REFERENCE MANUAL 53B

RIGHTS-OF-WAY

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RM53B

Note:

This reference manual (Reference Manual #53B) supersedes and replaces Appendix 5 of Reference Manual #53. The rest of Reference Manual #53 is still in effect. This manual includes background, processes, and guidance regarding issuance and management of right-of-way permits and other rights-of-way by the National Park Service. It should not be referred to when processing or managing other types of National Park Service special use permits (SUPs), such a First Amendment permits, grazing, etc.

If you are looking for general guidance that applies to all SUPs, including ROW permits, please use Reference Manual #53. However, if there is a conflict between the information in Reference Manual #53 and this manual, Reference Manual #53B, and you are working on a right-of-way matter, then follow the guidance in Reference Manual #53B.

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REFERENCE MANUAL 53B
RIGHTS-OF-WAY

A Right-of-Way Permit (ROW permit) from the National Park Service (NPS) is a permit issued by the NPS to a third party to pass over, under, or through an NPS-owned or controlled area, is discretionary and revocable, and does not convey or imply any interest in the land. NPS ROW permits may be issued to authorize operation and maintenance of most common utilities such as fiber, water, and power lines, as well as cellular antennas and associated equipment such as cell towers. Where authorized by unit-specific legislation, or where serving NPS or NPS concession facilities exclusively, these utilities can include petroleum product pipelines.

Unlike a deeded easement or fee simple ownership, a ROW permit does not convey or imply any interest in the land. In addition, a ROW permit may only be issued in accordance with applicable legal authority and subject to stringent permit terms and conditions to protect park resources and values ("NPS unit" and "park" are used interchangeably throughout this Reference Manual). When making decisions regarding issuance of ROW permits it is important to be mindful of all applicable authorities, including the mission of the National Park Service as stated in the NPS Organic Act.

ROW permits are a type of Special Park Use, therefore the overall standards for issuance of Special Park Use permits in NPS units also apply to ROW permits. The most relevant sections of Reference Manual 53 are referenced throughout this Reference Manual, highlighting the overlapping procedures. However, since ROW permits have specific statutory authority, the procedures described in this Reference Manual apply to ROW permits exclusively.

I. LEGAL AUTHORITY

There must be a specific legal authority allowing the type of use for which a ROW permit is requested. If there is no authority to permit the requested use, the park cannot issue a ROW permit. Park staff should work with their Regional ROW Coordinator to discuss other options that may be available.

A. Statutes

There are two general authorities for the NPS to grant ROW permits across NPS-managed areas; these apply to most NPS units unless there is park-specific legislation. Both are codified at 54 U.S.C. § 100902. 54 U.S.C. § 100902(a) authorizes ROW permits for: electrical plants, poles, and lines for the generation and distribution of electrical power;

telephone and telegraph purposes; and canals, ditches, pipes and pipe lines, flumes, tunnels, or other water conduits and water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses. 54 U.S.C. § 100902(b) authorizes ROW permits for: electrical poles and lines for the transmission and distribution of electrical power; poles and lines for communication purposes; radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities. The utilities mentioned in 54 U.S.C. § 100902(a) and (b) are the only uses for which the NPS has general authority to issue ROW permits, and only when allowing such uses is "not incompatible with the public interest."

In addition, NPS unit-specific legislation may authorize a specific unit to issue ROW permits for additional uses in that unit or modify the general authority in some way. Therefore, the park-specific authority must always be examined as well. Similarly, there are a few Alaska-specific authorities. For example, authority for permitting access to inholdings in Alaska park units is located at 16 U.S.C. § 3170(b) (ANILCA 1110(b)).

Authorities for roads in units of the National Park System and utilities providing service in a unit or used for its administration and protection are found at 54 U.S.C. §§ 100901 and 101511. These must comply with the same mandates for non-impairment of values and purposes as other park projects. These projects do not need a ROW permit.

Concessions-owned equipment generally does not need a ROW permit. However, utilities provided to a concession operation generally do require ROW permits. For example, if a power company installs a new power line to serve a lodge, the power company should obtain a ROW permit from the NPS.

i. Non-NPS Roads

There is no general authority for new, non-NPS roads in units of the National Park System, although some parks have unit-specific legislation authorizing permitting certain roads. Congress enacted laws that allow NPS lands to be used for highway purposes in certain limited situations using the authority of the Federal Highway Administration (FHWA). The laws are:

- 23 U.S.C. § 107(d) applies to lands needed for the Interstate Highway System.
- 23 U.S.C. § 317 governs with all non-interstate Federal-Aid highway projects (non-NPS roads) under this title.

- 23 U.S.C. § 138, "Preservation of Parklands," applies to both sections. Section 138 requires that these lands may be used only if FHWA determines that there is no feasible and prudent alternative, and such program or project includes all possible planning to minimize harm. (This is generally referred to as "section 4(f)" because it is substantially the same as 49 U.S.C. § 303, originally enacted as Section 4(f) of the DOT Act of 1966, Pub. L. No. 89-670, 80 Stat. 934).

See Director's Order #87-D for policy and procedures for non-NPS roads in NPS units. Also see 36 CFR Part 14, Subpart D when working with the FHWA authorities from Title 23.

Additionally, 40 U.S.C. § 1304(b) authorizes the widening of certain existing public roads in NPS units. The request must come from a state or political subdivision of the state (such as a county or Department of Transportation), and the project cannot be eligible for transfer under 23 U.S.C. The request for the road widening should be evaluated for a benefit to the park, park resources and park visitors, as well as to the community at large and public health and safety. The required compliance[1] must be completed before a decision is made. Permission for road projects approved under 40 U.S.C. § 1304(b) should be given through an easement and drafted in coordination with the regional Land Resources Program Center. The easement should allow the use of the land for highway improvements only; all other uses of the land (i.e., public utilities) would still need NPS approval through a separate ROW permit. The deed must contain a clause where the easement would revert to NPS ownership if the land ceased to be needed for highway purposes.

Parks should consult with the regional Lands office if a question comes up about whether a road has a valid authorizing document or not or if the NPS can grant an easement. The Lands office can assist with research and work with the park to determine which options are available.

ii. Petroleum Product Pipelines not Serving Parks

There is no general NPS authority to permit petroleum product pipelines (or "pipelines") in NPS units, although some NPS units have unit-specific legislation authorizing permitting of some of this type of infrastructure.

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1. Compliance includes NEPA, NHPA section 106, Endangered Species Act, and any other compliance required for this project.

The Mineral Leasing Act, 30 U.S.C. § 185, is the primary authority for such pipelines on other federal lands. But per 30 U.S.C. § 185(b), "lands in the National Park System" are specifically **excluded** from that authorization. Therefore, the Mineral Leasing Act does not authorize ROW permits for petroleum product pipelines on NPS lands. Nor does any other general authority allow such pipelines on NPS lands. However, individual parks may have park-specific legal authority to allow rights-of-way for various utilities, including petroleum product pipelines. These park-specific authorities as passed by Congress may direct a park to consider issuing a ROW permit. Parks should consult with the regional ROW Coordinator if a request for a ROW permit for a petroleum product pipeline is received. If park-specific legal authority for petroleum product pipelines cannot be found, the park cannot issue a ROW permit. Park staff should work with their Regional ROW Coordinator to discuss other options that may be available.

However, petroleum product pipelines do exist on park lands. Many pipelines were installed on privately owned land before acquisition by the federal government. Superintendents should know if pipelines exist in the park and where they are located so the pipelines can be monitored for possible problems. Should a petroleum product pipeline exist in your park, you need to confirm the authorization for the pipeline (deeded easement or park specific legislation and corresponding permit). The pipeline company should be able to provide their authorizing document. In addition, your regional Lands office may have this documentation on hand or be able to access it easily. If the company cannot provide documentation proving their authorization for the pipeline to exist on park land, contact the regional ROW Coordinator and the Office of the Solicitor for advice.

In NPS units containing land that was originally managed by the Bureau of Land Management (BLM) or another agency, the original petroleum product pipeline authorization may be a grant, lease, or permit from that agency. If this is the case, contact your regional ROW Coordinator for further guidance.

The Pipeline Safety Improvement Act of 2002 requires that all interstate petroleum product pipelines be inspected on a regular basis and sets time requirements for replacement and repair of damaged pipelines. Most inspections can be completed by the pipeline owner through an internal inspection, but some inspections will need to be accomplished by visual inspection, necessitating digging up sections of the pipeline. The timeframes for repair and replacement may be very short (i.e., 30 days), so if a pipeline exists in your park you need to be prepared. Parks should stay in contact with pipeline owners to ensure that the park is informed about planned maintenance and repairs and alerted to problems with the pipeline.

iii. Petroleum Product Pipelines Serving the NPS

Some park facilities use natural gas to fuel heating systems and other utilities. The installation, operation, and maintenance of the service lines to serve *exclusively* NPS facilities is allowed. However, the pipeline may not be used or extended to serve non-NPS facilities and does not convey any interest in NPS lands to the gas utility. The pipeline installation and operation will be subject to conditions that protect park resources and values.

B. Regulations

NPS general regulations regarding ROW permits are located at 36 CFR Part 14. Additional details and guidance for the process are described in this Reference Manual.

Regulations for National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) compliance are located at 40 CFR Part 1500 and 36 CFR Part 61 respectively. Alaska-specific regulations on ROWs and NEPA compliance cost recovery are located at 43 CFR Part 36 and Subpart 2808. For more details on NEPA and NHPA compliance, see Director's Orders #12 and #28.

C. Policies

NPS policy for rights-of-way is found in *Management Policies 2006* section 8.6.4. Other sections may also be applicable, including section 8.2. Further NPS policies are located in Director's Order #53.

NPS Management Policies (2006) and Director's Order 53 require that parks evaluate whether there is a "practicable alternative" to the use of NPS lands. This question must be evaluated for every new application and will be answered on a case by case basis. Park staff should consult with their Regional ROW Coordinator and, as may be necessary, the Office of the Solicitor.

Parks should review the latest NPS policies and guidance documents for permit requirements. NPS policy may guide the way that statutes and regulations are implemented. As NPS employees, we are required to know and follow NPS policies. For example, 54 U.S.C. § 100902(b) authorizes the NPS to grant rights-of-way for up to 50 years. However, under NPS policy, a Regional Director may only sign a ROW permit for a term of up to 10 years. Any ROW permit with a longer term must be signed by the Director. Always review NPS *Management Policies 2006*, section 8.6.4, and the current Director's Order #53 to ensure compliance with policies when reviewing a ROW permit application.

Generally and per NPS policy, and where and when possible, all new utility lines in parks will be placed in underground conduit. When considering requiring the undergrounding of utility lines, the economic factors involved with undergrounding the utility and installing

conduit must be weighed. In some cases, there are certain terrains that make undergrounding difficult or impossible. Whenever possible, underground utility lines should be installed by directional boring rather than trenching. For especially long lines or other factors that would make directional boring impractical, the superintendent may allow trenching to occur to avoid the installation of new overhead lines. Utilities placed underground generally require a narrower right-of-way than aboveground utilities. All parks with existing overhead utility lines should attempt to have those lines placed underground when the opportunity occurs. When these underground lines are no longer needed, it is frequently better to leave the facilities in place rather than remove them. Parks should consult with their regional ROW Coordinator if they have questions.

It is also the policy of the NPS to require co-location of utilities within the same right-of-way to the greatest extent possible. For example, it may be possible to place cable television lines in a right-of-way already occupied by a telephone utility. With the permission of the telephone company, it may be possible for the cable television company to co-locate their lines on the existing poles. Additionally, wireless communication facilities may be co-located on existing structures or within an already permitted wireless site. In either case, ROW permits should not be issued for a new use in an existing right-of-way without consultation with and approval by the existing utilities. There are cases where the installation of new or additional uses is not technologically possible or needs to be accomplished in a certain manner to avoid technical interference or conflict between the uses. Nonetheless, whenever possible and visually acceptable, all utilities should share a common corridor and be combined with transportation corridors.

NPS ROW permits do not grant exclusive use of park lands. A condition to this effect is in the ROW permit template and should not be removed. The ROW permit issued by the park to a utility authorizes the permittee to operate and maintain a specific utility in a specific location. The park retains the right to approve additional, compatible uses within or adjacent to the right-of-way, as long as the new use will not interfere with the functionality of the first utility. The area remains open to visitor use as long as it can be done safely (i.e., a trail runs under an overhead transmission line). All park rules and regulations continue to apply to the area occupied by the permitted use.

D. Park Guidance and Planning

Park superintendents should review park planning documents, paying particular attention to unique resource issues where issuing a ROW permit might have a direct and detrimental effect on park resources, values, and purpose.

New park planning documents should address the potential use of park lands for rights-of-way, such as electrical transmission lines and telecommunication facilities. For example, planning documents could consider the appropriateness of new facilities, approved operation and maintenance activities for existing facilities (including vegetation management), or fire suppression techniques in ROW corridors. NPS *Management Policies 2006* recommends developing a telecommunications plan, which can be very helpful in guiding the placement of cell towers and other communications equipment. Telecommunications plans will necessitate looking at some linear communications facilities as well. This is because the same goal may be achieved by microwaves or linear fiber optic lines, but each would have different impacts on park resources and quality of service.

Any telecommunications site plan should evaluate park lands based on a number of criteria, including the presence of endangered and threatened species, cultural resources, subsurface resources, viewsheds, wetlands, wilderness, the availability of utilities such as telephone and electric service, and method(s) of access. This plan should also identify existing structures that might be suitable for co-location. As a general principle, the public should be included in the planning process and public comments should be solicited. Suggested categories for park lands are: available for consideration; available for consideration with mitigation; and not available for consideration. The telecommunications site plan should make it clear that the designations are guidelines for both park management and the telecommunication industry and do not guarantee that an application will be approved.

II. PARK, REGIONAL, AND WASO ROLES AND RESOURCES

A. Park ROW Coordinators

Park staff should be the lead point of contact with ROW permit applicants and Permittees in their park. The ROW permit applications are received by a Park Superintendent, the park maintains the decision file for a permit, and the park is responsible for the financial aspects of ROW permitting—cost recovery and use and occupancy fees (annual rent). Park staff generally prepares draft permits, permit renewals, and amendments with the assistance of the regional ROW Coordinator when needed. Park staff manage the day-to-day aspects of ROW permits, including monitoring the Permittee during any construction or maintenance. Park staff is also responsible for initiating compliance as appropriate.

B. Regional ROW Coordinators

Each region has a Right-Of-Way Coordinator. These regional ROW Coordinators are usually a part of the regional Land Resources Program Centers.

The regional ROW Coordinator is a subject-matter expert and resource on the ROW permitting process. The regional ROW Coordinator provides support, guidance, and coordination between the park, regional office, and WASO.

The regional ROW Coordinator must be consulted to determine annual use and occupancy values for ROW permits, should review and approve the language of all draft permits, and is responsible for shepherding the ROW permit to the Regional Director for signature, when applicable.

Additionally, the regional ROW Coordinator should be kept informed about pending proposals, receipt of applications and of any concerns while the application is being evaluated, especially requests that have the potential to be controversial or have servicewide implications, or where a recommendation is likely to deny the request. The regional ROW Coordinator may negotiate directly with ROW permit applicants on major projects of a large scale or complexity that is beyond the experience of park staff. The regional ROW Coordinator will be able to advise you about documents that require regional or Solicitor review and/or approval and will serve as the conduit for all ROW documents sent to the Regional Office. The regional ROW Coordinator maintains a record of all regional ROW permits, which is further discussed in Section IV.

C. WASO Resources

The WASO Land Resources Division ROW Program provides trainings, consults and assists on ROW-related projects, and works with other WASO staff to clarify, revise, and update ROW permitting policy and guidance as needed. In addition, the Program maintains a website of ROW-related guidance available to NPS employees on LandsNet, landsnet.nps.gov.[2]

The WASO Land Resources Division works with the regional ROW Coordinators to maintain a centralized system of active and expired ROW permits called Use Manager. This official record for ROW permits across NPS land is maintained by WASO Land Resources Division. This information is available to NPS employees through LandsNet. PDF files of all ROW permits in the centralized system are maintained and archived on LandsNet in the Document Archive, and those documents are available to anyone on the NPS computer network.

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2. LandsNet is intranet site only available to NPS employees, and not available to the public.

Further, the ROW permitting section of LandsNet includes all of the reference documents and training materials included in this reference manual, and more. This website will continue to be updated as additional guidance is developed. LandsNet includes a Listing of Instruments, through which any NPS employee is able to look up the status of ROW permit processes ongoing at their park.

Use Manager is still in the final stages of development, so the exact functions and information available may change slightly as they are refined.

D. Related Divisions

Several other divisions in the NPS have relevant expertise for ROW permitting. The WASO Special Park Uses Program has expertise in Special Use Permits and cost recovery. The Special Park Uses Program is very helpful in drafting special use permits (SUPs), consulting on complex projects, and discussing cost recovery authority and process.

In addition, the WASO Geologic Resources Division has special expertise in petroleum product related pipelines and the regulatory processes that apply to those pipelines. The WASO Water Resources Division has knowledge about water rights and infrastructure related to those rights across NPS units.

The Regional Environmental Coordinators are available to assist with any NEPA-related questions that come up in the permitting process. There is also an Energy Coordinator in almost every region, usually in either the Planning or Resources division. This individual works on energy projects outside the boundaries of NPS units and may be a part of a project team if a project is crossing an NPS unit.

The Concessions and Business Management Division may authorize similar infrastructure through their concession contracts, such as Wi-Fi and fiber-optic cable. Generally, a ROW permit will still be required to allow the NPS to track where equipment is being placed in parks. Please contact your regional ROW Coordinator with questions.

