

**Carson City  
Request for Board Action**

**Date Submitted:** December 19, 2014

**Agenda Date Requested:** January 5, 2015  
**Time Requested:** 5 Minutes

**To:** Mayor and Supervisors  
**From:** Public Works

**Subject Title:** For Possible Action to approve Carson City's relinquishment of BLM right-of-way and temporary use permit, BLM Serial No. NV N006466. (*Hector Estrada*)

**Staff Summary:** This action will facilitate Carson City's relinquishment of the subject BLM granted right-of-way and permit before its expiration on July 30, 2016, and thereby relieve Carson City of its reporting and maintenance obligations under such grant and relieve Carson City of any responsibilities related to its interest in the subject property.

**Type of Action Requested:** (check one)

Resolution                       Ordinance  
 Formal Action/Motion     Other (Specify)

**Does This Action Require A Business Impact Statement:**  Yes  No

**Recommended Board Action:** I move that the Mayor be authorized to execute the subject "RELINQUISHMENT" document and, thereby, request BLM's approval of Carson City's "RELINQUISHMENT OF BLM RIGHT-OF-WAY AND TEMPORARY USE PERMIT, SERIAL NO. NV N-006466."

**Explanation for Recommended Board Action:** On July 31, 1986, the U.S. Department of the Interior's Bureau of Land Management (BLM) granted a right-of-way and temporary use permit, BLM No. NV N 006466, to Carson City. This grant was pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. § 1761 and was for the purposes of Carson City's Public Works Department's construction, operation, maintenance, and termination of a communication line and powerline on public lands described as the Mount Diablo Meridian, T. 16 N., R. 20 E., Sec. 32, NW1/4 NW1/4 NW1/4. This grant accommodated Carson City's buried portion of the powerline right-of-way 98 feet in length and 10 feet in width (.02 acre), the 90 feet long 25 feet wide overhead portion of the powerline right-of-way (.05 acre) and the (.03 acre) communication site. The subject right-of-way and permit, a copy of which is attached to the subject proffered "RELINQUISHMENT" document, will expire on July 30, 2016 unless earlier relinquished, abandoned, or terminated. Carson City no longer needs the subject right-of-way and permit and it would be financially beneficial for Carson City to relinquish same at the earliest opportunity; terminating Carson City's maintenance and reporting obligations and its responsibilities related to its interest in the subject property. Pursuant to Section 2(e) of the subject BLM "RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT," BLM insists on being provided with the City's request for "RELINQUISHMENT." BLM has indicated the subject "RELINQUISHMENT," upon BLM's approval, will effectively terminate Carson City's obligations and/or liabilities under the subject BLM "RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT."

**Applicable Statute, Code, Policy, Rule or Regulation:** 43 U.S.C. § 1761, Title V of Federal Land Policy and Management Act of October 21, 1976

**Fiscal Impact:** None

**Explanation of Impact:** N/A

**Funding Source:** N/A

**Alternatives:** Do nothing and allow the expiration to occur on July 30, 2016, during which time period Carson City's continued maintenance and reporting obligations would continue.

**Prepared By:** Joe Ward, Senior Deputy DA

**Reviewed By:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(Public Works Director)

*Luchoho Munano*

**Date:** 12/23/14

(City Manager)

*Joseph L. Ward Jr*

**Date:** 12/23/14

(District Attorney)

*Michael A. Reinhart*

**Date:** 12/23/14

(Finance Director)

**Board Action Taken:**

Motion: \_\_\_\_\_ 1) \_\_\_\_\_ Aye/Nay  
2) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Vote Recorded By)

UNITED STATES **BUR OF LAND MANAGEMENT**  
DEPARTMENT OF THE INTERIOR **CARSON CITY DIST OFFICE**  
BUREAU OF LAND MANAGEMENT  
JUL 22 11 24 AM '86

Issuing Office **Carson City District**  
**1535 Hot Springs Road, #300**  
**Carson City, NV 89701**

Serial Number

**N-6466**

**RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT**

1. A (right-of-way) (permit) is hereby granted pursuant to:

- a.  Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);
- b.  Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185);
- c.  Other (describe) \_\_\_\_\_

2. Nature of Interest:

a. By this instrument, the holder Carson City, Nevada receives a right to construct, operate, maintain, and terminate a communication site and powerline on public lands (or Federal land for MLA Rights-of-Way) described as follows:

**Mount Diablo Meridian**

**T. 16 N., R. 20 E.,  
sec. 32, NW $\frac{1}{4}$ NW $\frac{1}{2}$ NW $\frac{3}{4}$ .**

Record Posted	Date	By
MT Plat	12/15/86	WMLK
OG Plat		
USE Plat		
HI Plat	12/15/86	WMLK

b. The buried portion of the powerline right-of-way is 98 feet in length and 10 feet in width (.02 acre). The overhead portion of the powerline right-of-way is 90 feet in length and 25 feet in width (.05 acre). The communication site contains .03 acre.

