

2800 – RIGHTS-OF-WAY

Glossary of Terms

-A-

ABC: Activity Based Costing.

Act: the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701 et seq.

actual costs: the financial measure of resources the Federal government expends or uses in processing a ROW application or in monitoring the construction, operation, and termination of a facility authorized by a grant. An actual cost includes both direct and indirect costs, exclusive of management overhead costs.

adverse possession: the open and exclusive occupation and use of someone else's real property, without permission of the owner, continuously for a period of years prescribed by State or local law, thereafter giving title to the occupier-user.

agency: a Federal department or independent Federal office.

airways: gondolas, aerial trams, aerial conveyor belts, and other devices for transportation above-the-ground. It also includes takeoff and landing zones associated with airport operations.

ALJ: Administrative Law Judge.

amendment: a modification of a grant to provide for a substantial deviation in location or use.

appeal: a formal action requesting that a decision be reviewed by a higher authority. For the BLM this usually means a review by IBLA.

applicant: any individual, partnership, corporation, association, or other business entity, or any Federal, State, or local governmental entity including municipal corporations that applies for a ROW grant.

appropriation: ROW authorization for Federal-aid highway purposes issued to the Federal Highway Administration (FHWA) under Title 23 U.S.C.

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assignee: one who receives an assignment.

assignment: transfer, in whole or in part, of any right or interest in a ROW grant from one legal entity to another.

assignor: one who makes an assignment.

authorized officer (AO): any employee of the Department of the Interior to whom has been delegated the authority to perform the duties described in this Manual Section. Under the BLM standard delegation (Manual 1203) this is no lower than the Field Office or District Manager. Delegation below this level should be specific to an individual and a specific ROW project.

authorized officer's representative: a BLM employee designated by the AO for onsite inspection for compliance with stipulations of the ROW grant. The individual does not have authority to change or alter the ROW grant but is the primary contact between the BLM and holder's representative for matters pertaining to the ROW grant.

avoidance Area: an area designated on a land use plan for which use for a ROW should be avoided if at all possible.

-B-

backlog: the number of existing and anticipated cases that exceed the number of cases that can be accomplished within 6 months, considering resources available to conduct the work.

base rent: the dollar amount required from a communication facility grant or lease holder on BLM managed lands based on the communication use with the highest value in the associated facility or facilities, as calculated according to the communication use rent schedule. If a facility manager's or facility owner's scheduled rent is equal to the highest rent charged a tenant in the facility or facilities, then the facility manager's or facility owner's use determines the dollar amount of the base rent. Otherwise, the facility owner's, facility manager's, customer's, or tenant's use with the highest value, that is not otherwise excluded from rent, determines the base rent.

BLM: the Bureau of Land Management.

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bond: cash or legal document given to assure compliance with specific requirements.

-C-

CBS: is a collection and billing system used by the BLM.

casual use: activities ordinarily resulting in no or negligible disturbance of the public lands, resources, or improvements. Examples of casual use include: surveying, marking routes, and collecting data to use to prepare applications for grants.

CERCLA: the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. 9601 et seq.).

commercial purpose or activity: the circumstance where a holder attempts to produce a profit by allowing the use of its facilities by an additional party. The BLM may assess an appropriate rent for such commercial activities. The holder's use may not otherwise be subject to rent charges under the BLM's rent provisions.

common use ROW: a strip or parcel of public land used by more than one holder.

communication use rent schedule: a schedule of rents for the following types of communication uses, including related technologies, located in a facility associated with a particular ROW grant. All use categories include ancillary communication equipment, such as internal microwave or internal one-or two-way radio, which is directly related to operating, maintaining and monitoring the primary uses listed below. The Federal Communications Commission (FCC) may or may not license the primary uses. The type of use and community served identified on an FCC license, if one has been issued, do not supersede either the definitions in this subpart or the procedures in 2806.30 of this part for calculating rent for communication facilities and uses located on public land:

- (1) television broadcast: a use that broadcasts UHF and VHF audio and video signals for general public reception. This category does not include Low Power Television (LPT) or rebroadcast devices, such as translators; or transmitting devices, such as microwave relays serving broadcast translators.
- (2) AM and FM radio broadcast: a use that broadcasts amplitude modulation (AM) or frequency modulation (FM) audio signals for general public reception. This category does not include low-power FM radio; rebroadcast devices, such as translators; or boosters or microwave relays serving broadcast translators.