III. DOCUMENTATION OF EXISTING FACILITIES

The NPS does not allow utilities to occupy park lands without a valid property right or other legal authorization. Utility corridors are commonly called “rights-of-way,” and these rights-of-way may be:

- authorized by a property right such as a deeded easement;

- authorized by a ROW permit issued by the NPS pursuant to 54 U.S.C. § 100902, the general NPS ROW permitting authority;
- authorized by a permit, lease, or grant issued by another landowner prior to acquisition by the NPS or transfer to the NPS;
- authorized by park-specific or project-specific legislation;
- with regard to water facilities, established prior to the park pursuant to the Act of 1866 (14 Stat. 253, 43 U.S.C. § 661);
- occupied by infrastructure owned or used by a concessioner; or
- occupied by infrastructure owned by the NPS (in which case it needs no authorizing documentation).

The park should always know what authorizes a company to have its infrastructure on NPS managed land. Questions regarding existing infrastructure may come up because a company notifies the park of its intention to perform maintenance or equipment replacement, a park undertakes an inventory of infrastructure, a request for co-location or a problem arises with the infrastructure, or because of any number of other situations. In all of these cases, the park should first ask the company for documentation of the company's right to do work in the park. The section below describes the different types of possible authorizations and provides guidance on how to find these documents.

A. Easements and Deeds

An easement is an interest in land owned by another person consisting of the right to use or control the land, or an area above or below it, for a specific limited purpose. Easements are often written to allow power lines or other utilities to cross land and are generally recorded in County land records. When the NPS acquires land, it is often acquired subject to easements, which are generally kept on file in the regional Land Resources Program Center offices. Language in the easement often specifies location, width, and type of utility permitted by the easement as well as the type of activity that may be conducted such as a combination of construction, operations and maintenance and may also include upgrades, removal of vegetation, etc.

The NPS must allow these uses authorized by easement to continue. Under the Constitution, the federal government may be responsible for the taking of property if the government directly interferes with or substantially disturbs the owner's use and enjoyment of their property right, such as an easement. If a court determines that there was a taking, the federal

government will owe the property owner just compensation for the property. On the other hand, depending on the language of the easement and actions proposed by the easement holder, the NPS may have an obligation to require a permit and/or compliance for those proposed actions. For example, an easement may only authorize operation and maintenance but require the Superintendent's approval prior to ground disturbance within the easement. That approval may be in the form of a permit with terms and conditions. In light of this balance, it is very important to consult with your regional ROW Coordinator and the Office of the Solicitor to determine the scope of any easements in question.

The company must submit to the NPS its documentation demonstrating the right to perform work or maintain or place infrastructure in a park, as it is the company's responsibility to provide documentation of its rights. In addition, the park and regional Lands staff may check their records to see if there is documentation of any easement or other existing right authorizing the proposed infrastructure or work. When appropriate, the Office of the Solicitor should be contacted to review any documentation found and to determine whether the request is authorized under an existing right. If no adequate documentation is found, then Park staff should work with their Regional ROW Coordinator to discuss other options that may be available, including potential issuance of a ROW permit.

It is possible that the proposed use may be partially authorized under an easement or other document but may still require a Special Use Permit or ROW permit as well. For example, the NPS may have acquired a tract of land subject to a powerline easement. If the power company wants to upgrade the line and needs a wider right-of-way, any expansion granted by the NPS will be in the form of a ROW permit, even though part of the right-of-way was granted by an easement. If you believe this may be the case, please consult your regional ROW Coordinator.

Parks should be prepared to work with utility companies who approach the park wishing to exercise their right to an easement. Be aware that a utility may own an easement in your park that it has not developed yet. It is important to know that this easement exists and be prepared to work with the utility should they decide to exercise their right to use the property.

B. Permits, Leases, and Grants

The infrastructure may also be authorized by a permit, grant, lease, or other document. Most frequently, the authorization will be a ROW permit issued by the NPS. However, the NPS may be honoring a grant from another federal agency. For example, Mojave National Preserve was created in 1994, and the legislation creating the Preserve transferred management of land from the BLM to the NPS. As the NPS took over management, the NPS honored "grants" that the BLM had made, authorizing utilities to cross the land. These

transfers have occurred with numerous federal agencies, such as U.S. Bureau of Reclamation, U.S. Department of Defense, and BLM. Take note of the expiration date on these authorizations, and make sure the document provided has not expired.

As with easements, the company should be able to produce these authorization documents upon request. The other agency may also have copies of these documents on file (for example, the BLM field office often has files).

Similarly, the infrastructure may be authorized by an NPS ROW permit. In this case, the company should be able to produce this document, and it also should be in park files. In rare circumstances, legislation may authorize the infrastructure without requiring additional documentation. In those rare circumstances, a copy of the legislation is sufficient documentation.

C. Undocumented/Unauthorized Utility Lines

After the company researches its records for existing permits and easements, it may be determined that there is no current authorization for a piece of utility infrastructure (i.e., electrical lines, telephone lines, cable television, water lines, etc.) to be in a park, even though the infrastructure already exists. In some cases, these undocumented utility lines have been in place for decades. If the company and NPS agree that a permit or easement cannot be found and the legislative authority for the use exists, then the utility should be advised to apply for a ROW permit. Legislative authority may be in the form of a general authorization for all of NPS (i.e., 54 U.S.C. § 100902) or in park-specific legislation.

If there is no legal authority allowing the NPS to authorize the use, the park must work with the regional ROW Coordinator and the utility owner to resolve the situation. Resolution may include: removing the utility from park lands, working with the Lands office for a land exchange, obtaining park-specific legal authority from Congress, or other appropriate solutions.

D. Overburdened ROWs

Even if there is authorization for a company to operate and maintain infrastructure in a park, occasionally that authorization is “overburdened.” For example, a company may have an easement authorizing one power line through a park, but the company actually has two power lines running through the authorized area. In these cases, the park and regional ROW Coordinator must work together to determine what infrastructure is authorized by easement or permit, what infrastructure needs additional authorization, and what action should be taken

next. These actions may range from authorizing the equipment to requiring removal or a land exchange.

There are also cases where a second company adds their equipment to an existing right-of-way (For example, a television cable company adds their cables to electric poles in a permitted right-of-way or easement). This occurs with surprising frequency, especially by new utility companies or those not familiar with permitting on park lands. This is unauthorized co-location, which is discussed in section III.E below.

E. Co-location

Co-location is the placement of equipment of two or more companies on the same tower, building or structure allowing the number of additional structures to be minimized. Co-location can occur on either linear facilities (i.e., both phone and electric lines on the same set of poles) or on nonlinear facilities (i.e., a cell antenna and a microwave on the same cell tower). Each entity involved is required to have their own authorizing document with the NPS.

F. NPS ROW Permits

If there is no current, valid authorizing document in place, and there is legal authority for the proposed or existing use, then the company may apply for a ROW permit from the NPS. The process for an NPS ROW permit is described in section IV.

IV. THE RIGHT-OF-WAY PERMITTING PROCESS

The following information outlines procedures for issuing ROW permits and is meant to give systematic how-to-do-it assistance to Park Superintendents, park coordinators, and regional ROW Coordinators. The first section is the process for linear ROW permits, and the second section is for nonlinear ROW permits. The most common nonlinear ROW permit is for a telecommunications site (cell antennas and tower). For a nonlinear ROW permit application, follow the linear ROW permit process, and in addition, complete all the additional required steps of the nonlinear process. Park staff should do their best to send a final ROW permit for signature to the applicant within 30 days of completion of compliance and the appraisal processes. If it appears the park will be unable to send a final ROW permit for signature within 30 days the park should make arrangements to meet with the applicant to discuss a schedule and anticipated date for the final ROW document. We encourage applicants to communicate with park staff throughout the application review, compliance, and appraisal processes, so that we can set reasonable expectations, work collaboratively to address issues that may arise, and be in sync with regard to the likely timing of permit issuance.

A. Special Cases

i. Major Infrastructure Projects and Inter-Agency Cooperation

Several types of ROW permitting projects receive increased scrutiny, are subject to strict timelines, and have additional reporting requirements. These types of projects are listed below. If you are involved in these projects as a lead, cooperating, or participating agency, make sure that you are coordinating with your regional ROW Coordinator and the others listed below from the beginning of the project.

- FAST-41 projects - "Fixing America's Surface Transportation Act," Title 41: addresses "covered" infrastructure projects, requiring multiple agency authorizations, and generally requiring an environmental impact statement (EIS) and costing more than $200 million. Please coordinate with the NPS FAST-41 Coordinator, WASO Environmental Quality Division, and your Regional Environmental Coordinator. See also DOI Environmental Review Memorandum 10-11.
- Other ROW projects requiring an Environmental Assessment or Environmental Impact Statement as NEPA compliance. There may be timelines and page limits for these projects; please coordinate with your Regional Environmental Coordinator.

ii. Telecommunications and Broadband

Telecommunication encompasses multiple types of equipment. The word "telecommunications" is defined in the Telecommunications Act of 1996 as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent or received." In other words, telecommunications can include Wi-Fi, satellite internet, wired internet (e.g., fiber or copper), cell service, or others. Telecommunications can be further broken down into two categories: one relying on federally licensed spectrum (such as most microwave dishes and cell antennas), and one not relying on federally licensed spectrum (such as fiber optic cable or Wi-Fi).

Additionally, the word "broadband" is often used to refer to telecommunication transmission. Per the Federal Communication Commission (FCC), broadband is defined by download and upload speed, rather than a type of service. Therefore, broadband can include telecommunication transmission by any type of telecommunication equipment, as long as it meets the speed requirements. Laws and Executive Orders place additional requirements on the processing of ROW permits for telecommunications equipment and broadband, including reporting requirements on applications and processing time.

Multiple executive actions direct agency action on telecommunications or broadband ROW permitting, including an Executive Memo from August 10, 1995, and Executive Order 13821, signed January 8, 2018. These are also discussed in Section IV.C below. Depending on the type of proposed broadband or telecommunications equipment, an application may be for a linear ROW permit, a nonlinear ROW permit, or a combination of both. It is important to understand which process to follow for a proposed project and to apply any additional standards and be responsive to reporting requirements associated with broadband projects.

B. Linear ROW Permitting Process

Most utilities, such as electrical lines, water pipe lines and telephone lines use a linear right-of-way. A linear right-of-way has a width on either side of a center line, with a starting point, intermediate points, and an ending point. The width of the permitted area should be the minimum necessary to operate the utility, with the maximum width limited by the legal authority. For example, an electrical distribution line will require a narrower right-of-way than an electrical transmission line.

If any new infrastructure is to be built, it is usually appropriate in any of these cases to simultaneously issue two separate permits: a short-term SUP for construction and installation and a ROW permit for operation and maintenance. The construction SUP (36 CFR 5.7) includes any terms and conditions specific to construction, and may authorize the use of additional park lands only needed during the construction phase. The construction permit may have a term of several years to include enough time to fully restore and revegetate the area.

The linear ROW permitting process is discussed first, as everything required for a linear ROW permit is also required for a nonlinear ROW permit. Nonlinear ROW permits (usually for telecommunication sites) are discussed in section IV.C. as there are additional application and procedural requirements for those sites. A summary of the ROW permitting process is also shown in Exhibit A.

i. Decision File[3]

[3] In prior versions of this guidance (Reference Manual 53, Appendix 5) and in the rest of Reference Manual 53 (2000, updated 2009), the decision file is referred to as the "administrative record." In line with current Departmental and NPS guidance, RM53B uses the phrase "decision file" when referring to the file of

The decision file is maintained by the park and begins with documentation of the first contact with a potential ROW permit applicant. The first communication, whether in the form of an application, letter, email or a notation of a telephone call, becomes part of the decision file and may be for a new ROW permit, the renewal of an expiring document, or for the conversion of an existing document to a ROW permit.

A decision file will be started for a new request; any decision files for existing uses will be continued. The decision file documents communication between the park and prospective permittee, the step-by-step managerial decision-making process, and contains associated documents as the ROW permit application proceeds from request to final decision. The decision file for the request is maintained even if a potential applicant eventually decides not to submit an application or if an application is eventually withdrawn or denied. If approved, the file remains open for the duration of the permit and will contain any permit amendments, documentation of the payment of fees and cost recovery charges, notes, field studies, monitoring reports, and reauthorizations as they occur.

The regional ROW Coordinator also maintains a record in the regional files. The regional record should include a copy of the fully executed permit, confirmation that all compliance was completed, points of contact, and any other relevant documentation for the region. The regional record may include documents such as communication records, Solicitor approval, copies of the application, the appraisal, or any other relevant documentation. The regional ROW Coordinator should also work with WASO Land Resources Division to digitize ROW permits for Document Archive on landsnet.nps.gov, and to maintain the database of NPS ROW permits. However, the official decision file should be kept at the park.

ii. The Pre-Application Meeting

The initial contact between the park and a potential applicant may be through an email, phone call, submittal of an application, or another type of communication. Once the park knows of a company's interest in installing infrastructure on park property, a representative of that company should be contacted and urged to schedule a pre-application meeting with park staff.

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documents and materials created and used to decide the appropriate response to a ROW permit application submitted to the NPS. An administrative record is developed in response to litigation.

Before a written application is submitted, the potential applicant should be **STRONGLY** encouraged to meet with the park superintendent and appropriate park staff. The pre-application meeting gives park management the opportunity to:

- learn more about the proposed project and have the opportunity to ask questions;
- discuss applicable law, policy, guidance, and regulations as they apply to the proposed project;
- discuss locations in the park where applications will not be accepted due to critical resources (i.e., wilderness, threatened and endangered species) or where the installation of infrastructure could lead to unacceptable impacts to park resources, values, or purposes, and the value of co-location, as applicable;
- provide an estimated time line for processing a request, including environmental and cultural compliance and an appraisal;
- provide the potential applicant with a copy of the SF-299 and a list of required supporting documents, which should include all documents needed for all compliance for this specific project, since the application will not be considered complete until all of those supporting materials are provided;
- discuss the need for ongoing communication throughout the entire process;
- inform the potential applicant that information submitted in applications for ROW permits is subject to disclosure under the Freedom of Information Act (FOIA). All applicants must advise the park whether they consider any of the information they are being asked to submit as protected information containing trade secrets or confidential, commercial, or financial information exempt from disclosure under FOIA. The specific information must be highlighted and a justification provided from exempting the information from FOIA. Park managers after review of the material claimed for protection from public disclosure may request further information from the applicant, if necessary, to assist the superintendent in making a decision pursuant to the FOIA;
- explain NPS cost recovery procedures; and
- start the park's decision file on the request.

Generally, no cost recovery will be charged for the pre-application meeting. Since the meeting is being held for the benefit of both the potential applicant and the park, charging

cost recovery for a pre-application meeting could discourage applicants from arranging a meeting.

If an application is received without the benefit of a pre-application meeting, a meeting should be arranged with the applicant as soon as possible.

iii. The Application

The information needed by the park superintendent to make at least a preliminary evaluation of a new use is obtained from a formal application and required supplemental materials, all described in the subsections below. The linear application materials are also included in Exhibit B, so they can be easily provided to a potential applicant.

There are three "categories" of ROW permit processes:

- a new ROW permit for infrastructure yet to be built,
- a new ROW permit for existing infrastructure that is not currently under a valid permit, and
- a renewal of an existing, valid ROW permit for existing infrastructure, to renew the ROW permit for another up to 10-year term.

If any new infrastructure is to be built, it is usually appropriate in any of these cases to issue two separate permits: a short-term SUP for construction and installation and a ROW permit for operation and maintenance. In this case, it is often best to request two separate applications: one SUP application (form 10-930) detailing the construction and area required for construction, and one ROW permit application (SF-299 and supplemental documents) for the long-term operation and maintenance of the infrastructure. Construction often requires a different area for installation and staging, and other terms and conditions may differ because of the higher intensity of use during construction. Depending on the proposal, it may be appropriate to request only the SF-299 initially and have the applicant wait to submit a 10-930 until the proposal is more well developed or further along in the process. Your regional ROW Coordinator and your regional Special Park Uses Coordinator can assist with any questions about construction SUPs.

a. Complete Application: SF-299 and Supplemental Documents

Applications for a ROW permit must be submitted to the Superintendent on a Standard Form SF-299, "Application for Transportation and Utility Systems and Facilities on Federal Lands." A copy of this form is attached here as Exhibit C and is available online. The SF-299 is updated regularly, so make sure you have the current version.

An application is not considered complete unless it contains a fully complete and signed SF-299, any materials required by regulation (including 36 CFR Part 14, Subparts D-H, as applicable), the application materials described below (including the appropriate maps), and any additional materials necessary to begin the NEPA (including a complete project description and data and studies needed to analyze environmental effects) and other compliance processes. Early coordination and communication between NPS staff is critical to ensuring all necessary materials are requested at the beginning of the application process. As discussed in the section above, a list of all necessary materials for the application to be considered complete should be provided to the applicant in the pre-application meeting. In addition, notify your regional ROW Coordinator when your park has received a complete application, as this date must be entered into a central system. Application materials may be sent electronically, though the park may request hard copies of some or all of the materials.