~~b. The right-of-way or permit area granted herein is \_\_\_\_\_ feet wide, \_\_\_\_\_ feet long and contains \_\_\_\_\_ acres, more or less. If a site type facility, the facility contains \_\_\_\_\_ acres.~~

c. This instrument shall terminate on July 30, 2016, thirty years from its effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.

d. This instrument  may  may not be renewed. If renewed, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.

e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. Rental:

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. Terms and Conditions:

- a. This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations parts 2800 and 2880.
- b. ~~Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within \_\_\_\_\_ days or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.~~
- c. Each grant issued pursuant to the authority of paragraph (1)(a) for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The stipulations, plans, maps, or designs set forth in Exhibit(s) A and B, dated 6-12-86 and 7-3-85, respectively, attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.
- e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.
- f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant or permit.

*Tom Fettes*

(Signature of Holder)

Mayor Pro-Tem

(Title)

July 17, 1986

(Date)

*Norman L Murray*

(Signature of Authorized Officer)

District Manager

(Title)

JUL 31 1986

(Effective Date of Grant)

STANDARD STIPULATIONS

1. This grant is subject to all valid rights existing on the effective date of this grant.
  2. The right to grant additional rights-of-way or permits for compatible use on, over, under, or adjacent to the land involved in this grant is reserved to the Authorized Officer.
  3. The Holder shall conduct all activities associated with the construction, operation, and termination of the right-of-way within the authorized limits of the right-of-way.
  4. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the Holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the Authorized Officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery will be made by the Authorized Officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The Holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the Authorized Officer after consulting with the Holder.
  5. In case of change of address, the Holder shall immediately notify the Authorized Officer.
  6. Prior to abandonment of any portion of the facilities authorized by this grant, the Holder shall contact the Authorized Officer to arrange a joint inspection of the right-of-way. The inspection will be held to agree on an acceptable rehabilitation plan. The Authorized Officer must approve the plan in writing prior to the Holder commencing any abandonment and/or rehabilitation activities. The plan will address rehabilitation measures, such as recontouring, seeding, and mulching.
  7. Holder must display a permanent identification tag showing the Holder's address, telephone number and Bureau of Land Management right-of-way identification number on all structures authorized by this grant.
  8. Within the constraints of facility size, Holder shall provide space on a "first-come, first-served" basis to prospective users who agree to obtain the necessary licenses and permits and comply with the conditions of this grant. Such users need not apply for a separate right-of-way grant from the Bureau of Land Management. Holder will be responsible for the actions
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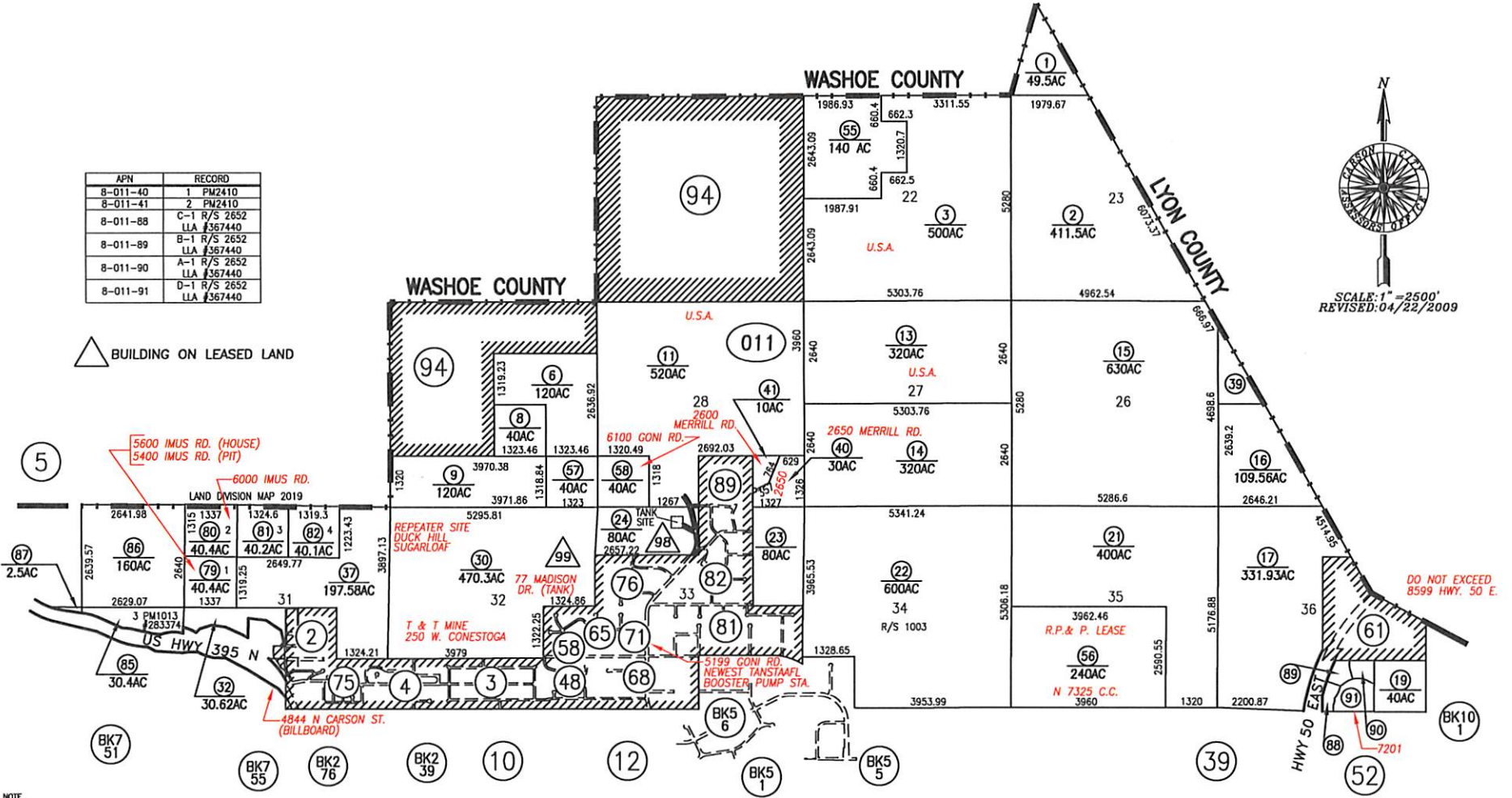
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of occupants of the facility. Charges for occupancy and services may be levied by the Holder provided such charges are uniform and apply to all users. Holder shall furnish information on occupants of the facility upon request of the Authorized Officer.