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- (3) broadcast translator, low-power television, and low-power FM radio: a use of translators, LPTV, or low-power FM radio (LPFM). Translators receive a television or FM radio broadcast signal and rebroadcast it on a different channel or frequency for local reception. In some cases the translator relays the true signal to an amplifier

or another translator. LPTV and LPFM are broadcast translators that originate programming. Microwave facilities used in conjunction with LPTV and broadcast translation are included in this category. This category also includes translators associated with public telecommunication services;

(4) cable television: a use that transmits video programming to multiple subscribers in a community over a wired or wireless network. This category does not include rebroadcast devices that retransmit television signals of one or more television broadcast stations, or personal or internal antenna systems, such as private systems serving hotels or residences;

(5) cellular telephone: a system of mobile or fixed communication devices that use a combination of radio and telephone switching technology and provide public switched network services to fixed or mobile users, or both, within a defined geographic area. The system consists of one or more cell sites containing transmitting and receiving antennas, cellular base station radio telephone equipment, and microwave communications link equipment and the ancillary communication equipment directly related to operating, maintaining and monitoring the use. Examples: Personal Communications Service (PCS), Enhanced Specialized Mobile Radio (ESMR), Improved Mobile Telephone Service (IMTS), Air-to-ground, Offshore Radio Telephone Service, Cell Site Extenders, and Local Multipoint Distribution Service (LMDS);

(6) commercial mobile radio service (CMRS)/facility manager: commercial mobile radio uses that provide mobile communication service to individual customers. Examples of CMRS include: community repeaters, trunked radio (specialized mobile radio), two-way radio voice dispatch, public switched network (telephone/data) interconnect service, microwave communications link equipment, and other two-way voice and paging services.

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(7) microwave: (i) uses that operate long-line intrastate and interstate public telephone, television, information, and data transmissions; (ii) uses that support pipeline and power companies or railroads; (iii) uses that land resource management companies have to support their primary business, and (iv) communication equipment directly related to operating, maintaining or monitoring the use;

(8) private mobile radio: uses supporting private mobile radio systems primarily for a single entity for mobile internal communications. This use is not sold and is exclusively limited to the user in support of business, community activities, or other organizational communication needs. Examples: private local radio dispatch, private paging services, and ancillary microwave communications equipment for controlling mobile facilities;

(9) other communication uses: private communication uses, such as amateur radio, personal/private receive-only antennas, natural resource and environmental monitoring equipment, and other small, low-power devices used to monitor or control remote activities.

compliance: operating within the requirements of the grant.

compliance enforcement: any and all actions taken by or on behalf of the AO to ensure the holder is operating within the requirements of the grant.

corridor: a tract of land forming a passageway for linear utilities or transportation uses.

cost recovery: the recovery of the cost to the Federal government of providing an item or processing an application through use of fixed fees or a record of actual costs.

customer: an occupant who is paying a communication facility manager, facility owner, or tenant for using all or any part of the space in the facility, or for communication services, and is not selling communication services or broadcasting communication services to others. We consider persons or entities benefiting from private or internal communication uses located in a holder's facility as customers for purposes of calculating rent. Customer uses are not included in calculating the amount of rent owed by a facility owner, facility manager, or tenant, except as noted in 2806.34(b)(4) and 2806.42 of the regulations. Examples of customers include: users of PMRS, users in the microwave category when the microwave use is limited to internal communications, and all users in the category of "other communication uses" (see "communication use rent schedule (9) other communication uses", above).

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-D-

designated ROW corridor: a parcel of land with specific boundaries identified by law, a Secretarial order, the land-use planning process, or other management decision as being preferred location for existing and future ROWs. The corridor may be suitable to accommodate more than one type of ROW or one or more ROWs that are similar, identical or compatible.

direct costs: those costs that can be specifically identified with the application and that are incurred for the benefit of the applicant in that the costs would not have been incurred except for the application and are appropriate in order for the BLM to process the application. Examples of direct costs may include personnel costs in the form of wages paid to the BLM or other Federal personnel working on the application, with allowances provided for fringe benefits and leave surcharge rates and any overtime associated with processing the application; travel expenses; purchased services, if necessary, such as printing, automated data processing services and photographic reproduction; and any miscellaneous supplies and equipment of a specialized nature, the use of which is directly applicable to processing the application.

discharge: the meaning found at 33 U.S.C. 1321(a)(2) of the Clean Water Act.

due diligence: such diligence as a reasonable person under the same circumstances would use. Use of reasonable but not necessarily exhaustive efforts.

-E-

EA: environmental assessment.

easement: a document issued in replacement of an existing ROW grant over lands being transferred out of BLM management or Federal Ownership.

easement deed: a deed issued by the FHwA to a State's highway department for a ROW or a temporary construction area.

EIS: environmental impact statement.