An applicant must also submit the following materials:

1. Complete and signed SF-299, including materials requested on page 4 of the SF-299.

2. Applicable corporate documents as described below in the following table.

IF APPLICANT IS…	THEN THEY MUST PROVIDE….
A private corporation	1. Copy of charter or articles of incorporation, duly certified by proper state official of state where corporation was organized 2. Copy of resolution or bylaws authorizing filing of the application
A corporation other than private	1. File copy of law under which corporation was formed 2. Proof of organization under that law 3. Copy of resolution or bylaws authorizing filing of the application
A corporation operating in state other than that in which it was incorporated	1. Certificate of Secretary of State that corporation has complied with the laws of that state governing foreign corporations to the extent required to entitle the company to operate in such state

IF APPLICANT IS…	THEN THEY MUST PROVIDE….
	2. Copy of resolution or bylaws authorizing filing of the application
As association of individuals (including partnership)	1. Certified copy of articles of association or other governing documents, if any, indicating appropriate signature authority 2. If no articles of association or other governing documents, all members must sign application 3. Each member must furnish evidence of citizenship
An individual	Proof of U.S. citizenship status
A naturalized citizen	Date of naturalization, court in which naturalized, number of certificate, if known

3. As applicable, the park unit may also request that the following information (and other relevant documents not listed below) accompany an application:

- Construction-Related information
    - Construction drawings
    - List of equipment to be used in construction
    - Construction schedule
    - Map showing area of requested use for construction in addition to area requested for operation and maintenance after the completion of construction
- Detailed list of all equipment either present or to be installed in the right-of-way
- Maintenance schedule
- Revegetation plans
- Emergency plans
- Proof of relevant authorizations from other agencies
- Archeological surveys, vegetation surveys, and steep slope surveys
- Photo-simulations of site or views of site after proposed installation

b. Maps and GPS

In addition, the applicant must submit maps with the application, meeting the applicable standards described below. The NPS has adopted the following standards to replace the suggested standard from 36 CFR 14.25(a), which is out-of-date with current mapping technology. These standards are also included as Exhibits B and K, which can be given to potential applicants.

All reported Global Positioning System (GPS) point features noted herein require, at a minimum, field-collected GPS data differentially corrected to sub-meter accuracy (differential GPS or DGPS). The correction process can be achieved either in real-time or by post-processing the data using a service like the Online Positioning User Service (OPUS) operated by United States National Geodetic Survey (NGS).

The following deliverables are required as part of every ROW permit application:

1. AutoCAD (.dwg or .dxf), GIS (.shp or .gdb), or Google Earth (.kmz) files including the required information and meeting the following requirements:

    a. AutoCAD or GIS files shall be projected to the local state plane coordinate system covering the project area in NAD83 or future state plane systems (ensure that the datum realization is specified in the files).[4]
    b. Features will include:
        i. points, lines or polygons[5] identifying the permit area, and associated control points;
        ii. all DGPS points as required below; and
        iii. feature attributes (e.g., acreage, Permittee name) or applicable layer names.
    c. Each file shall include an associated metadata file with fields describing the attributes, data collection method and accuracy of the dataset. Metadata must be Federal Geographic Data Committee (FGDC) compliant (see the FGCD website).

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[4] The current state plane coordinate system is NAD83. A new version, NAD 2022, is expected to be released in 2022.

[5] Park staff may request point, line, or polygon data, depending on park needs and on the project. Generally, nonlinear ROW permit requests (such as for cell towers) will require polygons, while parks may vary between requiring points, lines, or polygons for linear ROW permit requests (such as power lines) depending on the project.

2. Four 24” X 36” hard copies of the map(s). Linen or rag paper is not required.

3. A PDF file of each map, Adobe file version 1.7 or higher.

Regardless of the standard in this Reference Manual, in any situation where the NPS unit and the regional ROW Coordinator deem it appropriate, they may require the applicant to provide a formal survey and legal description. This survey and legal description must be signed by a licensed surveyor.

If the infrastructure has not yet been built, the maps must show:

1. Proposed permit area and associated features:

    a. **If the permitted area is a linear feature**
        i. DGPS points at the proposed beginning and terminus points within the park boundary, labeled with their respective coordinate pairs.
        ii. Proposed centerline and proposed location of any poles or ground disturbance.
        iii. The proposed width, length, and acreage of the permit area

    b. If the permit area is a non-linear feature
        i. DGPS points at all proposed corners and angle points of the permit area, labeled with their respective coordinate pairs.
        ii. Proposed tower location, and location of proposed appurtenances (buildings, fuel, etc.).
        iii. The proposed acreage and dimensions of the permit area.

2. Crossings of property lines and NPS unit boundaries[6]:

    a. DGPS points must be included on all crossings of NPS property lines and NPS unit boundaries.

    b. If within ¼ mile of NPS unit boundary, unit boundary must be shown if the map scale allows.

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6. NPS unit boundaries are the legislated (or proclaimed) boundaries of an NPS unit. Property lines are lines where NPS-managed land borders land owned by another entity or individual and may occur along a boundary or elsewhere inside a park if another entity or individual owns land within the NPS boundary.

c. Identify any lands that are not administered by the NPS (e.g., such as inholdings) being crossed by the project area within the NPS unit.

d. Buildings, existing roads, and utilities located within 25 feet of the project area must be shown.

3. Access:

a. **If access is along a road within the NPS unit**, list the name of the road and the distance along the road needed for access to the permit area. Note whether the roads to be used for access are open to the public or are administrative access only.
b. **If access is not along a public or administrative road**, include DGPS points at the beginning and terminus points of the proposed project area access route(s).

4. Also include:

a. Township, section, and range if in a Public Land Survey System (PLSS) state, or the equivalent survey grid if it is not a PLSS state.

b. County, State, and NPS unit name (i.e., Yellowstone National Park)

c. The scale should be appropriate to show the requested ROW. The park may request a different scale as needed.

d. Map legend.

e. North arrow.

f. The map base may be aerial photography, USGS topographic base, or another base, subject to park approval.

5. Legal Description (may be attached as an exhibit to the map):

a. Linear ROWs
   i. Legal description must be based on DGPS points for the centerline.
   ii. Legal description must include courses and distances of the centerline.
   iii. The entire area (in acres and square feet) must be included.

b. Nonlinear ROWs
   i. Legal description must be based on DGPS points for all corners of the proposed ROW area.
   ii. The entire area (listed in both acres and square feet) must be included.

6. Within 90 days of the completion of construction, the applicant must then provide a final as-built map and legal description meeting the standards for infrastructure that already exists, as set forth below. These final documents must be delivered to the NPS unit Superintendent. This includes remeasuring all DGPS points to match actual as-built conditions.

<u>If the infrastructure already exists, the maps must show:</u>

1. ROW permit area and associated features:

    a. **If the permitted area is a linear feature**
        i. DGPS points at the beginning and terminus points within the park boundary labeled with their respective coordinate pairs.
        ii. Centerline and location of any poles.
        iii. The width, length, square feet, and acreage of the permit area.

    b. **If the permit area is a non-linear feature**
        i. DGPS points at all corners and angle points of the permit area labeled with their respective coordinate pairs.
        ii. Tower location and location of appurtenances (buildings, fuel, etc.).
        iii. The acreage, square feet, and dimensions of the permit area.

    c. Major utility infrastructure features (pole locations, tower corners, buildings, fence corners, etc.).

2. Crossings of property lines and NPS unit boundaries[7]:

    a. DGPS points at all crossings of NPS property lines and NPS unit boundaries.

    b. If within one-quarter mile of NPS unit boundary, unit boundary must be shown if the map scale allows.

    c. Identify any lands that are not administered by the NPS (e.g., such as inholdings) being crossed by the project area within the NPS unit.

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7. NPS unit boundaries are the legislated (or proclaimed) boundaries of an NPS unit. Property lines are lines where NPS-managed land borders land owned by another entity or individual and may occur along a boundary or elsewhere inside a park if another entity or individual owns land within the NPS boundary.

d. Buildings, existing roads, and existing utilities located within 25 feet of the permit area must be included.

3. Access:
    a. **If access is along a road within the NPS unit**, list the name of the road and the distance along the road needed for access to the permit area. Note whether the roads to be used for access are open to the public or are administrative access only.
    b. **If access is not along a public or administrative road**, include DGPS points at the beginning and terminus points of the permit area access route(s).

4. Also include:

    a. Township, section, and range if in a Public Land Survey System (PLSS) state or the equivalent survey grid if it is not a PLSS state.

    b. County, State, and NPS unit name (i.e., Yellowstone National Park).

    c. The scale should be appropriate for the requested ROW. The park may request a different scale as needed.

    d. Map legend.

    e. North arrow.

    f. Data shall be georeferenced to NAD83, in US Feet, and the appropriate State Plane Zone.

    g. The map base may be aerial photography, USGS topographic base, or another base subject to park approval.

5. Legal Description (may be attached as an exhibit to the map) must be either:

    a. Linear ROWs
        i. Legal description must be based on DGPS points for the centerline.
        ii. Legal description must include courses and distances of the centerline.
        iii. The entire area (in acres and square feet) must be included.

    b. Nonlinear ROWs
        i. Legal description must be based on DGPS points for all corners of the proposed ROW area.
        ii. The entire area (listed in both acres and square feet) must be included.

iv. Acknowledgement of Application

After receiving an application, the park should respond to the applicant in writing within 15 business days. This letter should indicate the park's initial decision and request any additional information needed, if the application was incomplete. If incomplete, then the letter should also inform the applicant that their request will not be processed until it is complete. A sample letter is attached as Exhibit D.

If the application is complete, then the initial decision will be **Yes (a qualified yes – the application still needs to go through compliance and the evaluative process), No, or Maybe**. Experience has shown that requests where the initial response will be "yes" or "no" are few, and fairly obvious. For instance, a request to co-locate an antenna on an existing tower in previously disturbed ground or place fiber on existing power poles may receive a qualified "yes" if all necessary compliance is already complete (with permit terms and conditions to be worked out) unless there are unusual circumstances. Equally, a request to site an antenna in a wilderness area would normally receive an initial "no." Everything else would be a "maybe." It is expected that the vast majority of applications (probably better than 90%) will fall into the "maybe" category.

If the answer appears likely to be "no," the park should make arrangements to meet with the applicant to talk about the request. This provides the applicant with an opportunity to discuss NPS concerns and to offer plans for mitigation. This is done **PRIOR** to writing a formal denial to the applicant. If mitigation or a change in design is not possible, then the park issues a letter detailing the reasons for the denial.

The applicant should be advised of the "maybe" and "yes" decisions in writing. These decisions do **NOT** guarantee that NPS will issue a permit—only that the NPS will consider the request. A meeting with the applicant should be arranged to discuss the next steps. While processing a ROW permit application, the NPS should speak with the applicant as often as necessary to keep the applicant apprised of their application status and exchange information.

v. Cost Recovery

Cost recovery may cover all costs that the NPS incurs in processing a ROW permit application. These costs may include environmental and cultural compliance; an appraisal; staff time reviewing the application and related materials, drafting correspondence, and drafting a permit; management discussions regarding the proposal; resource surveys of the proposed permit area; and other costs as appropriate.

Cost recovery charges may apply as soon as an application is received. The applicability of cost recovery should be determined based on 54 U.S.C. § 103104, discussed in Section

IV.C.vii of this Reference Manual. Cost recovery as it pertains to ROW permits is also further discussed in Exhibits E and F. If cost recovery applies, then a letter should be sent out to the applicant, notifying them of the cost recovery process and requesting documentation of the applicant's acknowledgement of cost recovery applicability (sample attached as Exhibit D).

vi. Use and Occupancy Fee

As the park is reviewing the initial application, park staff must determine if the requested use will be subject to an annual use and occupancy fee, per 36 CFR 14.26. The use and occupancy fee is separate and apart from cost recovery, and the rules for its applicability are governed by NPS regulations. Per these regulations, a use and occupancy fee is not charged: where the use and occupancy are exclusively for irrigation projects, municipally operated projects, or non-profit or Rural Electrification Administration projects, or where the use is by a federal government agency. Rural Electrification Administration is now known as Rural Utility Service and is part of the U.S. Department of Agriculture.

If a use and occupancy fee is required, the park must work with its regional ROW Coordinator to set that fee as described in Exhibit F. Depending on the details of the proposal, an expedited process for ROW permit issuance may be available. This process is described in Exhibit G. The use and occupancy fee must be collected by the park annually.

After a ROW permit is issued, cost recovery may still apply in the form of park monitoring costs as described in Exhibits E and F. If the NPS unit incurred recoverable costs monitoring the ROW permit in a given year, then the NPS may keep the equivalent portion of the use and occupancy fee to cover those costs, but the balance of the annual use and occupancy fee must go to the U.S. Department of the Treasury at the end of that fiscal year. If no cost recovery is owed by the Permittee in a given year, then that year's entire use and occupancy fee must be sent to the U.S. Department of the Treasury.

vii. Compliance

Conducting environmental compliance is a required step in the ROW permitting process. Environmental compliance may include NEPA, NHPA, ESA, and any other compliance required for a given project. In Alaska, an evaluation of the effect on subsistence uses is also required. All required studies and environmental compliance may be conducted by the applicant, a contractor hired by either the applicant or the park, or park staff. Regardless of who completes the environmental compliance, it must meet NPS requirements and standards. The park has final say as to who conducts the environmental compliance. The final report must be submitted to the park for approval. The park must have an approved NEPA document or a statement citing one of the categorical exclusions before a decision on the

application can be made, as well as completed NHPA compliance, when applicable. Compliance documents must be retained in the decision file for the specific request.

The cost of the environmental compliance may be borne by the applicant as part of cost recovery, depending on whether the park has decided to charge cost recovery as discussed above. If the park conducts the environmental compliance, the park may be reimbursed through cost recovery.

Compliance documents may include permit conditions required to mitigate the impact of construction, maintenance, and operation of the facility on park resources and values. These conditions should be included in the final ROW permit as terms of the permit or required conditions.

viii. Preliminary Requirements Checklist for Decision-Making

To reach a decision on the request, the Superintendent should have all of the following documentation in the decision file:

- A complete application, including satisfactory maps and drawings and a legal description describing the proposed ROW area.
- Updated maps, legal description, and surveys, as necessary, to show any changes from the initial application.
- The specific law that authorizes the ROW permit.
- A managerial finding that the activity will not impair park resources, values, or the purposes for which the park was authorized; is not incompatible with the public interest (or the appropriate standard required for issuance, if there is park-specific legislation); and that there is no practicable alternative to siting the infrastructure in the park. If these standards are not met, the application must be denied.
- An approved NEPA compliance document (a categorical exclusion with documentation, an EA with a signed finding of no significant impact (FONSI) or an EIS with a record of decision (ROD) as appropriate).
- Appropriate NHPA compliance approval.
- Proof of any other required federal permits or compliance processes (e.g., Endangered Species Act Biological Opinion when necessary; Army Corps of Engineers § 404 Permit, Coastal Zone Management Act, Migratory Bird Treaty Act, etc.).
- Documentation that the park has determined what the cost recovery will be and has received all cost recovery amounts billed to date. If the park did not charge cost

recovery for the particular application and permit, the basis for that decision should be documented instead (documentation can be as simple as an email or memo to the file).

- Documentation that the park worked with the Lands office to determine if a use and occupancy fee is required and a copy of the appraisal if one was performed.
- Documentation that there are no conflicting uses already authorized across the proposed ROW area.
- In the case of water to be diverted from a source within the park, documentation of a water right or claim that predates the park supporting such use. In the absence of such documentation, review pursuant to Director's Order #35A or #35B may be required.
- Any other documents used in the decision-making process.
- As appropriate, documentation from co-locators (or others also using the permitted area) that the placement of any new equipment is acceptable and will not cause any problems with their existing equipment.
- In Alaska, park superintendents have evaluated the effect on subsistence uses in compliance with ANILCA 810.

While all these requirements are in progress, the park may begin the actual drafting of a ROW permit. If a separate construction permit is also going to be issued, it may be drafted simultaneously. However, the decision to approve or deny the ROW permit request may not be made until the above documentation is completed and approved as applicable.

ix. The ROW Permit

An NPS ROW permit template has been created to be used by all parks. This standardized template is attached in this Reference Manual as Exhibit H, and online for NPS employees at landsnet.nps.gov. Instructions for filling in the template are found on LandsNet. The instructions also provide guidance on critical terms and conditions, such as bonding, insurance, and park-specific additions. The ROW permit is only for operation and maintenance of the permitted infrastructure. If the park is going to authorize construction, the construction should be authorized through a SUP while operations and maintenance should be authorized through a ROW permit.

Every ROW permit must have a permit number. A sample is: "RW-GLCA-15-003."

- "RW" should be at the beginning of any ROW permit number, distinguishing it from other types of NPS permits.

- The second component is the park 4-digit AlphaCode—in the example, GLCA is for Glen Canyon National Recreation Area.
- The third component is the year in which the permit is issued—in the example, "15" is for 2015.
- The fourth component is the number of ROW permits that have been issued that year at that park unit. In the example, this is the third ROW permit that GLCA has issued in 2015.

A few park units have long-standing, unique numbering schemes that are highly integrated in park management. If that is the case, please consult with your regional ROW Coordinator to see if that numbering scheme is acceptable or if the park needs to change the way that ROW permit numbers are assigned in the future.

The standardized NPS ROW permit template has been approved by the Solicitor's Office and when used without changes does not require further legal review. Every permit must be reviewed by the regional ROW Coordinator, who will coordinate Solicitor review as appropriate. Changes to the template language **WILL** require at least consultation with your regional ROW Coordinator and possibly review and approval by the Solicitor's Office. The addition of park-specific permit terms and conditions is not necessarily seen as making changes to the template.