9. Holder shall construct, maintain, operate and/or modify structures and facilities as directed by the Authorized Officer to protect and minimize adverse effects upon raptors and other wildlife. Holder shall report any and all wildlife kills, including raptor electrocutions, discovered or reported on or near project facilities to the Authorized Officer.

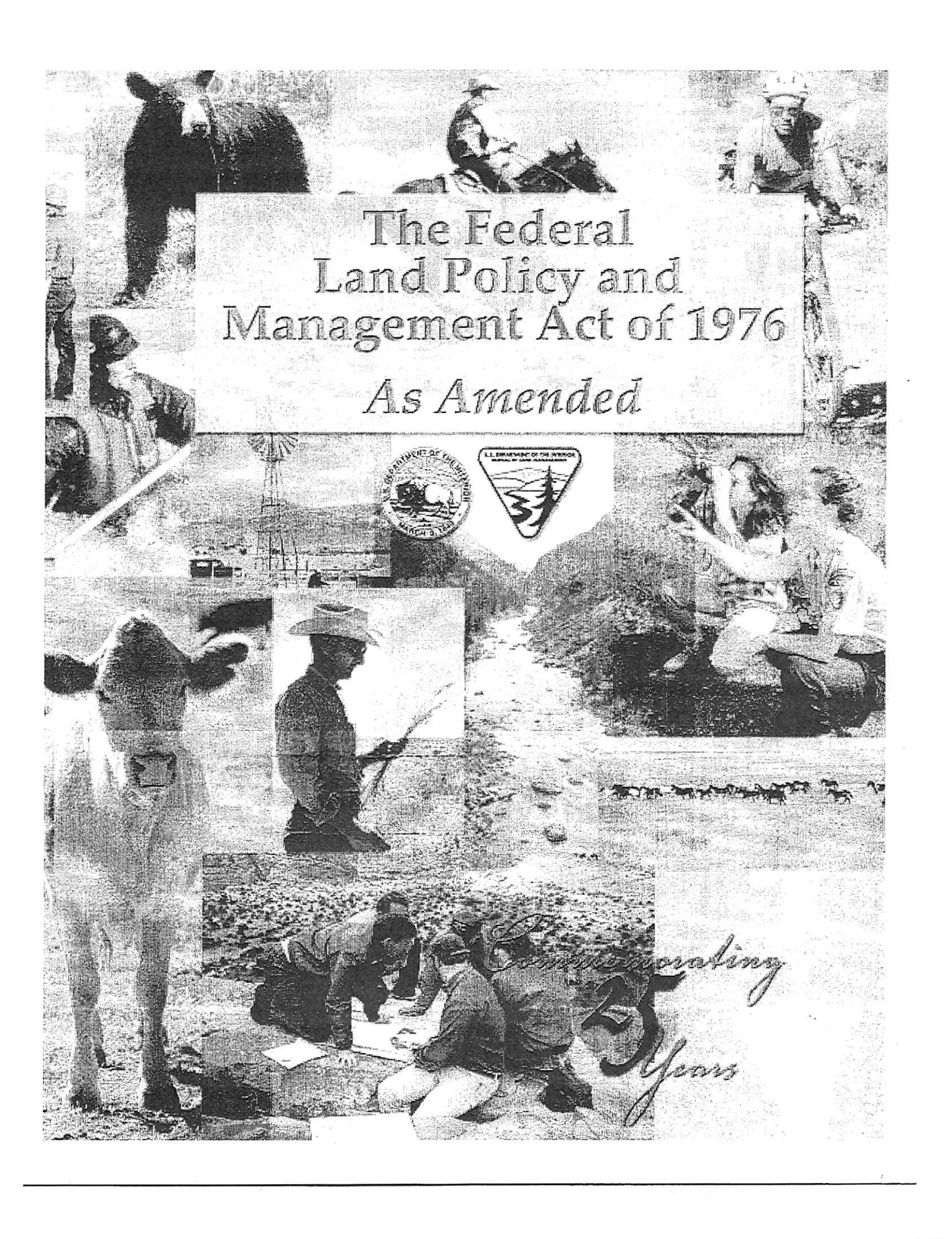
APN	RECORD
8-011-40	1 PM2410
8-011-41	2 PM2410
8-011-88	C-1 R/S 2652 LLA #367440
8-011-89	B-1 R/S 2652 LLA #367440
8-011-90	A-1 R/S 2652 LLA #367440
8-011-91	D-1 R/S 2652 LLA #367440