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exclusion area: an area identified through Resource Management Plans or in the process

of designating corridors for which ROWs are to be excluded.

-F-

44 LD 513: an identifier or category used on some BLM records to show an appropriation of public lands by a Federal agency through use as opposed to a written document such as a ROW or Public Land Order.

facilities usual to a highway: includes uses such as telephone lines, electric distribution and small transmission lines that are/were seen paralleling along the side of the highway system.

facility: an improvement or structure, whether existing or planned, that is or would be owned and controlled by the grant or lease holder within a ROW. For purposes of communication site rights-of-way or uses, facility means the building, tower, and related incidental structures or improvements authorized under the terms of the grant or lease.

facility manager: a person or entity that leases space in a facility to communication users and: (1) Holds a communication use grant or lease; (2) Owns a communication facility on lands covered by that grant or lease; and (3) Does not own or operate communication equipment in the facility for personal or commercial purposes.

facility owner: a person or entity that may or may not lease space in a facility to communication users and: (1) Holds a communication use grant or lease; (2) Owns a communication facility on lands covered by that grant or lease; and (3) Owns and operates their own communication equipment in the facility for personal or commercial purposes.

FERC: the Federal Energy Regulatory Commission. Among others, has authority over hydropower facilities under the Federal Water Power Act, interstate gas pipelines under the Natural Gas Act, and certain responsibilities for energy projects under the Energy Policy Act of 2005.

FHwA: the Federal Highway Administration.

FLPMA: the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701 et seq.).

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full force and effect: means that the decision involved is effective immediately and remains so unless a stay is issued by the IBLA.

-G-

grandfathered rights: usually the right to use in a non-conforming manner due to existence of use prior to the establishment of conforming terms and conditions.

grant: any authorization or instrument (e.g., easement, lease, license the BLM issues under Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1761 *et seq.* (FLPMA). The term includes those authorizations and instruments BLM and its predecessors issued for like purposes before October 21, 1976, under then existing statutory authority. It also includes any authorization or instrument BLM issues pursuant to other ROW authorities such as the Act of March 3, 1891 (43 U.S.C. 946-951) as to other than Public and National Forest Land. It does not include authorizations issued under the Mineral Leasing Act (30 U.S.C. 185).

guide stipulation: BLM-approved, or mandated by law, term or condition for a ROW grant that is to be used by the AO where necessary to ensure the facility authorized is constructed, operated, maintained, and terminated in a safe and environmentally sound manner. No attempt is made in this Manual to distinguish stipulations from terms and conditions. The two expressions are used interchangeably.

-H-

hazardous material:

- (1) Any substance or material defined as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act at 42 U.S.C. 9601(14) and (33);
- (2) Any regulated substance contained in or released from underground storage tanks, as defined by the Resource Conservation and Recovery Act at 42 U.S.C. 6991 *et seq.*;
- (3) Oil, as defined by the Clean Water Act at 33 U.S.C. 1321(a) and the Oil Pollution Act at 33 U.S.C. 2701 *et seq.*; or
- (4) Other substances defined and regulated as “hazardous” by applicable Federal, state, tribal, or local law.

holder: any entity to whom the BLM has issued a ROW grant.

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holder’s representative: the holder's onsite representative who is responsible to see that the stipulations of the ROW grant or permit are met. The representative is the primary contact for the BLM concerning technical matters of the ROW grant.

-I-

IBLA: the Department of the Interior, Board of Land Appeals.

IM: an Instruction Memorandum containing policy or procedure.

immediate temporary suspension: a prompt verbal or written order by the AO that requires the holder to immediately curtail ROW activities and privileges in order to protect public health or safety or the environment. The order is given prior to an administrative proceeding.

impacts: the effect an action has on other resource conditions.

indirect costs: those costs that cannot be specifically identified with the application expressed as a percent of “direct costs.” The percentage figure is developed in accordance with Department of Interior procedures and represents those administrative and program costs, excluding management overhead that can be attributed to processing the application. Indirect costs include a portion of the costs for capitalized and non-capitalized equipment; space rental; telephone services; postage; personnel transfer costs; budget and program development; administrative and clerical support; training; safety management; public information, inquiries and reports; cartography and basic series mapping; aviation management; telecommunications; maintenance of equipment and tools; and systems design and implementation. The percentage figure is calculated annually by the NBC and provided to the field offices.

individual: a single human being, as distinguished from a group. For purposes of this manual it also means a married couple.

interagency agreement: a written document between the BLM and another Federal bureau or agency, State governmental agency, governing official, or governing board of a unit of local government, any agency of local government, or any organization with authority to commit itself; setting forth a policy covering respective or mutual responsibilities with regard to a ROW grant and how mutual goals and responsibilities will be carried out.