The NPS ROW permit is drafted to authorize operation and maintenance of permitted infrastructure. If construction is going to occur, the construction activities should be permitted through a separate, short-term construction permit, which is another type of Special Use Permit (see section IV.B.iii. for more details on SUPs). The short-term construction permit is issued using the 10-114 form, and the term may not exceed 5 years. The area authorized for use by the construction permit may be different from the area covered in the ROW permit. Additionally, the terms and conditions may differ between the two, as construction is a totally different activity and often requires different types of vehicles, access, and presence on the property than operation and maintenance requires.

x. Execution of the ROW Permit

Once all compliance is complete, all cost recovery has been collected, any use and occupancy fees have been properly set, and the draft ROW permit has been reviewed and approved by both parties, the ROW permit is ready for execution. Two full originals of the ROW permit should be prepared by the park, including all exhibits and attachments. The applicant should sign both originals. The park should then send both originals to their regional ROW Coordinator, who will shepherd the ROW permit through the regional office for signature by

the Regional Director (sample cover letter attached as Exhibit I). Consult the regional ROW Coordinator prior to forwarding the ROW permit, as regions may require additional supplemental materials, such as proof of compliance, insurance, construction drawings, or other documents. The Regional Director will then sign both originals. The regional ROW Coordinator will then scan a fully executed copy of the ROW permit with all attachments and send that PDF to WASO Land Resources Division. The signed copies are returned to the park, where the park shall keep one original in park files and the other original shall be sent to the Permittee.

Electronic signatures are acceptable under the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001). If you use electronic signatures, one copy is sufficient so long as it is shared with all the required parties. Original "wet" signatures are always acceptable as well.

xi. Denial of ROW Permit Application

Denial of a ROW permit application may come at any time in the process. If the NPS is considering denying an application, the park should communicate its concerns to the applicant, and work with the applicant to see if an acceptable alternative or mitigation is available. Denials should be communicated in writing and should include the reason for the denial, the attempts to find an acceptable alternative, and the appeals process. The appeals process is discussed in section VI.B. below. The regional ROW Coordinator should be notified prior to issuing any denials.

C. Wireless Telecommunications Permits

When a request for a wireless telecommunication site ROW permit comes in to a park, all of the steps required for a linear ROW permit described previously must be followed. In addition, there are additional procedural and safety requirements that must be considered and addressed. Those are described in this section. A summary of process is attached as Exhibit A.

i. Legal and Policy Background

Various laws and Executive Orders place additional requirements on the processing of ROW permits for telecommunications equipment and broadband, as discussed below. Additionally, due to the nature of wireless telecommunication transmissions, there are a few additional required reviews that must be conducted to ensure none of the equipment causes any interference with other telecommunications equipment. The Telecommunications Act of 1996 (Public Law 104-104, section 704(c)) instructed federal agencies to make federal property available to holders of federal spectrum rights (i.e., holders of a FCC license) for

placement of "new telecommunication services…absent unavoidable direct conflict with the department or agency's mission…" (47 U.S.C. § 332(c)). Therefore, this standard needs to be analyzed when processing applicable ROW permit applications. Additionally, multiple executive actions direct agency action on telecommunications or broadband ROW permitting, including an Executive Memo from August 10, 1995, and Executive Order 13821, signed January 8, 2018.

When an application is received by a park for a facility providing a service that typically is subject to licensure by the FCC, NPS policy requires that applicants be licensed by the FCC to provide service in the area being requested. There are some technologies where the frequency used is not licensed by the FCC, and therefore an FCC license would not be a condition of the NPS permit. These technologies may include Wi-Fi. In addition, "tower companies" are common. A tower company's business model is to construct and maintain telecommunication towers and make money by providing space to companies that need to place equipment on the tower. The NPS will only accept an application from a tower company if it is accompanied by an application from a properly licensed provider that is interested in placing equipment to receive or transmit information from that tower.

ii. Technical Background

The FCC issues licenses to companies for specific service areas. Originally, each park area could have been covered by up to 11 license holders authorized to provide cellular/mobile phone service in the park area. With the recent mergers of telecommunications companies, the number of FCC licenses per area remains the same, but there may be fewer companies holding those licenses. The park should know which companies are licensed for the park area and have names, addresses, and telephone numbers enabling the park to contact these companies when necessary (this information is available from the FCC).

An important component of telecommunications is backhaul. There are two aspects to telecommunications: one is the device receiving the signal from the end user (such as an antenna), and the other is the network of microwave, fiber, copper, and/or satellite to get the signal to its destination. The network is called backhaul. Backhaul can be wireless or wired, and is often a limiting factor in how much telecommunication can flow through a park. The backhaul has a capacity, and once that capacity is reached, more infrastructure must be constructed to support additional telecommunications. For example, if the backhaul is at capacity and a cell provider wants to add new service in an area, they will also need to install backhaul for their users to be able to successfully use their cell phones. As a result, all applications for telecommunications must consider both the end user equipment and the backhaul.

Additionally, wireless communications are commonly used in emergency services. Local, state, and federal law enforcement all frequently rely on two-way radio communication and often place equipment in NPS units. Further, as of 2018, all 50 states, five U.S. territories, and Washington D.C. have all opted in to FirstNet, which is a public-private partnership with AT&T designed to improve public safety communications through wireless communications.

iii. Pre-Contact Preliminary Actions

As the wireless industry continues to "build out" their networks, more and more parks will receive applications for telecommunications sites. Park managers and staff need to be familiar with NPS policy and guidance and with the telecommunications industry in general to be prepared to process an application. Steps should include:

- Familiarization with NPS rights of way policy and procedures for reviewing applications for telecommunications sites including:
    - *Management Policies 2006* section 8.6.4.3
    - Director's Order #53
    - 36 CFR Part 14
    - The right-of-way permit template in this chapter
- Sending staff to training about wireless communication facilities, right-of-way permitting, and special park uses.
- Reviewing appropriate park planning documents, specifically any documentation of the unique resource issues that might result in a telecommunications tower causing unacceptable impacts to park resources, values or purposes.
- Developing a telecommunications management plan for the park (covered in more detail in Section VI.H).
- Developing a mailing list of telecommunications companies licensed by the FCC to provide service in the park area. Names of telecommunication companies licensed by the FCC to provide service in the park area can be obtained from the FCC website (see Exhibit J for instructions).
- Developing a mailing list of members of the public who demonstrated their interest in this or similar issues over the years. The public should be included in the planning process and given the opportunity to comment when appropriate.
- Developing a list of consultants that may be available to help the park evaluate technical material submitted as part of the permit application.

- Developing a list of consultants or companies known to the park who are capable of conducting NEPA, NHPA, and other required environmental reviews. If the park decides not to conduct the reviews with park staff, the list could be given to the applicant to select a company to complete the required compliance documents.
- Maintain a list of local telecommunication facilities not on parkland that may be available for co-location, as well as other structures, both within and outside park boundaries, that may be available for such uses, such as water towers.
- Arranging a meeting between park management and representatives of telecommunication companies. If interest in installing wireless towers within park boundaries is high, such a meeting may lead to companies planning together to build sites suitable for co-location. This would lead to the consolidation of compliance reviews and bring down cost. It would also minimize the number of potential towers located on parkland. If companies do eventually agree to co-location, each company on the tower requires an NPS telecommunication permit.

Prior planning and preparation on the part of park management and staff may simplify processing applications once they are received.

iv. Pre-Application Meeting

In addition to all the benefits and topics discussed in the linear section, the pre-application meeting with a potential telecommunications facility applicant should include:

- Providing the potential applicant with the park's telecommunications plan, if it exists; and
- Clarifying that the NPS decision will consider the full footprint of the telecommunications site, including the tower, equipment buildings, access road, and supporting utilities.

v. Components of a Complete Application: SF-299 and Application Materials

All materials required for a linear ROW permit application are required for a telecommunications ROW permit application, such as a sufficient map, corporate documents, and the SF-299. Additional requirements are described below. The wireless application components are also included as Exhibit K, so they can be easily provided to a potential applicant.

An application is not considered complete unless it contains a fully complete SF-299, any materials required by regulation (including 36 CFR Part 14, Subparts D-H, as applicable), the application materials described below (including the appropriate maps), and any additional materials necessary to begin the NEPA (including data and studies needed to analyze environmental effects) and other compliance processes. In addition, notify your regional ROW Coordinator when your park has received a complete application, as this date must be entered into a central database system.

Telecommunications sites include multiple types of infrastructure. Every site will have some sort of transmitting/receiving, backhaul, and power infrastructure. Often, these different types of infrastructure are owned and operated by different companies. Since a ROW permit must be held by the owner and operator of the particular infrastructure, one telecom site may be made up of three separate applications from the separate companies: the transmission company, the backhaul provider, and the power provider, although the applications should reference each other. These applications should be processed and evaluated simultaneously, as a telecommunications site is not functional until the entire infrastructure is installed and operational. All of the applications must also be considered together as part of the telecommunications site when conducting environmental and cultural compliance. If one or more of the applicants have not agreed how and by whom to provide backhaul to the site, the application should not be processed.

a. Area Evaluated in Application

When considering a request for a telecommunications facility, the entire footprint of the facility must be considered. A telecommunications facility generally includes a structure to support the antennas as well as a building to house switching equipment. The term “wireless” when associated with telecommunications facilities is frequently a misnomer. While some technology associated with the site is wireless, generally there are also linear utilities associated with the site, such as electrical power and telephone lines. Additionally, backhaul is the link, consisting of both linear (fiber, copper) and nonlinear (microwave) infrastructure, moving the information from the wireless facility to the hardwire network.

Given the environmental impacts of building new roads and the narrow NPS ROW permitting authority, the NPS should not allow utility companies or telecom providers to construct roads, so proposed sites must have existing access routes. These routes must be identified in the permit application and shown on the corresponding mapping and surveying documents, as discussed under Section IV.b.

b. Co-Location

Co-location is extremely common at telecommunication sites and is encouraged by the NPS. The most common example of co-location is where one company owns a cell tower, and a second company places their antennas and/or microwave dishes on the first company's cell tower. In these situations, the second company must provide proof of permission to co-locate from the first company as part of their application. The owner of the tower or structure may charge a fair rent for its use. Companies that co-locate on an existing structure may still find it necessary to add buildings to house switching equipment or add additional electrical or telephone service. All new equipment will require a ROW permit from the NPS even if located on an existing Permittee's tower or otherwise within an already-permitted ROW area.

The NPS should ensure that the tower owner has an active, unexpired authorization to operate and maintain the tower on NPS land prior to allowing co-locators to place equipment on an existing cell tower.

The maps and legal description for co-location on a cell tower should match the area described for the original tower. For example, if the cell tower ROW permit authorizes a 50x50 foot area, then the co-locator should also request a 50x50 foot area in their ROW permit application. However, the co-locator should also specify their own infrastructure and operation and maintenance needs in their application materials, which will differ from the cell tower owner's infrastructure and needs.

When environmental compliance is completed for a proposed telecommunications site, the analysis should thoroughly address the cumulative impact of multiple providers co-located on the same tower.

c. Additional Materials Required

In addition to all the required application materials that are described in the Linear ROW Permitting process discussed previously, telecommunications site applications must include the following:

- Telecommunications System Diagram
- System Specifications Data
- Antenna Specification Data
- FCC Issuance of Radio Frequency License(s) for the relevant area if an FCC license is required for the proposed service
    - A map, drawn to scale, showing the boundaries of the FCC authorized service area, laid over the boundaries of the park

- Radio Frequency Interference Analysis
- Radio Propagation signal strength map showing before and after service levels
- Antenna/Tower Placement Map showing (proposed) placement of:
    - Tower, Equipment, and antennas
    - Support structures and buildings
    - Electrical and telephone lines and connections
    - Road access
- Antenna/Tower Structural Analysis
- Construction drawings, if any new infrastructure is proposed
- Maps meeting the requirements of Section IV.b of this Reference Manual
- A realistic photo-simulation depicting what the proposed telecommunication site would look like after installation.

These are the preliminary materials required to have a complete application for a telecommunications site. However, this does not preclude the park requesting further materials and studies later, including balloon tests (to assist with signal tests and visibility questions) and further analyses of the impacts of any radio signals.

vi. Notifications to Other Telecommunication Companies and the Public

When a request is received by the park for a telecommunication facility, the park should consider notifying other telecommunications companies authorized to serve the park (sample notification letter attached as Exhibit L). Notifying other telecommunication companies provides them with an opportunity to work with the original applicant to co-locate on a proposed structure. It is beneficial to put a timeline on responses to the notification, so the process is able to keep moving forward. Having multiple companies applying to co-locate on the same tower at the same time allows the environmental and cultural compliance costs to be shared by multiple companies and cumulative and connected actions to be evaluated. Any communication with other telecommunications companies should include response deadlines to avoid delaying the processing of the original application.

The park should also consider whether notification or civic engagement (see Director's Order #75A) with the public is appropriate, regardless of the level of public notification required by environmental compliance (see Director's Order #12 and the NPS NEPA Handbook). Civic engagement typically occurs prior to any NEPA public involvement. Installation of telecommunications sites in NPS units is often of interest to the public, and some public

notice or civic engagement may be appropriate, especially if expanding service into new areas of the park.

vii. Cost Recovery

The policies and procedures described in the section on Linear ROW permits all apply to telecommunications sites as well. Additionally, because of the nature of these facilities, there may be additional recoverable costs. For example:

- All costs associated with review and approval of the application package including but not limited to the Office of the Chief Information Office, **Radio & Spectrum Management Division (RSMD)** for review.
- All costs associated with any additional safety reviews or structural analysis of proposed or existing infrastructure being used at a telecommunications site.

viii. Use and Occupancy Fee

The policies and procedures described in the section on Linear ROW permits all apply to telecommunications sites as well.

Any benefits offered to the park by a commercial entity, such as the use of space on the tower or free airtime, are not allowed. Parks generally cannot co-locate on a facility without payment. Call your Regional or WASO Coordinator with any questions.

ix. Radio and Spectrum Management Division Review

As part of processing a ROW permit application for wireless communications infrastructure, the regional ROW Coordinator will request the required consultation with the RSMD. The park should contact the regional ROW Coordinator upon receipt of an application, and the regional ROW Coordinator will work with the park to ensure all materials required for RSMD review have been submitted by the applicant. This review ensures that the proposed infrastructure will not interfere with other NPS wireless transmissions in the area and that there are sufficient safety measures in place, such as appropriate signage and fencing.

x. FAA Notification

One responsibility of the tower or structure owner is to notify the Federal Aviation Administration (FAA) when certain towers are constructed. Notification to the FAA is required for any tower construction or alteration of an antenna structure that is registered with the FCC. Towers that meet certain height and location criteria (generally towers more than 200 feet above ground level or located near an airport) require notice to the FAA and

registration with the FCC. Prior to completing registration with the FCC, an antenna structure owner must have notified the FAA (via FAA form 7460-1) and received a final determination of 'no hazard' from the FAA. The park must see the final determination notice for towers over 200' before issuing a ROW permit.

xi. Drafting the ROW Permit

The ROW permit should be drafted, using the same template and process as is used for linear ROW permits. Terms and conditions should include a specific description of Permittee's access to the site—both physical access to reach the site and access within the site. If several carriers are present at one site, proprietary equipment may need to be secured. Permittees should have access to their equipment only. Additionally, if any government has law enforcement or public safety equipment at a site shared with other users, there may need to be rules or limitations on who has access to certain areas of the site, such as requiring an escort or notification prior to entering the site. Appropriate ROW permit terms and conditions should always be included to ensure that NPS staff have adequate access to conduct safety inspections and check for compliance with the terms and conditions of the permit.

V. MODIFICATIONS TO EXISTING PERMITS

A. Amendments

Amendments normally document small or minor changes to the use described in the original permit or the stated terms and conditions that regulate the use. If there is a request for a short-term activity that does not include adding or changing equipment (such as one-time vegetation management that is not covered in the ROW permit), that may be permitted through a one-time, short-term SUP. A request to amend the permit may be made by either party, but the permit should not be amended without consulting the Permittee. The Permittee may be assessed cost recovery charges if appropriate. The park should also consider if any additional use and occupancy fees, cost recovery, and permit terms and conditions need to be included in the permit because of the proposed amendment.

A minor change might involve the addition of a telephone line to an existing telephone ROW permit or additional aerial equipment on a cell tower if all the equipment is owned by the same entity. If a new entity would like to place a telephone line on another company's power poles or place an antenna on another company's tower, it would require a new ROW permit application to authorize the co-location. If a major change is contemplated, an amendment may not be appropriate and the park should consider writing a new document. An example of

a major change would be the request from a company to change the route of an existing line to an area not included in the current permit.

A request to amend a permit may require NEPA and other compliance before a decision is made by the Superintendent. Additionally, an amendment may necessitate a change in the use and occupancy fee, which must be determined in conjunction with your regional ROW Coordinator.

A draft of the amendment along with a copy of the original permit and all pertinent documentation will be submitted to the regional ROW Coordinator for review. Upon Regional Office review and approval, the amendment is put into final form and two copies are submitted to the company for approval and signature. The Superintendent may then execute the permit amendments. One signed copy of the amendment should go to the Permittee, one signed copy should be placed in the decision file at the park, and a scanned copy should be sent to the regional ROW Coordinator.

A template for a ROW permit amendment is shown as Exhibit M. The original ROW permit number is shown on the upper left side of the sheet with the amendment number immediately below it. The amendment number is the original number followed by "A" and a sequential number specific to that permit and amendment (A01, A02, etc.). The date of issue and expiration of the **original** permit is shown on the upper right portion of the sheet. The approved amendment becomes a part of the original permit and will expire at the same time as the original permit.

The first paragraph identifies the permit involved, the permittee, the original use permitted, and the purpose of the amendment.

The second paragraph should explain what the change is and why the change is necessary.

The third paragraph documents the NEPA and NHPA status.

B. Renewals

If a ROW permittee files a complete application prior to the expiration of the existing ROW permit, this may be processed as a renewal. However, continued use is not automatic and not guaranteed.