△ BUILDING ON LEASED LAND



NOTE:  
SOME PARCELS DELINEATED HEREON MAY NOT  
BE PRESENTED IN TRUE SIZE, SHAPE, OR LOCATION  
DUE TO DISCREPANCIES BETWEEN LOT LINES.  
CARSON CITY, NEVADA  
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ASSESSOR FOR ASSESSMENT AND ILLUSTRATIVE PURPOSES  
ONLY. IT DOES NOT REPRESENT A SURVEY. NO LIABILITY  
IS ASSUMED AS TO THE SUFFICIENCY OR ACCURACY OF THE  
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WWW.CARSON-CITY.NV.US





The Federal  
Land Policy and  
Management Act of 1976

*As Amended*



*Commemorating  
25  
Years*



*The Federal Land Policy and Management Act of 1976,  
as amended, is the Bureau of Land Management  
"organic act"  
that establishes the agency's multiple-use mandate  
to serve present and future generations.*

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**The Federal Land Policy and  
Management Act of 1976**  
*As Amended*



**Compiled by  
U.S. Department of the Interior  
Bureau of Land Management  
and  
Office of the Solicitor**

**Washington, D.C**

**October 2001**

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# FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

Public Law 94-579  
94th Congress

## An Act

To establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development, and enhancement of the public lands; and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled* [italics in original],

### Editor's Note

This version of FLPMA was created and updated to include all sections of the Act as originally passed by Congress in 1976; consequently, it is more inclusive and annotated than most. In the text, additions have been italicized and deletions have been removed. Editor's notes are in a different, smaller font, and are framed by brackets "[ ]."

This document was prepared by the Bureau of Land Management and the Office of the Solicitor. Great care was taken to ensure that all amendments were included correctly and with precision. Nevertheless, we recognize that this document still could contain errors. The user is encouraged to consult the official United States Code if there is any doubt about the accuracy of the information contained herein.

# TITLE V

## RIGHTS-OF-WAY

### AUTHORIZATION TO GRANT RIGHTS-OF-WAY

Sec. 501. [43 U.S.C. 1761] (a) The Secretary, with respect to the public lands (*including public lands, as defined in section 103(e) of this Act, which are reserved from entry pursuant to section 24 of the Federal Power Act (16 U.S.C. 818)*) [P.L. 102-486, 1992] and, the Secretary of Agriculture, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for—

(1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the *Federal Energy Regulatory Commission under the Federal Power Act, including part I thereof* (41 Stat. 1063, 16 U.S.C. 791a-825r) [P.L. 102-486, 1992];

(5) systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication;

(6) roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where

such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System; or

(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.

(b) (1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way.