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interlocutory decision: a decision or ruling in the course of dealing with a case, but it is not the final decision. It usually seeks information as to why a condition exists, or similar request. The only penalty for not responding to an interlocutory decision is a final decision based on an incomplete file.

IPD-GDP: the Implicit Price Deflator-Gross Domestic Product, as published in the most recent edition of the Survey of Current Business of the Department of Commerce, Bureau of Economic Analysis. It is used to make annual or periodic adjustments to

tables such as the linear rent schedule.

-L-

LRAM: the Lands and Realty Authorization Module; an automated system used for billings and related activities and records.

land use plan: a plan that provides by tracts or areas for the use of the public lands. They are usually referred to as Resource Management Plans or Management Framework Plans.

Letter of Consent: the document issued by the BLM under Interagency Agreement AA 851- LA2-40, to the FHWA that clearly states the BLM's agreement to the appropriation of public land for Federal-aid highway purposes and the conditions under which the agreement is given. For this Manual series it is considered a "grant."

liability: the state of being legally obliged and responsible for an action.

LR2000: is a data base for land and mineral records of the BLM. It is used to retrieve individual data such as a case file serial page or to compile reports by case types or geographical location.

-M-

management overhead costs: Federal expenditures associated with the BLM's directorate, including all BLM State Directors and the entire Washington Office staff, except where a State Director or Washington Office staff member is required to perform work on a specific ROW case.

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master agreement: a written agreement that includes cost recovery procedures, providing for the BLM's expeditious handling of a customer's ROW needs, with or without an actual application having been previously filed.

MILS: the USGS Mineral Industry Location System database.

mitigation: the lessening of, usually adverse, impacts from an action through modification of the action, or taking other action either at the site of the adverse impact or a replacement action at another site.

monetary value of the rights and privileges sought: the objective value of the ROW or

what the ROW grant is worth in financial terms to the applicant.

monitoring: actions performed to ensure compliance with the terms, conditions, and stipulations of a grant. (1) For Monitoring Categories 1 through 4, the actions include inspection, construction, operation, maintenance, and termination of permanent or temporary facilities and protection and rehabilitation activities until the holder completes rehabilitation of the ROW and the BLM approves it; (2) For Monitoring Category 5 (Master Agreements), those actions agreed to in the Master Agreement; and (3) For Monitoring Category 6, those actions agreed to between the BLM and the applicant before the BLM issues the grant.

monitoring fee: reimbursement to the United States for the cost of monitoring the construction, operation, maintenance and termination of the facilities within the grant areas and protecting and rehabilitating the affected public lands. Except for Master Agreements, the BLM bases the monitoring category on the number of work hours necessary to monitor a grant.

-N-

name change: a change in the holder's identity that affects only the name of the individual or title of the corporation, company, association, partnership, etc.

negligence: failure to exercise the degree of care considered reasonable under the circumstances.

NEPA: the National Environmental Policy Act, 42 U.S.C. 43.21 et seq.

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Notice to Proceed: a written authorization by the AO that allows the holder to initiate actions under the grant. A notice to proceed applies only if specifically stipulated in the grant. A notice to proceed is usually used to allow a grant to be issued, while preventing the holder from starting surface disturbing activities before a plan of development is approved. The AO can issue separate notices to proceed if the project involves distinct work phases and/or locations. Each notice to proceed will specify the nature of work, location, and dates to be authorized.

-O-

oil or gas: oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from them.

on-line Payment Accounting Collection (OPAC): a Treasury subsystem that provides

electronic transfer of funds between Federal agencies.

-P-

Plan of Development (POD): a complete description of and design for the proposed project. It includes but is not limited to proposed plans, specifications, construction methods, schedules, restoration practices, and other information pertinent to the proposal; the plan becomes a part of the ROW grant. The plan can include sections for construction, maintenance, and termination. The content of the plan will vary with the complexity of the proposal.

pre-FLPMA law: any of the ROW laws repealed by FLPMA as to public lands or lands within the National Forests.

prescriptive uses/rights: usually relates to an easement over another's property. Under State law such an easement may be obtained through continuous adverse, open, and notorious use of the other's property.

processing fee: reimbursement to the United States for the cost of processing a ROW application and issuing the ROW grant. Except for Master Agreements, the BLM bases the processing category on the number of work hours necessary to issue a final decision on the application.

project: the transportation or other system that the ROW grant authorizes.