While it is the responsibility of the utility to request the renewal of an expiring right-of-way permit, the park should also track the expiration dates of all right-of-way permits in the park. The Listing of Instruments found on the LandsNet Right-of-Way Permits page will assist with this tracking (available to NPS employees). If the renewal request is not received at least

six months prior to the expiration of the ROW permit, the park should contact the utility in writing advising the utility of the expiring permit, asking about the utility's continued need for the right-of-way, and outlining the renewal process. If the park has issues it wants to address in the renewal, those issues should be outlined in this letter.

Requests for renewal give the park the opportunity and responsibility to evaluate the continued appropriateness of the use and complete required environmental and cultural compliance. The decision file for the right-of-way should be reviewed for any infractions, problems, or concerns. At this time, the Park Superintendent may modify the terms, conditions, use and occupancy fees, cost recovery charges, and special stipulations of the permit as appropriate. The park must work with the regional ROW Coordinator to update the use and occupancy fee. If any laws, regulations, or policies have changed since the prior ROW permit was issued, these changes will need to be considered and accounted for in the renewal process. Renewal requests are subject to cost recovery.

A draft ROW permit will be submitted to the regional ROW Coordinator for review. Upon Regional Office review and approval, the permit is put into final form and two copies submitted to the applicant for approval and signature and then to the Superintendent for final execution and implementation. A copy is sent to the permittee, and a copy is retained in the park's decision file. A scanned copy should be sent to the regional ROW Coordinator.

If the Permittee requests a change in the permitted area or a change of authorized infrastructure, additional environmental and cultural compliance may be required. If the requested changes are substantial, the NPS unit, in consultation with the regional ROW Coordinator, may require the renewal to be treated as a new application.

If possible, the park should get written confirmation for the decision file that the permittee does not intend to renew a ROW permit.

If a ROW permit has expired, the park must send the Permittee a notification of expiration. If no response is received to the notice of expiration, a determination should be made, in conjunction with the regional ROW Coordinator and the Solicitor, as to whether the right-of-way has been abandoned. The utility is responsible, by the terms and conditions of the permit, for removal of the improvements and personal property and for the rehabilitation and revegetation of the right-of-way.

C. Transferring a Right-of-Way Permit

Requests to transfer (assign) a permit should be made by letter from the Permittee to the superintendent and include the following information:

- Permit number
- Letter, with signature, from permittee stating the reason for the transfer
- Letter, with signature, from company assuming responsibility for the permit containing the following information:
    1. name of individual or company
    2. address of individual or company
    3. name, title, and contact information of person assuming responsibility for the permit
    4. statement that the purpose of the right-of-way remains the same
    5. agreement by company to comply with all terms and conditions of the permit
    6. proof of bonding, surety and insurance as required as a condition of the permit

Transfers of existing ROW permits from one permittee to another must be approved by the Regional Director, unless the terms and conditions of the permit state otherwise. Approval may only take place after it has been determined environmental and cultural compliance was done before the issuing of the original permit and any additional necessary compliance has been completed. If it was not done, then the analysis must be completed before the transfer is approved. The park will need to work with the permittee and the proposed permittee to collect cost recovery to cover the analysis, as appropriate. The superintendent may also use this opportunity to negotiate changes to the terms and conditions of the permit. However, the expiration date will not change during a transfer.

The transfer will be formatted as an amendment to the existing ROW permit, with the significant difference that the Regional Director signs a transfer (sample attached as Exhibit N). The NPS unit, in coordination with the regional ROW Coordinator, will draft the transfer. Once the transfer document is approved by the regional ROW Coordinator (and Solicitor's Office, if appropriate), the original and new Permittees will both sign four copies of the document. The park will forward all four copies to the regional ROW Coordinator, along with the Superintendent's recommendation that the Regional Director sign the transfer document. Once the Regional Director signs, the regional ROW Coordinator will distribute the fully executed copies: one to the original Permittee, one to the new Permittee, one to the NPS unit, and one in the regional files.

Unless and until a transfer is approved by the NPS, the Permittee named on the ROW permit will be held accountable for compliance with terms and conditions, including any financial obligations.

D. Conversions

Conversions are the substitution of one form of authorization with another. Conversions may be appropriate when the NPS assumes managerial responsibility for an area where there are existing right-of-way agreements issued by another federal agency. It is important for the NPS to obtain copies of all existing ROW authorizations when the NPS assumes managerial responsibility for an area and review the terms and conditions carefully. Since the existing authorization is valid, the terms and conditions of the agreement cannot be changed unless the changes are allowed by the terms of the original agreement or are negotiated and agreed to by both the NPS and the permittee. The park, in consultation with the regional ROW Coordinator, may decide not to convert the existing document into an NPS ROW permit, but just to administer the right-of-way under the terms of the original agreement.

If the park decides not to convert the existing federal permit to the NPS format, the utility should be contacted in writing, providing information about the park and NPS policy. This letter should request confirmation by the company that it is the current permit holder and include a copy of the existing permit, making it clear that the terms and conditions of the permit are still in force. The park should also request a contact name and contact information for the utility. If the authorization/permit required the payment of fees/and or cost recovery charges, a park contact and address should be provided for payment. A park contact name should be provided, as well as an email address and telephone number for any concerns that a utility might have concerning the permit itself or in the event of an emergency.

When the other federal permit is within 18 months of its expiration date, the park should provide the permittee with information on the process to request an NPS ROW permit. If the original federal permit was issued without required compliance, including NEPA and 106 analyses, the utility company should be advised that compliance documents will need to be completed before a decision on the permit request is reached. If the NPS is unlikely to issue an NPS ROW permit upon the expiration of the existing federal permit, the permit holder should be given as much advance notice as possible of that decision.

Property is occasionally acquired subject to permits or leases issued by state or local entities. If property to be acquired has active permits on it, the park must consult with the Land Resources office, prior to acquisition if possible, to ensure that these permits are fully accounted for through the acquisition process. It may be appropriate to honor the permits after land acquisition, to convert them to NPS ROW permits, or to require the use to cease upon acquisition by the United States. Your Lands office will work with you and your Solicitor on these issues. Conversion to an NPS ROW permit may require additional compliance to be completed.

VI. MANAGEMENT CONCERNS – ADMINISTRATIVE

A. Multiple Applications

Unless another process is set up in a park planning document such as a General Management Plan or Telecommunications Plan, then the NPS processes ROW permit applications in the order in which a complete application is received.

Multiple applications are most likely for telecommunications sites. If interest in a location in a park is high, it is beneficial to arrange a meeting between representatives of telecommunication companies and park management. NPS policy encourages co-location and coordination between ROW permit applicants, and the NPS should encourage companies proposing sites to accommodate co-location and consider coordinating their facilities and applications. This can result in the consolidation of compliance reviews, bringing down the cost to the applicants. Additionally, if the NPS unit has a relevant planning document in place, cooperation between companies may limit the number of applications accepted or type of infrastructure considered, which companies should also consider.

If multiple applications are expected or received for the same location, contact your regional ROW Coordinator to ensure the applications are processed properly. Depending on the NPS unit's management documents and the type of applications, it may be appropriate to consider an alternative application process. Please note that using a request for information or a request for proposals (RFI or RFP, respectively) to solicit applications is inappropriate.

B. Appealing Decisions Pertaining to a Right-of-Way Permit

Not all the decisions made by the National Park Service are going to be viewed favorably by the applicant, right-of-way permit holder, or the public. What follows is a broad outline of the appeal process, but consult your regional ROW Coordinator in case of any requests for appeals to confirm the appropriate steps.

Appeals may be made to the next higher level of NPS authority above the initial decision maker; the appeal decision will constitute the final agency action. For example, an initial decision made by a Park Superintendent regarding reissuance of a permit is appealed to the Regional Director, and an initial decision made by a Regional Director regarding an initial permit is appealed to the NPS Director. All appeals must be filed in writing.

C. Default of Permit Because of Failure to Comply with Terms and Conditions

Permitted rights-of-way should be monitored on a regular basis to ensure compliance with the terms and conditions of the permit and any impacts to park resources and the visitor

experience.[8] Failure by the permittee to honor the terms and conditions of the permit may lead to default and possible termination of the permit. Routine monitoring and documentation will also provide the park with data on the effectiveness of existing permit terms and conditions and the impacts of the ROW on park resources. This information will be valuable when drafting future permits.

Depending on the severity and urgency of the violation, initially the permittee may be notified that they are in default and have a period to cure either in a written letter or verbally. Subsequently, a written notification of default and period to cure must be delivered to the named point of contact on the ROW permit, and copies may be delivered to on-site employees or representatives. The regional ROW Coordinator should also receive a copy. The written order of default should detail the reasons for the default and corrections needed for activities to resume. The written notification of default and period to cure should include a time frame for the corrective actions to be taken and should include a clear statement that the ROW permit may be terminated if the corrective actions are not taken within the designated time frame. Depending on the type of violations, a time frame of 30 days is suggested.

If a verbal notification of default was given, the park must issue a written notification of default within three days detailing the reasons for the default, corrections needed for activities to resume, and period to cure.

The Permittee may appeal the notification to the Regional Director and may request permission from the superintendent to resume activities while the appeal is pending. The Superintendent has three (3) days to respond to a request to resume activities pending appeal.

Once it is confirmed that all corrective actions have been taken within the time frame, the Superintendent will issue a written notice that the default has been cured and that the permitted activities may resume. As appropriate, the written notice may increase the level of NPS monitoring of the Permittee, or require the Permittee to agree to additional or amended terms and conditions. If corrective actions are not taken to the satisfaction of the NPS within the designated time frame and no agreement on an extension is reached, then the Superintendent may request that the Regional Director terminate the permit.

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8. Easements should also be monitored for compliance with easement terms and conditions. However, if the easement terms and conditions are not followed, the NPS has a different enforcement process, as the NPS does not have the authority to suspend or revoke an easement. In those cases, consult with your regional ROW Coordinator and Lands office, and the Office of the Solicitor as appropriate.

Even during default, the use and occupancy fee is due.

When considering issuing a notification of default, keep in mind that most permittees are also subject to requirements from other federal and state agencies, such as the FCC or a state Public Utilities Commission (PUC). The NPS may be able to work with these other agencies to find a resolution to the issue in the park.

D. Termination of a ROW Permit

Termination of a ROW permit may occur for a number of reasons. Termination because of failure to comply with terms and conditions is caused by the Permittee's failure to follow the Permit that it agreed to and signed. On the other hand, termination for nonuse or abandonment is based on a determination of the government for ROW permits issued under 54 U.S.C. § 100902(b) and is also frequently incorporated into all ROW permits, as it is a standard provision in the ROW permit template. Finally, Management Policies 2006 section 8.6.4.1 dictates that ROW permits may be terminated for cause or at the discretion of the regional director, and this clause is incorporated into every ROW permit issued by the NPS.

The termination process includes a few steps: the Regional Director must notify the Permittee that the permit is to be terminated; the Permittee must remove their infrastructure (or abandon in place, if the park agrees); the Permittee must restore the site to the satisfaction of the Superintendent; and the Superintendent must concur that the work has been completed. Upon the Superintendent's concurrence, the Permit may be terminated.

If the Permittee is not responsive, the Superintendent should work with regional staff and the Solicitor to resolve the issue and be reimbursed by the Permittee for all costs incurred through cost recovery. The costs may include staff time working with Solicitors, drafting documents, monitoring uses, NPS costs to remove the infrastructure, and others. Until the permit is terminated, the use and occupancy fee is due. Additionally, the bond posted as a condition of the permit may be used for costs associated with removing the equipment if the Permittee refuses to comply.

i. Termination due to Failure to Comply with Terms and Conditions

Except in extraordinary circumstances, termination of a ROW permit for failure to comply with terms and conditions should only follow a notification of default. The process for notification of default of a ROW permit is described above.

A request for an order of termination is sent to the regional ROW Coordinator, who will route it to the Regional Director. The request must include a copy of the notification of default, a brief history of the situation, and a draft order of termination for the Regional

Director's signature. The order of termination is drafted by the NPS unit and the regional ROW Coordinator, and reviewed by the Solicitor. The order of termination should require the Permittee to remove all infrastructure and restore the site to the satisfaction of the Superintendent (and set time frames for those actions), and terminate the ROW permit upon the signed concurrence of the Superintendent that those steps have been taken by the Permittee. Any order of termination should include the reason for termination. The order of termination must also include the actions the Permittee is required to take upon termination of the ROW permit, such as removal of any infrastructure and restoration of any disturbed areas. The Permittee has the right to appeal the order of termination to the Director.

Upon the concurrence of the Superintendent, the Regional Director will send the Permittee the final notice of termination, stating that the ROW permit is officially terminated.

ii. Termination due to Abandonment or Nonuse

A permit may also be terminated if a determination is made that the right-of-way has been abandoned or after a period of two years of nonuse. Contact your regional ROW Coordinator if you have any questions about whether a ROW permit has been abandoned or whether the park has sufficient documentation to support showing two years of nonuse.

In the case of abandonment or two years of nonuse, the Superintendent sends a request for an order of termination to the Regional Director, along with the determination of abandonment or two years of nonuse. The rest of the termination process is the same as described above, with the Regional Director sending out a thirty (30) day order of termination, followed by final notice of termination.

iii. Termination at the Discretion of the Regional Director

Alternatively, ROW permits may also be terminated at the discretion of the regional director. Check the terms and conditions of the ROW permit, as well as the statutes and regulations cited in the ROW permit to see if it is a possibility. If a ROW permit is terminated in this manner, the ROW permit will not necessarily be suspended prior to termination and corrective action may not be possible. The same process described in section VI.D. above is followed here, but documentation supporting the discretion of the regional director must support the request to the Regional Director, rather than a copy of the order of suspension.

E. Freedom of Information Act

During the initial meeting, the Park Superintendent should advise the potential applicant that information submitted on applications for a right-of-way permit is subject to disclosure under the FOIA. Some of the information requested by the park as part of the permit process may be considered by the applicant to be confidential information containing trade secrets or confidential, commercial, or financial information exempt from disclosure under FOIA. Applicants must advise the park in writing of the information that they want withheld from disclosure under FOIA and the justification for withholding that material. Further guidance on this subject may be obtained from the Park/Regional FOIA officer or the Solicitor's Office.

F. Tracking Right-of-Way Permits

It is important for the park to remain in contact with the right-of-way permit holder. Frequently, utility companies are bought, sold, or merged with the new owner having no knowledge of the existence of the federal ROW permit. With a sale or merger, the park may no longer have a point of contact with the permit holder and may not be receiving the cost

recovery charges and fees that are a condition of the permit. The new owner may not have any knowledge of the terms and conditions of the permit, which may lead to violations of the permit conditions. Should a utility holding a right-of-way permit in your park be sold to or merged into another company, the park should contact the new company and arrange a meeting to discuss the existing right-of-way and the terms and conditions of the permit. The transfer procedure (Section 5.C., above) should be used to clarify responsibilities and relationships in these situations.

G. Park ROW Information on www.nps.gov

Each park should have basic information on its park website about obtaining a special park use permit, including a right-of-way permit. At a minimum, the information should include a park contact with contact information (address, email, telephone number) and a link to the NPS right-of-way website.

H. Telecommunications Plans

NPS policy recommends that NPS units develop appropriate planning documents addressing how NPS units will manage telecommunications technology and related facilities. Among other things, this document may establish where telecommunications infrastructure is allowable in the NPS unit and may be used to guide and evaluate future telecommunications ROW permit applications. This planning document is becoming more critical as parks receive more and more ROW permit requests every year. Communication plans allow parks to determine where both linear and nonlinear communications equipment is appropriate (in other words, cell towers, antennas, microwave, and fiber optic, among others) given the park's resource and visitor concerns and needs.

A park's plan may be relatively straightforward for smaller parks, where wireless communication facilities erected outside the park's boundaries provide sufficient service to park visitors and staff. Producing a communications plan may provide an opportunity to highlight critical viewsheds, landscapes, or other resources. The plan could also address established structures that could be used by commercial service providers for co-location.

Especially for larger parks where it is likely that requests will be received to build communication facilities within park boundaries, producing a communications plan provides the industry with important information, such as where facilities would not be approved because of resource impacts and other considerations, where they will be considered and where they are likely to be approved. This information results in the submission of a more viable application and allows for a quicker initial response from the park (yes, no, or maybe).

VII. MANAGEMENT CONCERNS – RESOURCES

A. Monitoring

Monitoring is an important tool for NPS management and is essential across all types of non-NPS infrastructure on NPS lands, regardless of whether it is authorized through a permit or an easement or if there is no authorization in place. Monitoring and documentation allows the NPS to understand the effect of the infrastructure on the park, its visitors, and its resources. In addition, the documentation is key to any enforcement actions that the NPS may need to undertake, including suspension and termination of ROW permits, citing companies for trespass, and bringing actions for resource damages.

It is important that any ROW permit include a condition authorizing ongoing monitoring of the right-of-way by NPS staff. Staff should then document activities conducted in the Permitted Area, such a vegetation management or pole replacement and the effect the right-of-way activities had on park resources and values in the decision file. The decision file should include documentation of the impact of the presence of the right-of-way on park resources and visitor enjoyment, provide necessary information for processing permit renewal requests, and provide information that may be used to draft terms and conditions for permits for similar activities.

The level of monitoring might change over the term of the permit, with increased, possibly full time, monitoring during the construction period and during times of on-site work, and periodic monitoring during routine operations. Monitoring should include at least looking at the infrastructure periodically, to ensure nothing has changed and there are no changed conditions. One way to document monitoring is to take pictures of the infrastructure annually and keep those pictures in the decision file. Alternatively, filling out a park-developed monitoring form or writing a few sentences after each visit are other possibilities. Periodic monitoring also provides information about the impact of the presence of the facility on park lands. For example, in monitoring a transmission line, the presence of raptor remains at the base of tower structures could indicate that the company did not employ raptor-proof designs techniques.

