

Appendix T

Right-of-way (ROW) Acquisition Process

Right-of-way (ROW) Acquisition Process

A Right-Of-Way (ROW) grant is an authorization to use BLM administered public land, for a particular use, for a defined period of time. Generally, a BLM ROW is granted for a time period appropriate for the life of the project. A complete explanation of the BLM ROW program is found in Title 43 of the Code of Federal Regulations, Parts 2800 and 2880. Routes are one of several uses requiring a ROW grant.

The following steps are required in obtaining a ROW for a transportation route on BLM administered lands, including Canyons of the Ancients National Monument:

1. Contact the BLM Land and Realty Specialist for the Monument.
2. Obtain an Application Form (Standard Form 299, titled "Application for Transportation and Utility Systems and Facilities on Federal Land").
3. Arrange a pre-application meeting.
4. Assemble all required information and submit to the BLM Lands and Realty Specialist for the Monument.

The pre-application meeting provides the opportunity to fully discuss and describe the desired transportation route in detail and to learn more about BLM process requirements. Information relevant to the project should be brought to the meeting including maps and/or survey data. Discussions during the pre-application meeting will also include fees, safety, work schedules and other items.

There are three different fees associated with ROWs. The processing fee reimburses the BLM in advance for the cost of processing an application. If a right-of-way is granted, the use of the ROW is subject to rental fees which are calculated based on type of use and location. In addition, once a right-of-way is granted, monitoring fees are collected which reimburses the BLM for the costs of monitoring the construction, operation, maintenance and termination of the project.

Project design must be compatible with the proposed use and anticipated environmental impacts. All disturbances must be within the boundary of the proposed ROW. A plan of development (POD) is required as part of the application. The POD covers the who, what, where, when, how questions of route construction. In addition, design criteria for transportation routes would be required and would identify the following:

- Total length and total width of ROW; width of route surface; maximum grade of route
- Minimum/maximum clearing width
- Cut/fill slope ratios
- Type and location of drainage structures, cattleguards, fences, gates
- Proposed surfacing type (gravel) and quantities; dust abatement
- Centerline survey plat
- Design drawings including: plan and profile sheets, typical roadway cross-sections, culvert installation details, grade dip detail (water bars, rolling dips, etc.), cattleguard, fence and gate details
- Construction specifications
- Materials specifications

The POD requires full disclosure of construction components such as:

- Flagging and Staking
- Clearing and Grading
- Earthwork
- Structure Installation
- Stabilization, Rehabilitation and Revegetation
- Seeding Specifications

The application also requires descriptions of what maintenance is required, the anticipated level of use, and actions required to terminate the use. The completed application is then evaluated to ensure conformance with the BLM land use plan and identification of possible conflicts such as concurrent use of the land by other valid existing rights. BLM tries to process completed applications in 60 calendar days but may take longer depending on the type and complexity of the project. In addition, the time it takes to process an application may depend on what potential resource impacts are involved and the required surveys for clearance.

A ROW application may be rejected, or a grant may be denied on the basis of:

- the proposal is not in conformance with applicable Land Use Plans (i.e. purpose for which the public lands are managed);
- the proposal would not be in the public's interest;
- the applicant is not qualified;
- the proposal is inconsistent with Federal, State, or local laws;
- the applicant is not technically or financially capable of accomplishing the project; or
- serious environmental consequences may occur from the proposed project that cannot be mitigated.

A pre-application meeting can reduce the possibility of the application being denied. Generally, once a signed ROW grant has been issued, work can begin. A ROW holder may use the ROW only for those purposes authorized in the grant. The BLM ROW process may be adjusted during the life of this PRMP/FEIS, therefore it is important to check with the Lands and Realty Specialist for changes in this process or obtain greater detail by viewing the BLM website:

http://www.blm.gov/wo/st/en/prog/energy/cost_recovery_regulations.html.

Right-of-Way Pre-Application Checklist

Items to be discussed in Pre-Application conference with applicant:

A. Scope of the proposed project

1. Project type - description, plans, MLA or FLPMA, site vs. linear, etc.
2. Use - is a ROW the most appropriate authorization?
3. Size - how much public land will be required?
4. Any other Federal agency lands involved? Lead state or lead agency (FERC).
5. Project location or routing- other potential routes/locations (on or off BLM land), and other BLM offices that may be involved?
6. Duration of use
7. Does the project qualify as casual use?
8. Any off-site or ancillary facilities?

B. Compliance with Land Use Planning

1. RMP or MFP- Does proposed project conform to land use plan?
2. Special Management Area/Area of Critical Environmental Concern - does proposed project conflict with any special designation areas?
3. Activity plans that may affect application
4. Other authorized uses or mining claims that may conflict with proposal
5. Corridor considerations?

C. Potential for Controversy/ Public Meetings

D. Level of Environmental Analysis

1. CX, DNA, EA, EIS
2. Special studies required (T&E species, cultural inventories, etc.)
3. Availability of existing staff
4. Opportunities for applicant-funded studies to expedite processing, BLM requirements and standards for such studies

E. Timeframes

1. Applicant - requirements of a completed application, when work needs to start (if approved)
2. BLM - existing staff, other applications already being processed, opportunities for applicant to fund BLM's processing of application

F. Financial Considerations

1. Processing fees
2. Monitoring fees
3. Rent
4. Potential for a bonding requirement in grant
5. Applicant's financial situation -what is the cost of constructing and maintaining the proposed use? Does the applicant have the capability?

G. Application

1. Requirements of a completed application (maps, description of project, business papers, etc.)
2. Line-by-line discussion with potential applicant of necessary information in application
3. Distribute "How to Obtain a ROW" brochure

H. Requirements of a Grant

1. Types of stipulations normally required by BLM
2. BLM's discretion of choosing a route or site other than the one applied for
3. Possibility of denying application

I. Points of Contact

1. Applicant contact (agent?)
2. If agent, extent of authority to represent applicant
3. BLM contact for application submission or other questions
4. Other agencies that may need to be involved (BLM is not a clearinghouse for these other agencies)

