



January 13, 2026

Idaho Fish & Game
600 South Walnut Street
Boise, Idaho 83712

Subject: Opinion Regarding Idaho Department of Fish and Game Policy E-11, Entry onto Private Lands.

To Whom it May Concern,

This letter addresses the Idaho Department of Fish and Game's policy titled "*Entry onto Private Lands*" (<https://idfg.idaho.gov/sites/default/files/e-1-1-entry-onto-private-lands.pdf>). We have reviewed the policy and believe it provides inadequate protection for Idahoans' private property rights. Legislative action would ensure that constitutional standards governing entry into private homes also consistently apply to all privately owned land, including so-called "open fields."

Key Concerns

1. No Concrete Standard for Entry When Conducting "Compliance Checks"

- Although the policy purports to require a reasonable articulable suspicion or landowner consent as a baseline for entry onto private land, multiple carveouts effectively eliminate those limits altogether. In particular, the policy authorizes entry onto private property for so-called "brief interactions" in the context of compliance checks. The policy's only standards governing entry in these circumstances are an officer's "thoughtfulness" and/or "judgment."
- If officers may enter private land whenever regulated activity is suspected or observed—without any objective threshold—then the policy's repeated references to reasonable articulable suspicion or consent as baseline standards governing entry provide little meaningful protection to landowners.

2. Reliance on “Reasonable Articulable Suspicion”

- Even when the policy explicitly states a standard governing an officer’s entry or continued presence on private land, the policy repeatedly uses this standard, which is significantly weaker than **probable cause**, the constitutionally required threshold for searches and seizures. See, e.g., *Caniglia v. Strom*, 593 U.S. 194, 204 (2021) (Kavanaugh, J., concurring) (“The Court has said that a warrant supported by probable cause is ordinarily required for law enforcement officers to enter a home. See U.S. Const., Amdt. 4.”); *Birchfield v. North Dakota*, 579 U.S. 438, 469 (2016) (“Search warrants ... ensure that a search is not carried out unless a neutral magistrate makes an independent determination that there is probable cause to believe evidence will be found.”).
- This diluted standard increases the risk of arbitrary intrusion, allowing for violations of Idahoans’ property rights.
- The provision permitting the use of trail cameras and other video surveillance equipment on privately owned land, based solely upon this weaker standard, is particularly concerning.

3. Weak Limitation on Warrant Exceptions

- Page 2 states “the Department will limit its entry onto private property” in part by “judiciously applying...warrant exceptions,” but this is vague and unenforceable.
- It grants broad discretion to officers, neither providing clear legal boundaries nor requiring independent judicial review.

4. Misapplication of Terry Stop Principles

- The policy’s reference to “brief stops and inquiries” appears to invoke the U.S. Supreme Court’s opinion in *Terry v. Ohio*, 392 U.S. 1 (1968).
- *Terry* stops apply only in public spaces (e.g., public roads) and do not authorize warrantless entry onto private property. See, e.g., J. Ross Hamrick, “First Among Equals: How the Curtilage Doctrine Bars a *Terry* Stop and Frisk Inside the Curtilage After *Jardines* and *Collins*,” 52 U. Mem. L. Rev. 578, 2022. (https://www.memphis.edu/law/documents/v52-book-3-hamrick_final.pdf)

5. Policy Lacks Legislative Oversight

- The policy is a set of internally generated agency guidelines, not a statute enacted by the Idaho Legislature.
- Accordingly, it can be changed at any time without public input or legislative review, leaving property owners vulnerable to shifting standards.

6. No Warrant Requirement for Entry

- The policy does not require a warrant before entering private land.

- Many states, including some of Idaho's neighbors, interpret their constitutions as providing stronger protections for private land than does the federal Fourth Amendment, requiring warrants for entry even onto "open fields." See, e.g., *State v. Bullock*, 901 P.2d 61, 75-76 (Mont. 1995) (Montana Supreme Court holding state constitution prohibits warrantless searches of private land even outside the curtilage); *State v. Dixon*, 766 P.2d 1015, 1024 (Or. 1988) (Oregon Supreme Court rejecting the open fields doctrine under Article I, § 9 of the Oregon Constitution); *People v. Scott*, 593 N.E.2d 1328, 1335 (N.Y. 1992) (New York Court of Appeals holding warrantless searches of posted private land violate the state constitution); *State v. Kirchoff*, 587 A.2d 988, 994-95 (Vt. 1991) (Vermont Supreme Court holding that Article 11 of the state constitution protects private land from warrantless searches). But see, *State v. Webb*, 943 P.2d 52, 58-59 (Idaho 1997) (affirming District Court's application of the "open fields" doctrine to allow warrantless search of defendant's marijuana garden); *State v. Pruss*, 181 P.3d 1231, 1236 (Idaho 2008) (Idaho Supreme Court applying "open fields" doctrine but distinguishing case before it); *State v. Beck*, 336 P.3d 809, 813 (Id. Ct. App. 2014) (applying open fields doctrine to case involving area around a camper's tent).
- Both the Fourth Amendment and Idaho Constitution protect against unreasonable searches and seizures with a presumptive warrant requirement. While the "open fields" doctrine limits these protections, legislative reform can and should impose the same warrant requirement for private land as for private homes. Idahoans deserve to have the safeguard of review by a neutral and detached member of the judiciary before law enforcement enters their privately owned land. Compare S.D. Codified Laws §§ 41-2-48 & 41-2-49.

Legal Framework

- **Fourth Amendment, U.S. Const.:** Requires probable cause and a warrant for searches and seizures, absent a narrowly defined exception.
- **Idaho Const. art. I, § 17:** Provides equivalent protections under state law.
- ***Terry v. Ohio***, 392 U.S. 1 (1968): Allows brief investigatory stops in public areas based on reasonable suspicion; does not permit entry onto private property.
- ***Oliver v. United States***, 466 U.S. 170 (1984): Recognized the "open fields" doctrine but left room for legislatures to impose stricter standards.
- ***State v. Webb***, 943 P.2d 52 (Idaho 1997): Recognizing and applying "open fields" doctrine.

Recommendation

We urge the Legislature to enact a statute requiring:

- A **warrant supported by probable cause** for any entry onto privately owned land, absent a clearly defined and narrow exception.

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- Explicit prohibition of warrantless entry based solely on “reasonable articulable suspicion” or “probable cause.”

Sincerely,



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