The permit may require that all monitoring costs incurred by the park be reimbursed by the permittee. Monitoring costs may be collected annually or at intervals specified in the permit. When deciding on a payment plan for the monitoring charges, the Superintendent should keep in mind that cost recovery money is year-end money. The total cost of monitoring for the entire term of the permit should not be collected in the first year of the permit.

B. Wilderness

Except as specifically provided by law or policy, there will be no permanent road, structure, or installation within any eligible, study, proposed, or designated wilderness area. This includes the installation of utilities. (See the Wilderness Act 16 U.S.C. § 23). The NPS will not issue any new ROW permits or widen or lengthen any existing rights-of-way in eligible, study, proposed, or designated wilderness area. In very rare cases where utilities are located in wilderness areas the Regional or WASO Wilderness program manager should be consulted before reissuing a permit or issuing a permit for an existing facility.

C. Power Lines and Raptors

Electrical power lines may pose a serious threat to raptors. Raptors are attracted to electrical power lines as they serve as perches for hunting, resting, feeding, and for territorial defense. Some electrical power lines are constructed with conductors and ground wires close enough together that raptors' wings can touch them simultaneously, causing electrocutions. Most often, these electrocutions involve the larger birds, since their broader wingspan makes it more likely that they will touch two components at the same time. These electrocutions tend to occur more frequently in non-forested areas because the non-forested areas of the ROW make prey easier to spot but provide the birds fewer options for perches.

Guidelines for mitigating raptor deaths are detailed on the U.S. Fish and Wildlife Service web page or in the study "Suggested Practices for Avian Protection on Power Lines: the State of the Art in 2006" and Reducing Avian Collisions with Power Lines: The State of the Art in 2012" available from the Avian Power Line Interaction Committee, the Edison Electric Institute or the California Energy Commission.

Some utility companies have taken steps to correct this problem on existing facilities. When parks are drafting a new ROW permit or reissuing a ROW permit for an existing transmission line and have large raptors either in residence or in the area as a stop on their flyway, the park should include a condition to the permit that reads:

> "All overhead power lines will be operated and maintained in accordance with raptor safe procedures as outlined by the U.S. Fish and Wildlife Service and the Edison Electric Institute."

If the park has large raptors and overhead power lines, monitoring the ROW permit should involve park staff traveling the ROW to search for evidence of raptor mortality because of collisions with the lines or electrocution. To be effective, monitoring should take place frequently since predators will quickly remove carcasses, skewing the results. Bird mortality

should be documented and recorded by species and individual size. Observations should also include date, location, and weather conditions. Carcasses may need to be collected so they may be examined by park natural resource staff or staff from the USFWS to determine the cause of death. If the park finds evidence of mortality by probable electrocution, the park should meet with the utility to explore implementing some of the existing mitigation methods.

If the park does find evidence of raptor mortality and meets with the utility company but the company does not agree to implement corrective measures, the park should preserve the electrocuted birds as evidence. In addition, if circumstances warrant it, consider criminal sanctions under applicable authorities. This might come into play in the event that park determines the cause of death to be electrocution and cannot negotiate a reasonable solution with the utility company. At that point, the regional law enforcement specialist/special agent and Solicitor's Office should be asked to assist the park. The park should also contact the USFWS special agent for that area for coordination, additional support, and advice. Failure on the part of the permittee to agree to mitigation measures should also be considered when evaluating an application for reauthorization of the right-of-way.

D. Towers and Bird and Bat Mortality

There is ongoing research on the effect of telecommunication towers on avian and bat mortality. Published accounts first appear in literature in 1880 of birds striking towers measuring 200 feet or more (this is any tower, communication, power, etc.) (see the Bird Strikes and Electrocutions at Power Lines, Communication Towers, and Wind Turbines: State of the Art and State of the Science – Next Steps Toward Mitigation report). Studies of bird mortality, based largely on carcass counts, have been going on for the last 50 years or so. Incidences have been documented where large numbers of warblers, vireos, sparrows, thrushes, and other small birds collided with towers.

There are many variables to study when trying to determine the causes of bird and bat mortality, including weather, tower location, tower construction, height, lighting, and color of lights.

While there is little agreement on the causes of bird mortality, it does appear that most incidents of birds colliding with towers occur at 200 feet or more. Poor weather, visibility, and tower lights also seem to play a role. In addition, most collisions occur during spring and fall migrations, with more collisions occurring in the fall than in the spring. Studies on avian mortality are ongoing, and parks should stay current with the data to assist in locating communication sites.

Communication towers should not be permitted in established flyways. In addition, the USFWS currently recommends that towers, whenever possible, be under 200 feet tall, unlit, and without guy wires. The USFWS has published multiple documents to assist in communication tower planning, which are all available at: U.S. Fish & Wildlife Service Communication Tower website.

Monitoring by park staff should include walking around the tower site to search for evidence of bird and bat mortality. For this to be effective, monitoring should take place on a daily basis since predators will quickly remove carcasses, skewing the results. Bird and bat mortality should be documented and recorded by species and individual size. Observations should also include date, location, and weather conditions.

E. Camouflage of Towers

Depending on the location of a proposed wireless communications tower, different types of camouflage may be appropriate. The BLM's Technical Note 446, "The Use of Color for Camouflage Concealment of Facilities," released April 2015, may be helpful in deciding appropriate camouflage.

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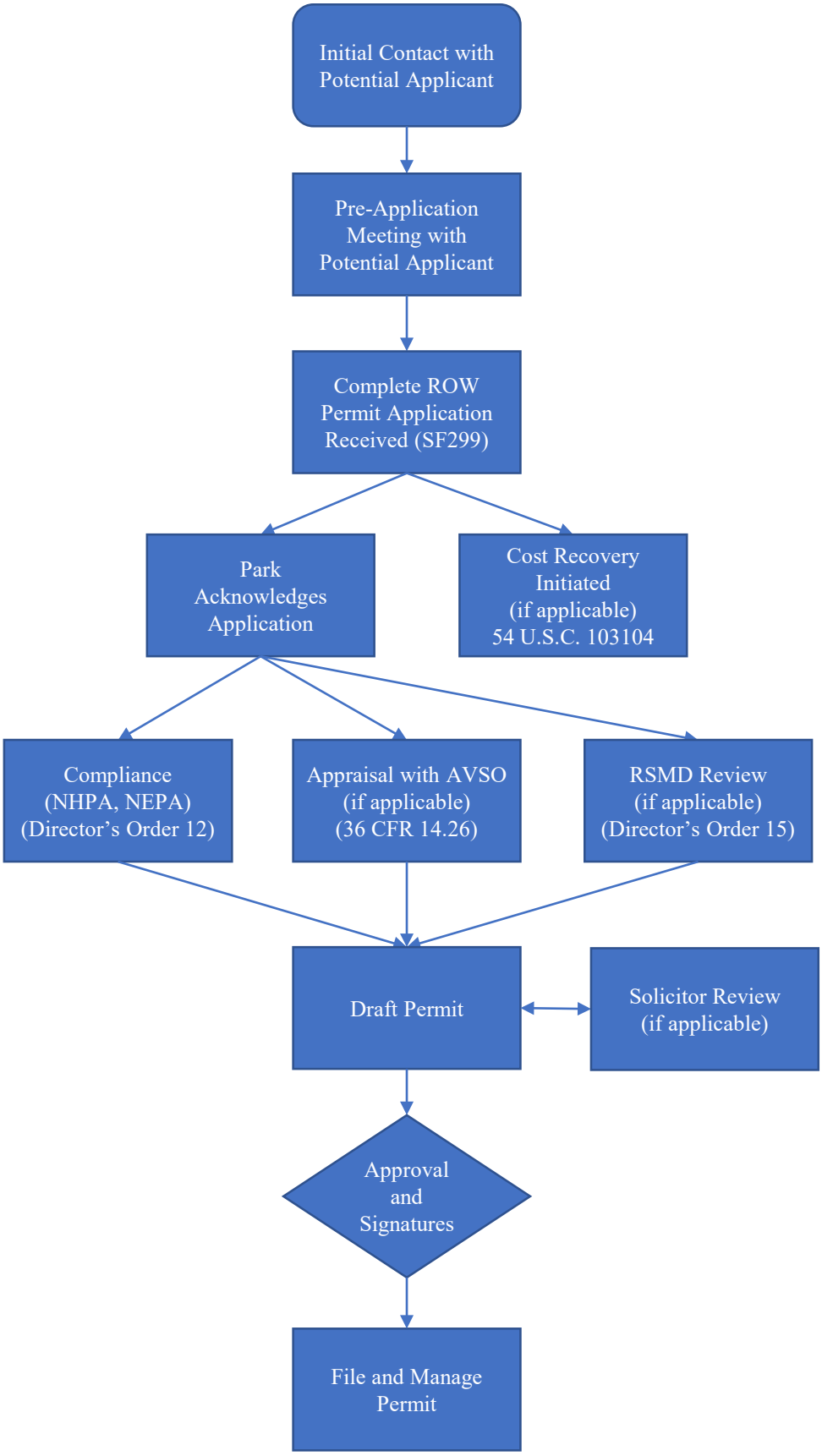
REFERENCE MANUAL 53B
RIGHTS-OF-WAY
DECEMBER 2020

EXHIBIT A

NPS ROW Permitting Process



Application Materials

An application is not considered complete by the NPS until the NPS unit has received, reviewed, and approved all relevant application materials. This includes all materials necessary to begin the NEPA process, as well as the SF-299 and any materials required by regulation (including 36 CFR Part 14 Subparts D-H, as appropriate) or otherwise included below.

1. Complete and signed SF-299, including materials requested on page 4 of the SF-299.

2. Applicable corporate documents as described below in the following table.

IF APPLICANT IS…	THEN THEY MUST PROVIDE….
A private corporation	1. copy of charter or articles of incorporation, duly certified by proper state official of state where corporation was organized 2. Copy of resolution or bylaws authorizing filing of the application
A corporation other than private	1. file copy of law under which corporation was formed 2. proof of organization under that law 3. Copy of resolution or bylaws authorizing filing of the application
A corporation operating in state other than that in which it was incorporated	1. certificate of Secretary of State that corporation has complied with the laws of that state governing foreign corporations to the extent required to entitle the company to operate in such state 2. Copy of resolution or bylaws authorizing filing of the application
As association of individuals (including partnership)	1. certified copy of articles of association or other governing documents, if any, indicating appropriate signature authority 2. if no articles of association or other governing documents, all members must sign application 3. each member must furnish evidence of citizenship
An individual	proof of U.S. citizenship status
A naturalized citizen	date of naturalization, court in which naturalized, number of certificate, if known

3. As applicable, the park unit may also request that the following information (and other relevant documents not listed below) accompany an application:

- Construction-Related information
    - Construction drawings
    - List of equipment to be used in construction
    - Construction schedule
    - Map showing area of requested use for construction in addition to area requested for operation and maintenance after the completion of construction

- Detailed list of all equipment either present or to be installed in the right-of-way
- Maintenance schedule
- Revegetation plans
- Emergency plans
- Proof of relevant authorizations from other agencies
- Archeological surveys, vegetation surveys, and steep slope surveys
- Photo-simulations of site or views of site after proposed installation

Maps and GPS

In addition, the applicant must submit maps with their application, meeting the applicable standards described below. The NPS has adopted the following standards to replace the suggested standard from 36 CFR 14.25(a), which is out-of-date with current mapping technology.

All reported Global Positioning System (GPS) point features noted herein require, at a minimum, field-collected GPS data differentially corrected to sub-meter accuracy (differential GPS or DGPS). The correction process can be achieved either in real-time or by post-processing the data using a service like the Online Positioning User Service (OPUS) operated by United States National Geodetic Survey (NGS).

The following deliverables are required as part of every ROW permit application:

1. AutoCAD (.dwg or .dxf), GIS (.shp or .gdb), or Google Earth (.kmz) files including the required information and meeting the following requirements:

    a. AutoCAD or GIS files shall be projected to the local state plane coordinate system covering the project area in NAD83 or future state plane systems (ensure that the datum realization is specified in the files).[1]

    b. Features will include:
        i. points, lines or polygons[2] identifying the permit area, and associated control points;
        ii. all DGPS points as required below; and
        iii. feature attributes (e.g., acreage, Permittee name) or applicable layer names.

    c. Each file shall include an associated metadata file with fields describing the attributes, data collection method and accuracy of the dataset. Metadata must be Federal Geographic Data Committee (FGDC) compliant (see https://www.fgdc.gov/dataandservices/fgdcmeta).

2. Four 24” x 36” hard copies of the map(s). Linen or rag paper is not required.

3. A PDF file of each map, Adobe file version 1.7 or higher

Regardless of the standard in this Reference Manual, in any situation where the NPS unit and the regional ROW Coordinator deem it appropriate, they may require the applicant to provide a formal survey and legal description. This survey must be signed by a licensed surveyor.

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[1] The current state plane coordinate system is NAD83. A new version, NAD 2022, is expected to be released in 2022.

[2] Park staff may request point, line, or polygon data, depending on park needs and on the project. Generally, nonlinear ROW permit requests (such as for cell towers) will require polygons, while parks may vary between requiring points, lines, or polygons for linear ROW permit requests (such as power lines) depending on the project.

<u>If the infrastructure has not yet been built, the maps must show</u>:

1. Proposed permit area and associated features:

    a. If the permitted area is a linear feature

        i. DGPS points at the proposed beginning and terminus points within the park boundary, labeled with their respective coordinate pairs.
        ii. Proposed centerline and proposed location of any poles or ground disturbance.
        iii. The proposed width, length, and acreage of the permit area.

    b. If the permit area is a non-linear feature

        i. DGPS points at all proposed corners and angle points of the permit area, labeled with their respective coordinate pairs.
        ii. Proposed tower location, and location of proposed appurtenances (buildings, fuel, etc.).
        iii. The proposed acreage and dimensions of the permit area.

2. Crossings of property lines and NPS unit boundaries[3]:

    a. DGPS points must be included on all crossings of NPS property lines and NPS unit boundaries.

    b. If within ¼ mile of NPS unit boundary, unit boundary must be shown if the map scale allows.

    c. Identify any lands that are not administered by the NPS (e.g., such as inholdings) being crossed by the project area within the NPS unit.

    d. Buildings, existing roads, and utilities located within 25 feet of the project area must be shown.

3. Access:

    a. **If access is along a road within the NPS unit**, list the name of the road and the distance along the road needed for access to the permit area. Note whether the roads to be used for access are open to the public or are administrative access only.

    b. **If access is not along a public or administrative road**, include DGPS points at the beginning and terminus points of the proposed project area access route(s).

4. Also include:

[3] NPS unit boundaries are the legislated (or proclaimed) boundaries of an NPS unit. Property lines are lines where NPS-managed land borders land owned by another entity or individual and may occur along a boundary or elsewhere inside a park if another entity or individual owns land within the NPS boundary.

a. Township, section, and range if Public Land Survey System (PLSS) state, or the equivalent survey grid if it is not a PLSS state.

b. County, State, and NPS unit name (i.e., Yellowstone National Park).

c. The scale should be appropriate to show the requested ROW. The park may request a different scale as needed.

d. Map legend.

e. North arrow.

f. The map base may be aerial photography, USGS topographic base, or another base, subject to park approval.

5. Legal Description (may be attached as an exhibit to the map):

a. Linear ROWs

i. Legal description must include sub-meter accuracy GPS points for the centerline.
ii. Legal description must include courses and distances of the centerline.
iii. The entire area (in acres and square feet) must be included.

b. Nonlinear ROWs

i. Legal description must include sub-meter accuracy GPS points for all corners of the proposed ROW area.
ii. The entire area (listed in both acres and square feet) must be included.

6. Within 90 days of the completion of construction, the applicant must then provide a final as-built map and legal description meeting the standards for infrastructure that already exists, as set forth below. These final documents must be delivered to the Superintendent. This includes remeasuring all DGPS points to match actual as-built conditions.

<u>If the infrastructure already exists, the maps must show:</u>

1. ROW permit area and associated features:

    a. **If the permitted area is a linear feature**

        i. DGPS points at the beginning and terminus points within the park boundary labeled with their respective coordinate pairs.
        ii. Centerline and location of any poles.
        iii. The width, length, square feet, and acreage of the permit area.

    b. **If the permit area is a non-linear feature**

        i. DGPS points at all corners and angle points of the permit area labeled with their respective coordinate pairs.
        ii. Tower location and location of appurtenances (buildings, fuel, etc.).
        iii. The acreage, square feet, and dimensions of the permit area.

    c. Major utility infrastructure features (pole locations, tower corners, buildings, fence corners, etc.).

2. Crossings of property lines and NPS unit boundaries[4]:

    a. DGPS points at all crossings of NPS property lines and NPS unit boundaries.

    b. If within one-quarter mile of NPS unit boundary, unit boundary must be shown if the map scale allows.

    c. Identify any lands that are not administered by the NPS (e.g., such as inholdings) being crossed by the project area within the NPS unit.

    d. Buildings, existing roads, and existing utilities located within 25 feet of the permit area must be included.

3. Access:

    a. **If access is along a road within the NPS unit**, list the name of the road and the distance along the road needed for access to the permit area. Note whether the roads to be used for access are open to the public or are administrative access only.

