. A BIA or Tribal INVF may assist with a wildland fire investigation on non-BIA jurisdiction, if requested to do so by the jurisdictional authority.

Case Handling:

The Trespass Officer will conduct the preliminary investigation of an alleged trespass and determine whether additional follow up investigation and procedures are required. This may be based on the amount of damage done by the trespass action or fire. Additional follow-up may be required when any of the following occur:

* Agricultural and/or forest trespass trespass (loss in value);
* Serious injuries or fatalities;
* Real property loss occurs;
* There is or is suspected other criminal activity;
* A fire is suspicious or possibly part of serial arson.

In the case of a human caused wildfire damaging Indian forest products, the Wildfire Incident Commander is responsible to protect and secure the general origin area, identify any evidence collection areas, and establish a chain of custody at the scene. This includes posting a sentry or guard at the general origin area, if needed. Upon arrival, the INVF will coordinate with the IC, gather and exchange information, and begin processing the fire scene. The INVF will coordinate his/her actions with the Trespass Officer and provide a full and complete written report of the origin and cause determination findings. Upon the recognition that the incident may involve any major crimes as described in the General Crimes Act – 18 U.S.C., serious injury, or fatality, the jurisdictional LEO will be notified immediately.

***Large scale fire investigations/Arson Task Forces:***

If Arson is suspected, ***(insert your Tribe or agency here)*** will coordinate investigations/task forces with ***(identify LE group here).*** The Arson Task Force Team Leader will conduct a short face-to-face briefing with ***(identify LE group here)*** upon arrival to review roles and expectations. The Team Leader will be responsible for ensuring INVF Team safety and for communications with the Trespass Officer, Regional Trespass Coordinator and ***(identify LE group here)***. The Lead INVF will coordinate with ***(identify LE group here)*** to notify non-federal law enforcement of the presence of the INVF Team in the area.

Ideally, certified INVFs should conduct investigations side-by-side with law enforcement. This 2 person (or larger) team will improve safety and probability of success. A ***(identify LE group here)*** or LEO should be part of any large-scale fire investigations or Arson Task Force mobilizations.

Investigation Standards:

**All Trespass investigations led by BIA or Tribal personnel should follow the standards established in the BIA Trespass Handbook, and for wildfires the BIA Wildfire Investigation Handbook.** For wildfires, additional guidance is found in the National Wildfire Coordinating Group (NWCG) FI-210 Origin and Cause Determination Course and the guidance from NWCG PMS 412 (April 2016). Where these conflict, the BIA Handbooks have priority.

Roles:

*Trespass Scene Protection* – The resource program manager or designee is responsible for protecting the general trespass area and/or wildfire origin area. They also must protect any potential evidence until/unless relieved of the scene protection responsibilities by the Trespass Officer, LEO, or in the case of wildfire trespass, the responding INVF. The resource program manager or designee must ensure timely transfer of discovery/first responder information and other critical information to wildfire investigation.

*Standard Fire Investigation* – These are cases where a wildfire is the only cause of the damages to be investigated and no evidence of other criminal activity is found. This would not include serial wildland arson incidents.

* Role of INVF: To take the lead in processing the scene, interviewing witnesses, collecting and securing evidence, and preparing the final report.
* Role of the LEO: to assist the INVF with scene control, evidence collection/chain of custody, interrogation of witnesses/persons of interest/suspects, and collaborating with the INVF to develop the case.

*Trespass combined with other criminal activity* *that requires a LE response* –

* Role of the LEO: to take the lead in managing and processing the overall scene, conducting the overall investigation, collecting and securing evidence, interviewing/interrogation, and developing the criminal case.
* Role of the Trespass Officer: to take the lead in completing the trespass report, the on ground investigation, and to provide the LEO with an estimate of the damages to Indian Forest Products for cost recovery.
* Role of INVF: if the trespass originates from a wildfire, the role of the INVF is to assist during the investigation as directed/requested in processing the *fire scene*; to assist as needed with fire-related evidence collection; and to provide a written supplemental report to the Officer in Charge (LEO or Trespass Officer) of the investigation.

*Trespass combined with criminal activity that requires a response by other federal law enforcement agencies* –

* Role of the Trespass Officer or LEO: to make the decision to involve other federal law enforcement agencies, and to secure the scene and direct the activities of any investigation personnel on the scene. The Officer in Charge remains in charge of the scene and investigation until relieved by the other agency.
* Role of INVF: if the trespass originates from a wildfire, the role of the INVF is to follow the direction of the Trespass Officer or LEO in protecting the scene, to remain available for questioning and witness statements as needed, and to assist Trespass Officer, LEO, or other federal agency Officer in Charge with processing the FIRE scene if requested.

Collection and Transfer of Evidence:

*It may be beneficial for the person conducting the trespass investigation to have physical evidence at scenes collected directly by law enforcement officials* *to shorten the chain of custody.* However, in many situations, law enforcement will be unavailable and the investigator must collect and later transfer evidence to law enforcement.

The investigator must always exercise caution when collecting identifiable evidence or evidence that may present an environmental hazard. If this type of evidence is discovered at the scene, the investigator must immediately remove all personnel and witnesses in the vicinity to a safe area, and then call law enforcement.