(2) If the applicant is a partnership, corporation, association, or other business entity, the Secretary concerned, prior to granting a right-to-way pursuant to this title, shall require the applicant to disclose the identity of the participants in the entity, when he deems it necessary to a determination, in accordance with the provisions of this title, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way. Such disclosures shall include, where applicable: (A) the name and address of each partner; (B) the name and address of each share-holder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; and (C) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting

stock of that entity owned, directly or indirectly, by the affiliate.

(3) *The Secretary of Agriculture shall have the authority to administer all rights-of-way granted or issued under authority of previous Acts with respect to lands under the jurisdiction of the Secretary of Agriculture, including rights-of-way granted or issued pursuant to authority given to the Secretary of the Interior by such previous Acts.* [P.L. 99-545, 1986]

(c) (1) *Upon receipt of a written application pursuant to paragraph (2) of this subsection from an applicant meeting the requirements of this subsection, the Secretary of Agriculture shall issue a permanent easement, without a requirement for reimbursement, for a water system as described in subsection (a)(1) of this section, traversing Federal lands within the National Forest System ('National Forest Lands'), constructed and in operation or placed into operation prior to October 21, 1976, if—*

(A) *the traversed National Forest lands are in a State where the appropriation doctrine governs the ownership of water rights;*

(B) *at the time of submission of the application the water system is used solely for agricultural irrigation or livestock watering purposes;*

(C) *the use served by the water system is not located solely on Federal lands;*

(D) *the originally constructed facilities comprising such system have been in substantially continuous operation without abandonment;*

(E) *the applicant has a valid existing right, established under applicable State law, for water to be conveyed by the water system;*

(F) *a recordable survey and other information concerning the location and characteristics of the system as necessary for proper management of National Forest lands is provided to the Secretary of Agriculture by the applicant for the easement; and*

(G) *the applicant submits such application on or before December 31, 1996.*

(2) (A) *Nothing in this subsection shall be construed as affecting any grants made by any*

*previous Act. To the extent any such previous grant of right-of-way is a valid existing right, it shall remain in full force and effect unless an owner thereof notifies the Secretary of Agriculture that such owner elects to have a water system on such right-of-way governed by the provision of this subsection and submits a written application for issuance of an easement pursuant to this subsection, in which case upon the issuance of an easement pursuant to this subsection such previous grant shall be deemed to have been relinquished and shall terminate.*

(B) *Easements issued under the authority of this subsection shall be fully transferable with all existing conditions and without the imposition of fees or new conditions or stipulations at the time of transfer. The holder shall notify the Secretary of Agriculture within sixty days of any address change of the holder or change in ownership of the facilities.*

(C) *Easements issued under the authority of this subsection shall include all changes or modifications to the original facilities in existence as of October 21, 1976, the date of enactment of this Act.*

(D) *Any future extension or enlargement of facilities after October 21, 1976, shall require the issuance of a separate authorization, not authorized under this subsection.*

(3) (A) *Except as otherwise provided in this subsection, the Secretary of Agriculture may terminate or suspend an easement issued pursuant to this subsection in accordance with the procedural and other provisions of section 506 [43 U.S.C. 1766] of this Act. An easement issued pursuant to this subsection shall terminate if the water system for which such easement was issued is used for any purpose other than agricultural irrigation or livestock watering use. For purposes of subparagraph (D) of paragraph (1) of this subsection, non-use of a water system for agricultural irrigation or livestock watering purposes for any continuous five-year period shall constitute a rebuttable presumption of abandonment of the facilities comprising such system.*

(B) *Nothing in this subsection shall be deemed to be an assertion by the United States of any right*

*or claim with regard to the reservation, acquisition, or use of water. Nothing in this subsection shall be deemed to confer on the Secretary of Agriculture any power or authority to regulate or control in any manner the appropriation, diversion, or use of water for any purpose (nor to diminish any such power to authority of such Secretary under applicable law) or to require the conveyance or transfer to the United States of any right or claim to the appropriation, diversion, or use of water.*

*(C) Except as otherwise provided in this subsection, all rights-of-way issued pursuant to this subsection are subject to all conditions and requirements of this Act.*

*(D) In the event a right-of-way issued pursuant to this subsection is allowed to deteriorate to the point of threatening persons or property and the holder of the right-of-way, after consultation with the Secretary of Agriculture, refuses to perform the repair and maintenance necessary to remove the threat to persons or property, the Secretary shall have the right to undertake such repair and maintenance on the right-of-way and to assess the holder for the costs of such repair and maintenance, regardless of whether the Secretary had required the holder to furnish a bond or other security pursuant to subsection (i) of this section. [P.L. 99-545, 1986]*