[4] NPS unit boundaries are the legislated (or proclaimed) boundaries of an NPS unit. Property lines are lines where NPS-managed land borders land owned by another entity or individual and may occur along a boundary or elsewhere inside a park if another entity or individual owns land within the NPS boundary.

b. **If access is not along a public or administrative road**, include DGPS points at the beginning and terminus points of the permit area access route(s).

4. Also include:

   a. Township, section, and range if Public Land Survey System (PLSS) state or the equivalent survey grid if it is not a PLSS state.

   b. County, State, and NPS unit name (i.e., Yellowstone National Park).

   c. The scale should be appropriate for the requested ROW. The park may request a different scale as needed.

   d. Map legend.

   e. North arrow.

   f. Data shall be georeferenced to NAD83, in US Feet, and the appropriate State Plane Zone.

   g. The map base may be aerial photography, USGS topographic base, or another base subject to park approval.

5. Legal Description (may be attached as an exhibit to the map) must be either:

   a. Linear ROWs

      i. Legal description must include DGPS points for the centerline.
      ii. Legal description must include courses and distances of the centerline.
      iii. The entire area (in acres and square feet) must be included.

   b. Nonlinear ROWs

      i. Legal description must include DGPS points for all corners of the proposed ROW area.
      ii. The entire area (listed in both acres and square feet) must be included.

STANDARD FORM 299 (REV. 3/2020)

APPLICATION FOR TRANSPORTATION, UTILITY SYSTEMS, TELECOMMUNICATIONS AND FACILITIES ON FEDERAL LANDS AND PROPERTY

FORM APPROVED
OMB Control Number: 0596-0249
Expiration Date: 2/28/2023

FOR AGENCY USE ONLY

NOTE: Before completing and filing the application for an authorization (easement, right-of-way, lease, license or permit), the applicant should completely review this package, including instructions, and schedule a pre-application meeting with representatives of the agency responsible for processing the application. Each agency may have specific and unique requirements to be met in preparing and processing the application. Many times, with the help of the agency representative, the application can be completed at the pre-application meeting.

Application Number

Date Filed

1. Name and address of applicant

2. Name and address of authorized agent if different from item 1

3. Applicant telephone number and email:

Authorized agent telephone number and email:

4. As applicant are you? *(check one)*

a. ☐ Individual
b. ☐ Corporation*
c. ☐ Partnership/Association*
d. ☐ State Government/State Agency
e. ☐ Local Government
f. ☐ Federal Agency

** If checked, complete supplemental page*

5. Specify what application is for: *(check one)*

a. ☐ New authorization
b. ☐ Renewing existing authorization number
c. ☐ Amend existing authorization number
d. ☐ Assign existing authorization number
e. ☐ Existing use for which no authorization has been received *
f. ☐ Other*

** If checked, provide details under item 7*

6. If an individual, or partnership, are you a citizen(s) of the United States? ☐ Yes ☐ No

7. Project description *(describe in detail)*: (a) Type of use or occupancy, *(e.g., canal, pipeline, road, telecommunications);* (b) related structures and facilities; (c) physical specifications *(Length, width, grading, etc.*); (d) term of days/years needed; (e) time of year of use or operation; (f) Volume or amount of product to be transported; (g) duration and timing of construction; and (h) temporary work areas needed for activity/construction *(Attach additional sheets, if additional space is needed.)*

8. Attach a map covering area and show location of project proposal.

9. State or Local government approval: ☐ Attached ☐ Applied for ☐ Not Required

10. Nonrefundable application fee: ☐ Attached ☐ Not required ☐ To be determined by agency

11. Does project cross international boundary or affect international waterways? ☐ Yes ☐ No *(if "yes," indicate on map)*

12. Give statement of your technical and financial capability to construct, operate, maintain, and terminate system for which authorization is being requested.

13a. Describe other alternative locations considered.

b. Why were these alternatives not selected?

c. Give explanation as to why it is necessary to use or occupy Federal assets (lands or buildings).

14. List authorizations and pending applications filed for similar projects which may provide information to the authorizing agency. *(Specify number, date, code, or name)*

15. Provide statement of need for project, including the economic feasibility and items such as: (a) cost of proposal (construction, operation, and maintenance); (b) estimated cost of next best alternative; and (c) expected public benefits.

16. Describe probable effects on the population in the area, including the social and economic aspects, and the rural lifestyles.

17. Describe likely environmental effects that the proposed project will have on: (a) air quality; (b) visual impact; (c) surface and ground water quality and quantity; (d) the control or structural change on any stream or other body of water; (e) existing noise levels; and (f) the surface of the land, including vegetation, permafrost, soil, and soil stability; and, (g) historic or archaeological resources or properties.

18. Describe the probable effects that the proposed project will have on (a) populations of fish, plant life, wildlife, and marine life, including threatened and endangered species; and (b) marine mammals, including hunting, capturing, collecting, or killing these animals.

19. State whether any hazardous material, as defined in this paragraph, would be used, produced, transported or stored on or in a federal building or federal lands or would be used in connection with the proposed use or occupancy. "Hazardous material" shall mean (a) any hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any petroleum product or its derivative, including fuel oil, and waste oils; and (d) any hazardous substance, extremely hazardous substance, toxic substance, hazardous waste, ignitable, reactive or corrosive materials, pollutant, contaminant, element, compound, mixture, solution or substance that may pose a present or potential hazard to human health or the environment under any applicable environmental laws. The holder shall not store any hazardous materials at the site without prior written approval from the authorized officer. This approval shall not be unreasonably withheld. If the authorized officer provides approval, this permit shall include (or in the case of approval provided after this permit is issued, shall be amended to include) specific terms addressing the storage of hazardous materials, including the specific type of materials to be stored, the volume, the type of storage, and a spill plan. Such terms shall be proposed by the holder and are subject to approval by the authorized officer.

20. Name all the Federal Department(s)/Agency(ies) where this application is being filed.

I HEREBY CERTIFY, That I am of legal age and authorized to do business in the State and that I have personally examined the information contained in the application and believe that the information submitted is correct to the best of my knowledge.

Signature of Applicant | Date

Title 18, U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

GENERAL INFORMATION
ALASKA NATIONAL INTEREST LANDS

This application will be used when applying for a right-of-way, permit, license, lease, or certificate for the use of Federal lands which lie within conservation system units and National Recreation or Conservation Areas as defined in the Alaska National Interest lands Conservation Act. Conservation system units include the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, and National Forest Monuments.

Transportation utility systems telecommunication installations facility uses for which the application may be used are:

1. Canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other systems for the transportation of water.

2. Pipelines and other systems for the transportation of liquids other than water, including oil, natural gas, synthetic liquid and gaseous fuels, and any refined product produced therefrom.

3. Pipelines, slurry and emulsion systems, and conveyor belts for transportation of solid materials.

4. Systems for the transmission and distribution of electric energy.

5. Wired and wireless systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communications.

6. Improved right-of-way for snow machines, air cushion vehicles, and all-terrain vehicles.

7. Roads, highways, railroads, tunnels, tramways, airports, landing strips, docks, and other systems of general transportation.

This application must be filed simultaneously with each Federal department or agency requiring authorization to establish and operate your proposal.

In Alaska, the following agencies will help the applicant file an application and identify the other agencies the applicant should contact and possibly file with:

Department of Agriculture
Regional Forester, Forest Service (USFS)
P.O. Box 21628
Juneau, Alaska 99802-1628
Telephone: (907) 586-7847
(or a local Forest Service Office)

Department of the Interior
Bureau of Indian Affairs (BIA)
Alaska Regional Office
709 West 9th Street
Juneau, Alaska 99802
Telephone: (907) 586-7177

Department of the Interior
Alaska State Office
Bureau of Land Management
222 West 7th Avenue #13
Anchorage, Alaska 99513
Public Room: 907-271-5960
FAX: 907-271-3684
(or a local BLM Office)

U.S. Fish & Wildlife Service (FWS)
Office of the Regional Director
1011 East Tudor Road
Anchorage, Alaska 99503
Telephone: (907) 786-3440

National Park Service (NPS)
Alaska Regional Office
240 West 5th Avenue
Anchorage, Alaska 99501
Telephone: (907) 644-3510

Note - Filings with any Interior agency may be filed with any office noted above or with the Office of the Secretary of the Interior, Regional Environmental Officer, P.O. Box 120, 1675 C Street, Anchorage, Alaska 99513.

Department of Transportation
Federal Aviation Administration
Alaska Region AAL-4, 222 West 7th Ave., Box 14
Anchorage, Alaska 99513-7587
Telephone: (907) 271-5285

NOTE - The Department of Transportation has established the above central filing point for agencies within that Department. Affected agencies are: Federal Aviation Administration (FAA), Coast Guard (USCG), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA).

OTHER THAN ALASKA NATIONAL INTEREST LANDS

Use of this form is not limited to National Interest Conservation Lands of Alaska.

Individual department/agencies may authorize the use of this form by applicants for transportation, utility systems, telecommunication installations and facilities on other Federal lands outside those areas described above.

For proposals located outside of Alaska, applications will be filed at the local agency office or at a location specified by the responsible Federal agency.

SPECIFIC INSTRUCTIONS
(Items not listed are self-explanatory)

7 Attach preliminary site and facility construction plans. The responsible agency will provide instructions whenever specific plans are required.

8 Generally, the map must show the section(s), township(s), and range(s) within which the project is to be located. Show the proposed location of the project on the map as accurately as possible. Some agencies require detailed survey maps. The responsible agency will provide additional instructions.

9, 10, and 12 The responsible agency will provide additional instructions.

13 Providing information on alternate locations in as much detail as possible, discussing why certain locations were rejected and why it is necessary to use Federal assets will assist the agency(ies) in processing your application and reaching a final decision. Include only reasonable alternate locations as related to current technology and economics.

14 The responsible agency will provide instructions.

15 Generally, a simple statement of the purpose of the proposal will be sufficient. However, major proposals located in critical or sensitive areas may require a full analysis with additional specific information. The responsible agency will provide additional instructions.

16 through 19 Providing this information with as much detail as possible will assist the Federal agency(ies) in processing the application and reaching a decision. When completing these items, you should use a sound judgment in furnishing relevant information. For example, if the project is not near a stream or other body of water, do not address this subject. The responsible agency will provide additional instructions.

Application must be signed by the applicant or applicant's authorized representative.

EFFECT OF NOT PROVIDING INFORMATION

Disclosure of the information is voluntary. If all the information is not provided, the proposal or application may be rejected.

DATA COLLECTION STATEMENT

The Federal agencies collect this information from proponents and applicants requesting a right-of-way, permit, license, lease, or certification for use of Federal assets. The Federal agencies use this information to evaluate a proponent's or applicant's proposal to use Federal assets.

BURDEN STATEMENT

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0249. The time required to complete this information collection is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The authority to collect this information is derived from 47 U.S.C. 1455(c)(3) and 16 U.S.C. 3210.

USDA NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

SUPPLEMENTAL

NOTE: The responsible agency(ies) will provide instructions	CHECK APPROPRIATE BLOCK	
I - PRIVATE CORPORATIONS	ATTACHED	FILED *
a. Articles of Incorporation	☐	☐
b. Corporation Bylaws	☐	☐
c. A certification from the State showing the corporation is in good standing and is entitled to operate within the State	☐	☐
d. Copy of resolution authorizing filing	☐	☐
e. The name and address of each shareholder owning 3 percent 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 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.	☐	☐
f. If application is for an oil or gas pipeline, describe any related right-of-way or temporary use permit applications, and identify previous applications.	☐	☐
g. If application is for an oil and gas pipeline, identify all Federal lands by agency impacted by proposal.	☐	☐
II - PUBLIC CORPORATIONS		
a. Copy of law forming corporation	☐	☐
b. Proof of organization	☐	☐
c. Copy of Bylaws	☐	☐
d. Copy of resolution authorizing filing	☐	☐
e. If application is for an oil or gas pipeline, provide information required by item "I - f" and "I - g" above.	☐	☐
III - PARTNERSHIP OR OTHER UNINCORPORATED ENTITY		
a. Articles of association, if any	☐	☐
b. If one partner is authorized to sign, resolution authorizing action is	☐	☐
c. Name and address of each participant, partner, association, or other	☐	☐
d. If application is for an oil or gas pipeline, provide information required by item "I - f" and "I - g" above.	☐	☐

***** If the required information is already filed with the agency processing this application and is current, check block entitled "Filed." Provide the file identification information *(e.g., number, date, code, name)*. If not on file or current, attach the requested information.

Fill in or modify any language in bold or italics, as appropriate to fit your project

In reply refer to:

Date

Applicant name
Applicant company
Applicant address

Dear Mr./Ms.:

[APPLICANT NAME] applied for a right-of-way (ROW) permit from **[PARK UNIT]** (Park), a National Park Service (NPS) unit, on **[DATE]**. The application proposes *[insert 2-3 sentence summary of project – include type of use request, length, location, whether construction is included, and who/what it will serve)*.

This letter acknowledges the Park's receipt of your application. Please note that acknowledgment of **[COMPANY's]** application does not guarantee issuance of a ROW permit, and no work is to commence by **[COMPANY]** until and unless a signed ROW permit has been issued. **[COMPANY's]** application is currently incomplete, and cannot be processed until the missing components (detailed below) are submitted. *(if the application is complete, then state that fact here, and delete the section below about required additional information)*.

In order to be considered complete, **[COMPANY]** must include the following additional information:

- *(list missing information –*
- *anything missing from SF-299, signature, maps, construction drawings, corporate documents, coverage maps, etc.)*

Upon receipt and approval of the above materials, the NPS will move forward and begin processing **[COMPANY's]** application.

Once a complete application is received, the next steps in processing the application may include the environmental and cultural reviews, appraisal, and agreement on permit terms. Depending on the type of infrastructure **[COMPANY]** is requesting to place in the park, additional steps may be required.

As part of the ROW permitting process, the Park will be implementing cost recovery for processing the application, which includes administrative and compliance costs, plus the cost of an appraisal. The NPS uses the appraisal to determine the annual use and occupancy fee to be paid by **[COMPANY]** under the ROW permit (36 CFR 14.26). You will be contacted by **[regional coordinator]** from the NPS regional office to begin the appraisal process. *(modify as needed if not collecting cost recovery or if an annual use and occupancy fee is not required. Also, feel free to expand on how your park will bill for cost recovery here (annually, quarterly, upfront, etc.).*

[**COMPANY]** is responsible for reimbursing the Park through cost recovery, even if you withdraw the application prior to permit issuance or if the NPS denies the permit. All cost recovery must be paid to the Park before the NPS will sign any ROW Permits.

Upon request, the Park will provide an estimate of cost recovery to **[COMPANY]**. Please note that this is just an estimate, and the final total of cost recovery may vary from the estimated total. The Park will provide an invoice for any remaining cost recovery due at the conclusion of the ROW Permitting process as as an attachment to the final ROW Permit for your signature, upon NPS's denial of the application, or upon the NPS's receipt of **COMPANY'S** withdrawal of application.

We request **[COMPANY'S]** signature below to indicate concurrence with and understanding of the terms of cost recovery associated with your permit application.

We are available for a conference call or meeting to discuss the NPS ROW permitting process and answer any questions you may have. If you have any questions or would like more information about the ROW permit process, please contact **[PARK CONTACT**] at [**PHONE NUMBER & EMAIL**].

Sincerely,

Superintendent

Concurrence:

By: _____ Date: _____

Print Name: _____

Title: _____

March 2, 2016

EXHIBIT E

To: Regional and Park ROW Coordinators

From: Lee Dickinson, NPS Special Park Uses Program Manager
David Reynolds, NPS Land Resources Division Right-of-Way Program Director

Re: ROW Permits: Cost Recovery, Use and Occupancy Fees
54 U.S.C. § 103104; 36 CFR 14.22(a) and (b); 36 CFR 14.26

The National Park Service (NPS) is authorized to collect and retain reimbursement for costs incurred in processing and issuing right-of-way permits (ROW Permits) authorizing utilities to cross NPS units. In addition, NPS collects an annual rental charge for such uses, known as a "use and occupancy fee." NPS ROW Permits are generally issued under 54 U.S.C. § 100902[1], and occasionally under park-specific authorities. The authorities used to recover and retain costs associated with processing and monitoring ROW Permits and applications were reviewed by the Solicitor last year, and this memo serves to disseminate the resulting clarifications of NPS policies and processes. The Solicitor's Opinion is attached for reference.

Cost Recovery – processing an application

54 U.S.C. § 103104[2] authorizes NPS to recover and retain all costs of providing necessary services associated with special use permits. NPS ROW Permits are a type of special use permit. As such, NPS is authorized to collect and retain cost recovery for costs incurred while processing ROW Permit applications. Policy and guidance for use of this authority may be found in 2006 Management Policies § 8.6.1.2; Director's Order 53; and Reference Manual 53. As appropriate, this authority should be used to recover and retain all costs incurred in receiving an application, processing the application and, if approved, all costs incurred in facilitating the permitted activity including monitoring costs incurred after a ROW Permit is signed (see Monitoring Costs, below). Cost recovery may begin upon receipt of an application.

36 CFR 14.22(a)[3], which also covers cost recovery for ROW permits, pre-dates 54 U.S.C. § 103104, and is a completely separate authority for collecting cost recovery. However, under 36 CFR 14.22(a), all costs recovered must be sent to Treasury – no funds may be retained by NPS. 54 U.S.C. § 103104 and 36 CFR 14.22(a) should not be used simultaneously. In the interests of consistency, discretion at the park level to collect cost recovery as appropriate, and retaining recovered costs in the park, the NPS WASO ROW Team recommends using 54 U.S.C. § 103104 for cost recovery decision-making. When following 54 U.S.C. § 103104, NPS staff should not rely on the categories listed in 36 CFR 14.22 to determine whether cost recovery applies. Instead, rely only on the policy and guidance promulgated under 54 U.S.C. § 103104, as mentioned above.