***On Indian land:***

When the cause is criminal, or there is an injury, fatality or real property damage (including timber loss), the investigator should mark, identify, photograph, and protect evidence until a law enforcement officer is available to collect it. If the evidence is in danger of being destroyed before law enforcement can collect it; the investigator should collect, catalogue, and preserve the evidence. Any evidence collected should be turned over to law enforcement at the earliest opportunity. The investigator should retain a copy of the evidence description form and chain of custody transfer form.

When the cause is not criminal, and there is no injury, fatality, or real property damage (including timber loss), the investigator should mark, identify, photograph, protect, collect, and catalog all evidence and then transfer it to an evidence storage facility as directed by the Trespass Officer. The investigator should retain a copy of the evidence description form and chain of custody transfer form.

***On non-Indian land:***

Mark, identify, photograph, and protect all evidence and contact the authority having legal jurisdiction prior to collecting any evidence on these cases. If cleared by the authority having legal jurisdiction, the investigator may collect and catalogue the evidence. This evidence will be transferred to the authority having legal jurisdiction for the case.

Wildfire Investigation Safety Requirements:

All personnel assigned to a wildfire incident must adhere to the personal protective equipment (PPE) requirements as defined in the Interagency Standards for Fire and Fire Aviation (Red Book, current edition, Chapter 7). These requirements are specific to those individuals who are assigned specifically to the incident on the ground. LE personnel may also be assigned to the incident on the ground, not in a role associated with the suppression of the fire itself, but functioning in a law enforcement capacity. Wearing the standard law enforcement uniform is therefore appropriate. In addition, those individuals performing duties associated with the investigation of a wildfire must wear the appropriate PPE associated with the actual incident.

Perception of Threat:

If anyone investigating a trespass is threatened or intimidated in the course of a legitimate jurisdictional investigation, they should withdraw and contact the appropriate law enforcement entities.

Questioning of Witnesses, Persons of Interest, and Suspects:

All individuals identified at the trespass scene should be contacted as potential witnesses, and their statements should be obtained by trained individuals. In cases where trained individuals are not available, the investigative personnel should record, at a minimum, the name, contact information, and description of each potential witness. Personnel may collect a voluntary statement from a witness if the witness has to leave the scene. This statement must be signed by the witness giving the statement and signed by the investigation personnel receiving the statement.

When possible, witness statements should be written, signed, and dated by the person making the statement as true and correct. When witnesses are unable to write out a statement, the investigator can write it for them, adding, “Statement of John Doe as told to Jimmy Q, investigator.” Have the witness initial the beginning of the statement, approve any changes (spelling errors, etc.) made to the statement, and initial the end of the statement. Make sure that they sign and date the statement as true and correct to the best of their knowledge.

If witnesses on scene identify additional witnesses who are not on scene, the investigator must forward the information to the LEO for follow up. The investigator may follow-up only when the individual is employed by the BIA or Tribe and is not a person of interest.

If at any time a witness admits s/he started the wildfire, the investigator must document all statements provided and contact LEO immediately. This information must be transposed onto a Field Report – Voluntary Statement.

If anyone is identified as a person of interest related to the wildfire occurrence, the investigator must contact law enforcement immediately. The LEO (not the investigator) will be the lead agency for any follow up related to this information. They will conduct any follow-up interviewing or interrogation deemed necessary.

Tracking down, locating, and interrogating “persons of interest” or “suspects” (possible or probable fire setters) is the role of law enforcement. The investigator may provide information to assist law enforcement and may assist with providing specific interview questions based on the cause and origin investigation.

Disposition of Case Files:

***Original Files:***

In all circumstances, regardless of ownership, the original forest trespass investigation field report files will be maintained and remain with the investigator. The original files will be kept in a secured locked storage cabinet. If the investigator retires or leaves the BIA, the original files will be maintained at the *(insert your agency name here)*.

In a criminal wildland fire investigation on Indian land, a good copy of the original case file will be transferred to the local BIA LEO or Tribal Law enforcement if criminal investigations are compacted or contracted.

In a non-criminal wildland fire investigation on Indian land, a copy will be transferred to the line officer having jurisdiction for trespass purposes.

All other Agencies requesting copies will need to go through the FOIA Officer or LEO to receive a copy of the investigation report. All INVF reports are considered to be law enforcement sensitive documents and shall be exempt from the Freedom of Information Act (FOIA).

***Copies:***

All copies will be clearly marked COPY. The distribution of original copies will be documented in the “Original” case file.

Training:

The *(insert your tribe/agency here)* will advise OJS, and Tribal LEOs of training opportunities in trespass and wildfire investigation.

Communications with Law Enforcement:

*(Insert local LE information here)*

(*Insert local LE phone numbers here)* (Office)

To request investigations of suspected trespass on the (insert Tribe or agency/reservation here), contact:

Name

Number (Cell)

Number (Office)

Or

Duty Officer

Insert Regional Office

Number (Cell)

SOP Prepared by: *(insert name of person preparing this document)*,

Date: *(date prepared)*

**This SOP should be reviewed and applicable revisions/changes made annually to assure all parties are aware of any changes in wording or personnel.**

***Adopted by:***

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (insert Tribe/agency name here)**

**Line Officer\_ Date**