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project manager: a BLM employee having overall operational control in processing a ROW application or supervising a grant that is usually interstate in nature.

proponent: any individual, partnership, corporation, association, or other business entity or any Federal, State, or local governmental entity, including municipal corporations, that is interested in applying for a ROW grant.

public interest or benefit: factors that serve to promote the good of the public in general rather than the exclusive benefit of the applicant.

public lands (FLPMA): any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through the BLM without regard to how the United States acquired ownership except: (1) lands located on the Outer Continental Shelf, and (2) lands held for the benefit of Indians, Aleuts, and Eskimos.

public lands (other): the original lands acquired by the United States and open to

settlement or location. It may also include lands acquired by exchange where the exchange authority so directs.

-R-

REA: Rural Electrification Administration.

reasonable costs: include, but are not limited to, the costs of special studies; environmental impact statements; monitoring construction, operation, maintenance, and termination of any authorized facility; or other special activities.

reciprocal ROW: a road or similar access ROW grant issued by the BLM at the time the BLM receives a road or similar access ROW document from another grantor. The terms, conditions, width and length should be relatively equal.

related facilities: those structures, devices, improvements, and sites, located on public or Federal lands, which may or may not be connected or contiguous to the primary purpose of the ROW, the substantially continuous use of which is necessary for operation or maintenance, such as:

- (1) supporting structures;
- (2) airstrips;
- (3) roads;

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- (4) campsites;
- (5) pump, transformer, transmission or other stations, including associated heliports, structures, yards, and fences;
- (6) valves and other control devices;
- (7) surge and storage tanks;
- (8) bridges;
- (9) monitoring and communication devices and structures housing them;
- (10) terminals, including structures, yards, docks, fences, and storage tank facilities;
- (11) retaining walls, berms, dikes, ditches, cuts and fills; and
- (12) structures and areas for storing supplies and equipment.

release: the meaning found at 42 U.S.C. 9601(22) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

rent: a fee paid for the use and occupancy of Federal lands.

resource management plan: a plan that provides for the use and management of the public lands as required by Sec. 202 of FLPMA. It includes those land use plans

(Management Framework Plans) developed prior to the passage of FLPMA.

right-of-way (ROW): the public lands authorized to be used or occupied pursuant to a ROW grant.

RMA: the Rationally Metro Area Population Ranking as published in the most recent edition of the Rand McNally Commercial Atlas and Marketing Guide.

rule of reason: a standard used to differentiate reasonable and unreasonable actions or conditions.

RUS: Rural Utility Service.

-S-

site: a compact area, usually involving non-linear facilities such as a substation or compressor.

stay: a stop or delay in the effect of a decision.

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stipulation: a condition, requirement, or term specified in a grant.

strict liability: liability without the need to prove intent, negligence or fault, i.e., if damage occurs, the holder is liable as long as it can be shown that the damage was caused by the holder's facility, equipment or activity.

substantial deviation: a change in the authorized location or use that requires:  
(1) Construction or use outside the boundaries of the ROW; or (2) Any change from, or modification of, the authorized use.

suspension: either the immediate or prompt curtailing of the activities and privileges under grant for a period of time to protect the public health, safety or the environment or, because the holder has failed to comply with applicable laws or regulations or the terms, conditions, or stipulations of the grant.

-T-

tenant: an occupant who is paying a communication facility manager, facility owner, or other entity for occupying and using all or any part of a communication facility. A tenant operates communication equipment in the facility for profit by broadcasting to others or selling communication services. For purposes of calculating the amount of rent that the BLM charges, the term "tenant" does not include private mobile radio

or internal microwave use that is not being sold, or uses included in the category of “other communication uses.”

termination: ending a grant under one or more of these conditions: (1) the grant has expired under its own terms, (2) by operation of law, (3) the holder requests and the BLM consents to the termination in writing, or (4) the holder has failed to comply with applicable laws or regulations, or any terms and conditions of the grant.

terms and conditions: see “stipulation”.

third party: any person or entity other than the BLM, the applicant, or the holder of a ROW authorization.

tramway: a system for carrying passengers, logs, or other material using traveling carriages or cars suspended from an overhead cable or cables supported by a series of towers, hangers, tailhold anchors, guyline trees, etc.

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transportation and utility corridor: a parcel of land, with fixed limits or boundaries that is used as the location for one or more transportation or utility ROWs.

-U-

unauthorized use: the use, occupancy, or development of the public lands without authorization or using, occupying, and developing them in a way that is beyond the scope and terms and conditions of an authorization. It includes acts or omissions causing undue or unnecessary degradation to the occupied public lands.

USFS: the United States Forest Service.

-Z-

zone: one of eight geographic groupings used for linear ROW rent assessment purposes, covering all lands in the contiguous United States.