

Bureau of Land Management, Interior

§ 2800.0-5

§ 2800.0-2 Objectives.

It is the objective of the Secretary of the Interior to grant rights-of-way and temporary use permits, covered by the regulations in this part, to any qualified individual, business entity, or governmental entity and to regulate, control and direct the use of said rights-of-way on public land so as to:

(a) Protect the natural resources associated with the public lands and adjacent private or other lands administered by a government agency.

(b) Prevent unnecessary or undue environmental damage to the lands and resources.

(c) Promote the utilization of rights-of-way in common with respect to engineering and technological compatibility, national security and land use plans.

(d) Coordinate, to the fullest extent possible, all actions taken pursuant to this part with State and local governments, interested individuals and appropriate quasi-public entities.

§ 2800.0-3 Authority.

Sections 303, 310, and 501-511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733, 1761-1771) authorize the Secretary of the Interior to issue regulations providing for the use, occupancy, and development of the public lands through permits, easements, and rights-of-way.

[54 FR 25854, June 20, 1989]

§ 2800.0-5 Definitions.

As used in this part, the term:

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

(b) *Secretary* means the Secretary of the Interior.

(c) *Authorized officer* means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

(d) *Public lands* means any lands or interest in land owned by the United States and administered by the Secretary through the Bureau of Land Management, 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.

(e) *Applicant* means any qualified individual, partnership, corporation, association or other business entity, and any Federal, State or local governmental entity including municipal corporations which applies for a right-of-way grant or a temporary use permit.

(f) *Holder* means any applicant who has received a right-of-way grant or temporary use permit.

(g) *Right-of-way* means the public lands authorized to be used or occupied pursuant to a right-of-way grant.

(h) *Right-of-way grant* means an instrument issued pursuant to title V of the act, or issued on or before October 21, 1976, pursuant to then existing statutory authority, authorizing the use of a right-of-way over, upon, under or through public lands for construction, operation, maintenance and termination of a project.

(i) *Temporary use permit* means a revocable non-possessory, non-exclusive privilege, authorizing temporary use of public lands in connection with construction, operation, maintenance, or termination of a project.

(j) *Facility* means an improvement constructed or to be constructed or used within a right-of-way pursuant to a right-of-way grant. For purposes of communication site rights-of-way, facility means the building, tower, and/or other related incidental improvements authorized under terms of the right-of-way grant.

(k) *Project* means the transportation or other system for which the right-of-way is authorized.

(l) *Designated right-of-way corridor* means a parcel of land either linear or areal in character that has been identified by law, by Secretarial Order, through the land use planning process or by other management decision as being a preferred location for existing and future right-of-way grants and suitable to accommodate more than 1 type of right-of-way or 1 or more rights-of-way which are similar, identical or compatible; and

(m) *Casual use* means activities that involve practices which do not ordinarily cause any appreciable disturbance or damage to the public lands, resources or improvements and, therefore, do not require a right-of-way grant or temporary use permit under this title.

(n) *Transportation and utility corridor* means a parcel of land, without fixed limits or boundaries, that is being used as the location for 1 or more transportation or utility right-of-way.

(o) *Actual costs* means the financial measure of resources expended or used by the Bureau of Land Management in processing a right-of-way application or monitoring the construction, operation and termination of a facility authorized by a grant or permit. *Actual costs* includes both direct and indirect costs, exclusive of management overhead.

(p) *Monetary value of the rights and privileges sought* means the objective value of the right-of-way or permit or what the right-of-way grant or temporary use permit is worth in financial terms to the applicant.

(q) *Cost incurred for the benefit of the general public interest* (public benefit) means funds expended by the United States in connection with the processing of an application for studies and data collection determined to have value or utility to the United States or the general public separate and apart from application processing.

(r) *Public service provided* means tangible improvements, such as roads, trails, recreation facilities, etc., with significant public value that are expected in connection with the construction and operation of the project for which a right-of-way grant is sought.

(s) *Efficiency to the Government processing* means the ability of the United States to process an application with a minimum of waste, expense and effort.

(t) *Management overhead costs* means costs associated with the Bureau directorate, including all State Directors and the entire Washington Office staff, except where a member of such staffs is required to perform work on a specific right-of-way or temporary use permit case.

(u) *Trespass* means any use, occupancy or development of the public lands or their resources without authorization to do so from the United States where authorization is required, or which exceeds such authorization or which causes unnecessary or undue degradation of the land or resources.

(v) *Willful trespass* means the voluntary or conscious trespass as defined at subpart 2801 of this title. The term does not include an act made by mistake or inadvertence. The term includes actions taken with criminal or malicious intent. A consistent pattern of trespass may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of mistake or inadvertence. Conduct which is otherwise regarded as being knowing or willful does not become innocent through the belief that the conduct is reasonable or legal.

(w) *Nonwillful trespass* means a trespass, as defined at §2801.3(a) of this title, committed by mistake or inadvertence.

(x) *Unnecessary or undue degradation* means surface disturbance greater than that which would normally result when the same or a similar activity is being accomplished by a prudent person in a usual, customary, and proficient manner that takes into consideration the effects of the activity on other resources and land uses, including those resources and uses outside the area of activity. This disturbance may be either nonwillful or willful as described in §2800.0-5(v) through (w), depending upon the *circumstances*.

(y) *Written demand* means a request in writing for payment and/or rehabilitation in the form of a billing delivered by certified mail, return receipt requested or personally served.

(z) *Road use, amortization and maintenance charges* means the fees charged for commercial use of a road owned or controlled by the Bureau of Land Management. These fees normally include use fees, amortization fees and maintenance fees.

(aa) *Base rent* means the amount required to be paid by the holder of a right-of-way on public lands for the communication use with the highest assigned schedule rent in the facility,