*(d) With respect to any project or portion thereof that was licensed pursuant to, or granted an exemption from, part I of the Federal Power Act [16 U.S.C. 791a et seq.] which is located on lands subject to a reservation under section 24 of the Federal Power Act [16 U.S.C. 818] and which did not receive a permit, right-of-way or other approval under this section prior to enactment of this subsection, no such permit, right-of-way, or other approval shall be required for continued operation, including continued operation pursuant to section 15 of the Federal Power Act [16 U.S.C. 808], of such project unless the Commission determines that such project involves the use of any additional public lands or National Forest lands not subject to such reservation. [P.L. 102-486, 1992]*

## COST-SHARE ROAD AUTHORIZATION

Sec. 502. [43 U.S.C. 1762] (a) The Secretary, with respect to the public lands, is authorized to provide for the acquisition, construction, and maintenance of roads within and near the public lands in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management of such lands for utilization of the other resources thereof.

Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of timber and other products from the public lands, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agencies or persons, or (4) by a combination of these methods: *Provided*, That, where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of timber and other products from public lands shall not, except when the provisions of the second proviso of this subsection apply, be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate: *Provided further*, That when timber is offered with the condition that the purchaser thereof will build a road or roads in accordance with standards specified in the offer, the purchaser of the timber will be responsible for paying the full costs of construction of such roads.

(b) Copies of all instruments affecting permanent interests in land executed pursuant to this section shall be recorded in each county where the lands are located.

(c) The Secretary may require the user or users of a road, trail, land, or other facility administered by him through the Bureau, including purchasers of Government timber and other products, to maintain such facilities in a satisfactory condition commensurate with the particular use requirements



of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a facility to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited:

*Provided*, That deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates: *And provided further*, That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded.

(d) Whenever the agreement under which the United States has obtained for the use of, or in connection with, the public lands a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor.

## RIGHT-OF-WAY CORRIDORS

Sec. 503. [43 U.S.C. 1763] In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary concerned the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way granted pursuant to this Act. In designating right-of-way corridors and in determining whether to require that rights-of-way be confined to them, the Secretary concerned shall take into consideration

national and State land use policies, environmental quality, economic efficiency, national security, safety, and good engineering and technological practices. The Secretary concerned shall issue regulations containing the criteria and procedures he will use in designating such corridors. Any existing transportation and utility corridors may be designated as transportation and utility corridors pursuant to this subsection without further review.

## GENERAL PROVISIONS

Sec. 504. [43 U.S.C. 1764] (a) The Secretary concerned shall specify the boundaries of each right-of-way as precisely as is practical. Each right-of-way shall be limited to the ground which the Secretary concerned determines (1) will be occupied by facilities which constitute the project for which the right-of-way is granted, issued, or renewed, (2) to be necessary for the operation or maintenance of the project, (3) to be necessary to protect the public safety, and (4) will do no unnecessary damage to the environment. The Secretary concerned may authorize the temporary use of such additional lands as he determines to be reasonably necessary for the construction, operation, maintenance, or termination of the project or a portion thereof, or for access thereto.

(b) Each right-of-way or permit granted, issued, or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project. In determining the duration of a right-of-way the Secretary concerned shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. The right-of-way shall specify whether it is or is not renewable and the terms and conditions applicable to the renewal.

(c) Rights-of-way shall be granted, issued, or renewed pursuant to this title under such regulations or stipulations, consistent with the provisions of this title or any other applicable law, and shall also be subject to such terms and conditions as the Secretary concerned may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination.

(d) The Secretary concerned prior to granting or issuing a right-of-way pursuant to this title for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way which shall comply with stipulations or with regulations issued by that Secretary, including the terms and conditions required under section 505 of this Act.

(e) The Secretary concerned shall issue regulations with respect to the terms and conditions that will be included in rights-of-way pursuant to section 505 of this title. Such regulations shall be regularly revised as needed. Such regulations shall be applicable to every right-of-way granted or issued pursuant to this title and to any subsequent renewal thereof, and may be applicable to rights-of-way not granted or issued, but renewed pursuant to this title.

(f) Mineral and vegetative materials, including timber, within or without a right-of-way, may be used or disposed of in connection with construction or other purposes only if authorization to remove or use such materials has been obtained pursuant to applicable laws or *for emergency repair work necessary for those rights-of-way authorized under section 501(c) of this Act.* [P.L. 99-545, 1986]

(g) *The holder of a right-of-way shall pay in advance the fair market value thereof, as determined by the Secretary granting, issuing, or renewing such right-of-way. The Secretary concerned may require either annual payment or a payment covering more than one year at a time except that private individuals may make at their option either annual payments or payments covering more than one year if the annual fee is greater than one hundred dollars. The Secretary concerned may waive rentals where a right-of-way is granted, issued or renewed in consideration of a right-of-way conveyed to the United States in connection with a cooperative cost share program between the United States and the holder.* [P.L. 99-545, 1986] The Secretary concerned may, by regulation or prior to promulgation of such regulations, as a condition of a right-of-way, require an applicant for or holder of a right-of-way to reimburse

the United States for all reasonable administrative and other costs incurred in processing an application for such right-of-way and in inspection and monitoring of construction, operation, and termination of the facility pursuant to such right-of-way: *Provided, however,* That the Secretary concerned need not secure reimbursement in any situation where there is in existence a cooperative cost share right-of-way program between the United States and the holder of a right-of-way. Rights-of-way may be granted, issued, or renewed to a Federal, State, or local government or any agency or instrumentality thereof, to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profit making corporations or business enterprises, or to a holder where he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned, or to a holder in connection with the authorized use or occupancy of Federal land for which the United States is already receiving compensation for such lesser charge, including free use as the Secretary concerned finds equitable and in the public interest. Such rights-of-way issued at less than fair market value are not assignable except with the approval of the Secretary issuing the right-of-way. The moneys received for reimbursement of reasonable costs shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended. *Rights-of-way shall be granted, issued, or renewed, without rental fees, for electric or telephone facilities, eligible for financing pursuant to the Rural Electrification Act of 1936, as amended [7 U.S.C. 901 et seq.], determined without regard to any application requirement under that Act,* [P.L. 104-333, 1996] *or any extensions from such facilities: Provided, That nothing in this sentence shall be construed to affect the authority of the Secretary granting, issuing, or renewing the right-of-way to require reimbursement of reasonable administrative and other costs pursuant to the second sentence of this subsection.* [P.L. 98-300, 1984]

[43 U.S.C. 1764 Note: effective date shall apply with respect to rights-of-way leases held on or after the date of enactment of this Act. [P.L. 104-333, 1996]]

(h) (1) The Secretary concerned shall promulgate regulations specifying the extent to which holders of rights-of-way under this title shall be liable to the United States for damage or injury incurred by the United States caused by the use and occupancy of the rights-of-way. The regulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liabilities, damages, or claims caused by their use and occupancy of the rights-of-way.

(2) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(i) Where he deems it appropriate, the Secretary concerned may require a holder of a right-of-way to furnish a bond, or other security, satisfactory to him to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or by any rule or regulation of the Secretary concerned.

(j) The Secretary concerned shall grant, issue, or renew a right-of-way under this title only when he is satisfied that the applicant has the technical and financial capability to construct the project for which the right-of-way is requested, and in accord with the requirements of this title.

## TERMS AND CONDITIONS

SEC. 505. [43 U.S.C. 1765] Each right-of-way shall contain—

(a) terms and conditions which will (i) carry out the purposes of this Act and rules and regulations issued thereunder; (ii) minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment; (iii) require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law; and (iv) require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of or for rights-of-way for similar purposes if those

standards are more stringent than applicable Federal standards; and

(b) such terms and conditions as the Secretary concerned deems necessary to (i) protect Federal property and economic interests; (ii) manage efficiently the lands which are subject to the right-of-way or adjacent thereto and protect the other lawful users of the lands adjacent to or traversed by such right-of-way; (iii) protect lives and property; (iv) protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; (v) require location of the right-of-way along a route that will cause least damage to the environment, taking into consideration feasibility and other relevant factors; and (vi) otherwise protect the public interest in the lands traversed by the right-of-way or adjacent thereto.

## SUSPENSION OR TERMINATION OF RIGHTS-OF-WAY

Sec. 506. [43 U.S.C. 1766] Abandonment of a right-of-way or noncompliance with any provision of this title, condition of the right-of-way, or applicable rule or regulation of the Secretary concerned may be grounds for suspension or termination of the right-of-way if, after due notice to the holder of the right-of-way, and with respect to easements, an appropriate administrative proceeding pursuant to section 554 of title 5 of the United States Code, the Secretary concerned determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time. If the Secretary concerned determines that an immediate temporary suspension of activities within a right-of-way for violation of its terms and conditions is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding. Prior to commencing any proceeding to suspend or terminate a right-of-way the Secretary concerned shall give written notice to the holder of the grounds for

such action and shall give the holder a reasonable time to resume use of the right-of-way or to comply with this title, condition, rule, or regulation as the case may be. Failure of the holder of the right-of-way to use the right-of-way for the purpose for which it was granted, issued, or renewed, for any continuous five-year period, shall constitute a rebuttable presumption of abandonment of the right-of-way, except that where the failure of the holder to use the right-of-way for the purpose for which it was granted, issued, or renewed for any continuous five-year period is due to circumstances not within the holder's control, the Secretary concerned is not required to commence proceedings to suspend or terminate the right-of-way.

### **RIGHTS-OF-WAY FOR FEDERAL AGENCIES**

Sec. 507. [43 U.S.C. 1767] (a) The Secretary concerned may provide under applicable provisions of this title for the use of any department or agency of the United States a right-of-way over, upon, under or through the land administered by him, subject to such terms and conditions as he may impose.

(b) Where a right-of-way has been reserved for the use of any department or agency of the United States, the Secretary shall take no action to terminate, or otherwise limit, that use without the consent of the head of such department or agency.

### **CONVEYANCE OF LANDS**

Sec. 508. [43 U.S.C. 1768] If under applicable law the Secretary concerned decides to transfer out of Federal ownership any lands covered in whole or in part by a right-of-way, including a right-of-way granted under the Act of November 16, 1973 (87 Stat. 576; 30 U.S.C. 185), the lands may be conveyed subject to the right-of-way; however, if the Secretary concerned determines that retention of Federal control over the right-of-way is necessary to assure that the purposes of this title will be carried out, the terms and conditions of the right-of-way complied with, or the lands protected, he shall (a) reserve to the United States that portion of the lands which lies within the boundaries of the right-

of-way, or (b) convey the lands, including that portion within the boundaries of the right-of-way, subject to the right-of-way and reserving to the United States the right to enforce all or any of the terms and conditions of the right-of-way, including the right to renew it or extend it upon its termination and to collect rents.

### **EXISTING RIGHTS-OF-WAY**

Sec. 509. [43 U.S.C. 1769] (a) Nothing in this title shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title.

(b) When the Secretary concerned issues a right-of-way under this title for a railroad and appurtenant communication facilities in connection with a realignment of a railroad on lands under his jurisdiction by virtue of a right-of-way granted by the United States, he may, when he considers it to be in the public interest and the lands involved are not within an incorporated community and are of approximately equal value, notwithstanding the provisions of this title, provide in the new right-of-way the same terms and conditions as applied to the portion of the existing right-of-way relinquished to the United States with respect to the payment of annual rental, duration of the right-of-way, and the nature of the interest in lands granted. The Secretary concerned or his delegate shall take final action upon all applications for the grant, issue, or renewal of rights-of-way under subsection (b) of this section no later than six months after receipt from the applicant of all information required from the applicant by this title.

### **EFFECT ON OTHER LAWS**

Sec. 510. [43 U.S.C. 1770] (a) Effective on and after the date of approval of this Act, no right-of-way for the purposes listed in this title shall be granted, issued, or renewed over, upon, under, or through such lands except under and subject to the provisions, limitations, and conditions of this title:

*Provided*, That nothing in this title shall be construed as affecting or modifying the provisions of the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532–538) and in the event of conflict with, or inconsistency between, this title and the Act of October 13, 1964, the latter shall prevail: *Provided further*, That nothing in this Act should be construed as making it mandatory that, with respect to forest roads, the Secretary of Agriculture limit rights-of-way grants or their term of years or require disclosure pursuant to Section 501 (b) or impose any other condition contemplated by this Act that is contrary to present practices of that Secretary under the Act of October 13, 1964. Any pending application for a right-of-way under any other law on the effective date of this section shall be considered as an application under this title. The Secretary concerned may require the applicant to submit any additional information he deems necessary to comply with the requirements of this title.

(b) Nothing in this title shall be construed to preclude the use of lands covered by this title for highway purposes pursuant to sections 107 and 317 of title 23 of the United States Code.

(c) (1) Nothing in this title shall be construed as exempting any holder of a right-of-way issued under this title from any provision of the antitrust laws of the United States.

(2) For the purposes of this subsection, the term “antitrust laws” includes the Act of July 2, 1890 (26 Stat. 15 U.S.C. 1 et seq.); the Act of October 15, 1914 (38 Stat. 730, 15 U.S.C. 12 et seq.); the Federal Trade Commission Act (38 Stat. 717; 15 U.S.C. 41 et seq.); and sections 73 and 74 of the Act of August 27, 1894. [15 U.S.C. 8, 9]

## COORDINATION OF APPLICATIONS

Sec. 511. [43 U.S.C. 1771] Applicants before Federal departments and agencies other than the Department of the Interior or Agriculture seeking a license, certificate, or other authority for a project which involve a right-of-way over, upon, under, or through public land or National Forest System lands must simultaneously apply to the Secretary concerned for the appropriate authority to use public lands or National Forest System lands and submit to the Secretary concerned all information furnished to the other Federal department or agency.