Cost Recovery – post-permit issuance monitoring costs

Just as 54 U.S.C. § 103104 provides NPS-specific authority to recover and retain ROW Permit processing costs prior to execution of the ROW Permit, this same authority may also be used to

[1] Previously 16 U.S.C. § 5 and § 79.
[2] Previously 16 U.S.C. § 3a.
[3] Regulation promulgated under the authority of 31 U.S.C. § 9701.

recover and retain monitoring costs after a ROW Permit is executed. Again, when following 54 U.S.C. § 103104, rely on the policy and guidance promulgated under the statute, as mentioned above. Cost recovery for monitoring costs must be evaluated under the same criteria as the cost recovery for processing the initial ROW Permit application.

Historically, NPS recovered costs expended on monitoring activities authorized by a ROW Permit under 36 CFR 14.22(b). 36 CFR 14.22(b) requires the ROW Permittee to reimburse the United States for costs incurred by the United States in monitoring the uses associated with the ROW Permit after the ROW Permit has been signed. As mentioned above, 36 CFR 14.22(b) does not authorize NPS to retain the cost recovery – any recovered costs retained by NPS are done so under 54 U.S.C. § 103104 (though this is rarely stated). As with cost recovery for Permit processing, the NPS WASO ROW Team recommends using 54 U.S.C. § 103104 for monitoring costs. When following 54 U.S.C. § 103104, do not rely on the categories of user or use listed in 36 CFR 14.22 to determine monitoring costs.

Note that a 2007 U.S. Government Accountability Office (GAO) Decision[4] held that NPS may not charge monitoring fees on top of use and occupancy fees. Instead, NPS should back any monitoring costs out of the collected use and occupancy fees and keep the monitoring fees in the park as cost recovery. The remaining use and occupancy fees collected are to be remitted to the U.S. Treasury. If monitoring costs exceed the use and occupancy fees collected from a Permittee in a given year, then NPS may bill the Permittee for the additional monitoring costs for that year and retain that amount. Any monitoring costs must be documented in the park unit's administrative record for the ROW Permit.

Use and Occupancy Fees

36 CFR 14.26(a) requires that, except as provided in 36 CFR 14.26(b) and (c), a use and occupancy fee (annual rental fee) be charged for each permit. The use and occupancy fee is to be "the fair market value of the permit, right-of-way, or easement, as determined by appraisal by the authorized officer." In light of Department of the Interior's (DOI's) Office of the Inspector General Report "Management of Right-of-Way in the U.S. Department of the Interior"[5] and 602 DM 1, responsibility for determination of the fair market value is now placed with the DOI's Office of Valuation Services (OVS).

A use and occupancy fee must be collected, unless the applicant meets one of the exceptions under 36 CFR 14.26(c). If a use and occupancy fee is required, then the Regional ROW Coordinator must be contacted to request an appraisal from OVS. This process can take several months, so it is important that park staff contact their Regional ROW Coordinator as early as possible.

Note that the exceptions for use and occupancy fees are different from any of the exceptions for cost recovery – cost recovery and use and occupancy fee must be separately determined under their respective criteria.

Please distribute this memo to park and regional staff as appropriate.

---

[4] B-307319; August 23, 2007.

[5] C-IN-MOA-0013-2010, September 2012

EXHIBIT E

FOR FURTHER INFORMATION, CONTACT:

Lee Dickinson, NPS Special Park Uses Program Coordinator

or

Dave Reynolds, NPS Land Resources Division ROW Program Manager

COST RECOVERY AND USE & OCCUPANCY FEES FOR RIGHT-OF-WAY PERMITS

1. INTRODUCTION

There are two distinct charges associated with right-of-way (ROW) permits: cost recovery and the use and occupancy (U&O) fee. These charges are collected pursuant to different authorities and serve different purposes. However, the park must document and account for the charges together as described in this section.

The discussion of cost recovery and U&O fees in this Exhibit is specific to ROW permits and is not intended for other permitting instruments described in Reference Manual 53**.**

2. COST RECOVERY

Cost Recovery refers to all costs incurred in processing an application and monitoring or managing a permitted activity. Cost recovery for NPS ROW permits is often separated into three parts in practice: (1) application charge; (2) pre-permit issuance (processing charge); and (3) post-permit issuance (monitoring charge). This Exhibit applies to all of these parts and supplements existing policy on cost recovery for Special Use Permits, found in Management Policies, Director's Order #53: Special Park Uses, Reference Manuals 53& 53B, and the 2016 memo entitled "ROW Permits: Cost Recovery, Use and Occupancy Fees."

The NPS authority to collect and retain cost recovery is 54 U.S.C. § 103104. This is the same cost recovery authority used for all special park uses. As such, exemptions for cost recovery for ROW permits are the same as those for other special park uses, as described in Director's Order #53 and Reference Manual 53. While there is a second authority for cost recovery that applies exclusively to ROW permits, 36 CFR 14.22, it is recommended that NPS units recover costs under 54 U.S.C. § 103104 (see Exhibit E).

The application charge is often the first payment of cost recovery. An application charge will be submitted with an application for a ROW permit. This one-time, upfront charge covers the costs to initially review the application for completeness and is non-refundable. This charge should be individually calculated at each park to reflect actual costs and the time and grade(s) of those involved in initial review. The park must document their calculation of the application charge in park files. As long as the calculation of the application charge is documented centrally, it does not need to be individually calculated for every permit application. The application charge for a ROW permit may be the same as the application charge for all other special park uses, so long as that is representative of actual initial costs and documented in park files.

The processing charge (pre-permit issuance cost recovery) should reflect the actual costs incurred by the NPS in processing the right-of-way permit, from receipt of a complete application to final permit approval and issuance (prior to receipt of a complete application, the NPS should not be working on processing an application, except for a pre-application meeting and determination of application completeness).

This charge includes, but is not limited to:

- all costs associated with an appraisal to determine the U&O fee;
- environmental and/or cultural compliance;
- research and surveys;
- meetings;
- travel;
- personnel time, including benefits; and
- charges incurred by hiring contractors and consultants to provide park management with subject matter experts and information.

Upon request of the applicant, the NPS should provide an estimate of expected costs. The applicant is responsible for all costs associated with the processing of the application, even if the request is denied. All costs must be recovered prior to execution of any permit by the NPS.

The monitoring charge is the money expended by the park in monitoring or managing the ROW permit after the ROW permit is issued. If a park is charging a monitoring charge for a ROW permit, then the charge must be required by a term in the ROW permit and will be assessed on a yearly basis, at most. This charge covers the *actual costs* incurred by the park accomplishing the required monitoring or management during any maintenance activities and annual reassessment of the use for compliance with permit terms and conditions. These costs must be documented and included in the park's records for the permit.

3. USE AND OCCUPANCY FEE

Use and occupancy fee (U&O fee) refers to the money due the United States for the use and occupancy of NPS lands or facilities and is a payment based on value of those NPS lands or facilities as determined by an appraisal. It is also called annual rent.

The U&O fee is collected when required by 36 CFR 14.26. There are no exemptions from the U&O fee other than those in the regulation.

Calculation of U&O Fee

36 CFR 14.26 requires recovery of the fair market value of lands and waters as determined by the authorized official using an appraisal. An "appraisal" as referenced within 36 CFR 14.26 must be approved by the DOI Appraisal and Valuation Services Office (AVSO) before it is used. In addition, all appraisals needed for the purpose of establishing a U&O fee for a ROW permit must be requested and ordered in coordination with AVSO.

The Regional ROW Coordinator facilitates engagement of AVSO appraisal services upon the request of NPS offices or park units, and on a cost-reimbursable basis, for the purpose of establishing a U&O fee. Generally, the process is as follows: the Regional ROW Coordinator will request the appraisal from AVSO. AVSO will develop a statement of work (SOW) and a list of qualified appraisers. Once the NPS approves the SOW, both the SOW and list of qualified

appraisers will be given to the ROW permit applicant, who may then contract directly for the appraisal (Alternatively, AVSO may contract for the appraisal and be reimbursed through cost recovery. However, this method is slower and not recommended). AVSO will receive the appraisal and must approve it before the value is shared with anyone else—even the applicant paying for the appraisal must wait for AVSO's approval. Once the appraisal is completed and approved by AVSO, it sets the U&O fee for the ROW permit. This is not a negotiable fee.

Depending on market conditions, the U&O fee may increase annually based on an escalation clause inclusive in the scope of the appraisal or the permit may need to be reappraised every few years. At the very least, a new appraisal should be completed every time the permit is renewed.

In March 2020, the NPS released an Expedited Process (Exhibit G) that may be used when certain conditions are met. When this process is followed, the NPS may issue a ROW permit before the appraisal is complete and approved by AVSO.

Various fee schedules exist throughout the country, including one set by BLM. While some other agencies may use these fee schedules to set the annual rent for their permits, as of publication of this reference manual, the NPS does not have authorization to use any of these fee schedules. Please check with your Regional ROW Coordinator if you have questions about fee schedules.

Moneys collected for land and/or facility use and occupancy will be deposited to the Miscellaneous Receipts of Treasury's General Fund as described in section 5, below.

4. DOCUMENTING COST RECOVERY

If a park is collecting cost recovery for a ROW project, the park must document the staff time and costs in the decision file kept at the park. It is imperative to plan for cost recovery from the beginning of the application process in order to ensure that it is properly tracked, documented, and billed to the applicant or permittee. Since cost recovery funds have an annual availability and will expire each fiscal year on September 30th, the park must schedule timely billing to the applicant/permittee and reconcile charges for park staff and incurred costs before the end of each fiscal year.

Documentation of cost recovery can take many forms. The documentation must be included in the park files and include: park staff working on the project and their total rate (hourly rate plus benefits); each individual's hours spent on the project; and what tasks have been completed. A few recommendations and templates for documentation are included below. Depending on the size of the project, number of staff involved, and amount of cost recovery expected, different approaches to documentation may be appropriate. Samples of each documentation method referenced below are available at LandsNet.nps.gov or where otherwise stated.

- For a large project with significant staff involvement parks may use any of the following:
    - A shared spreadsheet on a shared website (such as Teams) that everyone updates at least once per pay period.
    - The cost recovery sheet available on the internal NPS SUP page.

- Commercially available apps exist to track time for multiple individuals on computers and phones, and aggregate and report that time to a project manager. As of the approval of this document, none of these apps have been approved for NPS use but they may be used if approval is received from the appropriate authority within the NPS, currently the One General Support System Change Advisory Board. The costs of using an app should also be recovered as part of the cost recovery.

- For a small project with few staff involved parks may:
  - Have staff maintain individual documentation that is compiled in the decision file by a designated person.
  - Use a shared spreadsheet on a shared site (such as Teams) that everyone updates at least once per pay period.

5. ACCOUNTING FOR BOTH COST RECOVERY AND U&O FEE

Generally, cost recovery and the U&O fee are both managed by the park. Money due for monitoring or management (cost recovery) is retained from the U&O fee, with the balance of the fee going to Treasury's General Fund. If the amount of the monitoring charge due the park exceeds the amount of the U&O fee, the park collects the proper amount to cover that year's monitoring charge (even above and beyond the U&O fee), retains that amount, and does not make a deposit to Treasury's General Fund (if a ROW permit authorizes a monitoring charge but does not have a U&O fee, then the monitoring charge must be billed to the Permittee each year). Money collected for monitoring and management reflects actual costs to the park and should be deposited to the reimbursable park account. Below is a chart showing how cost recovery and the U&O fee are managed together.

Year of Permit	Cost Recovery	Use & Occupancy Fee	Amount billed to Permittee	Amount kept at park	Amount sent to Treasury
1	400	100	400	400	0
2	200	100	200	200	0
3	0	100	100	0	100
4	50	100	100	50	50
5	100	100	100	100	0

Since cost recovery and the U&O fee must be managed together, the park may want to require the U&O fee to be submitted early in the fiscal year in order to make accounting easier. This can be specified in the ROW permit.

Tracking cost recovery and U&O fee in NPS accounting software

Starting in FY22, ROW permits have unique Functional Areas:

PROIERWC1.XZ0000 RIGHT OF WAY FEES (applicable Fund is C1)

PSS00PRXR.XU0000 ROW U&O FEES (applicable Fund is XR)

Parks may use any park Funds Center.

All cost recovery collected from ROW permits, regardless of whether it is collected before or after ROW permit issuance, should be deposited in "PROIERWC1.XZ0000 RIGHT OF WAY FEES" and identified with the appropriate Park Cost Center.

If an active ROW permit authorizes both cost recovery and a U&O fee, then the U&O fee should initially be deposited in "PROIERWC1.XZ0000 RIGHT OF WAY FEES" upon receipt. However, at the end of the fiscal year, after all cost recovery for that ROW permit has been backed out, any remaining U&O fee must be transferred to Miscellaneous Receipts for ROW permits, "PSS00PRXR.XU0000 U&O FEES" (this will go to Treasury's General Fund).

If an active ROW permit only authorizes a U&O fee but not cost recovery (this should be rare), then that U&O fee should immediately be deposited into Miscellaneous Receipts (PSS00PRXR.XU0000 U&O FEES) upon receipt.

Parks may create an individual WBS for a particularly large or complex ROW permitting project. If a park is creating an individual WBS, the level 1 WBS will include PROIERWC1.000000 RIGHT OF WAY FEES and the level 2 WBS will include PROIERWC1.XZ0000 RIGHT OF WAY FEES.

This accounting process ensures that management of cost recovery meets the combination of relevant legal requirements for these different funds, cost recovery for individual permits can be tracked, and OIG Report recommendations are implemented.

6. BILLING FOR COST RECOVERY – PROCESSING CHARGE

The processing charge is, in most instances, a one-time assessment payable prior to issuance of the permit, so long as the ROW permit will be issued in the same fiscal year that the application was received. However, if the project spans multiple fiscal years, the park needs to plan when they are going to bill cost recovery in order to avoid any issues with the expiration of funds at fiscal year end. The park may choose to either bill for cost recovery regularly up-front and charge against the account as costs are incurred, or to bill the applicant regularly (i.e. quarterly) and reimburse costs after they occur. The money received must be deposited to the reimbursable park account set up for the RIGHT OF WAY FEES account described above, starting in FY22.

7. BILLING METHOD FOR BOTH COST RECOVERY AND USE AND OCCUPANCY FEE

It is important to remember that the cost recovery account has an annual availability and these funds will expire each fiscal year on September 30th. This may help the park reach a decision on the timing of billing to the Permittee.

The monitoring charge and U&O fee are calculated and collected each fiscal year for the life of the permit, using a bill for collection. The park should establish billing using a bill for collection for each yearly remittance of the monitoring charge and U&O fee. This should be set up in coordination with the administrative officer or comptroller, starting in FY22.

United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N. W.
Washington, DC 20240

4.A1(L1425)

March 30, 2020

Memorandum

To: Regional Directors

From: Acting Associate Director, Park Planning, Facilities, and Lands MICHAEL CALDWELL Digitally signed by MICHAEL CALDWELL Date: 2020.03.30 19:41:40 -04'00'

Subject: Expedited Process for Valuation and Issuance of Right-of-Way Permits

The National Park Service (NPS) regularly issues right-of-way (ROW) permits for utility infrastructure located on or within parks as authorized by 54 U.S.C. § 100902 or park-specific enabling legislation. The NPS ROW permits have an annual fee (also called "use and occupancy fee"), unless the permit is exempt from the fee under 36 C.F.R. 14.26(c). Currently, the annual fee must be set by an appraisal developed in coordination with the Appraisal and Valuation Services Office (AVSO) and approved by AVSO prior to its use by the NPS.

This memo outlines an approved process for the NPS to issue new and renewed ROW permits while the appraisal is still being completed (Expedited Process). Standard practice for both new and renewed ROW permits is to wait for the appraisal to be completed and approved by AVSO prior to issuance of the new or renewed ROW permit. The goal of the Expedited Process is to ensure that, in certain situations, the NPS has the ability to issue ROW permits more quickly, while still ensuring the annual fee is appropriately determined and incorporated into the ROW permit. This Expedited Process **only** applies to the appraisal process – all other steps in the ROW permitting process must be completed as usual prior to execution of any ROW permits.

The Expedited Process may be used under the following conditions:

1. The park and regional ROW Coordinator have agreed in writing (an email exchange is acceptable for this purpose) that the proposed project is not complex and not controversial.
2. An AVSO-approved appraiser is already under contract with AVSO or the applicant.
3. The Permittee has agreed to all of the following, in writing and signed by their authorized representative:
    a. Pre-payment:
        1. For a new ROW permit, Permittee will make a $25 pre-payment towards their annual fee to the NPS prior to the execution of any ROW permit.

2. For a timely renewal, the park may choose one of the following options:
    i. Option 1: Permittee makes a pre-payment in the same amount as the prior existing use and occupancy fee to the NPS prior to the execution of any ROW permit renewal. If the appraisal determines an annual fee above the prior fee, Permittee will be charged the difference. If the appraisal comes back below the prior fee, the park must reimburse Permittee for any overage collected.
    ii. Option 2: Permittee makes a pre-payment of $25 to the NPS prior to the execution of any ROW permit renewal. Once the appraisal is completed, Permittee will pay the annual fee determined by the appraisal, minus the $25 pre-payment.

b. Permittee will pay the full annual fee as established by the appraisal, including the period of time prior to the appraisal's final approval by AVSO;
c. Permittee accepts the risk of agreeing to pay an unknown value; and
d. If the appraisal is not completed by the appraiser and approved by AVSO within twelve (12) months of the effective date of the permit, the NPS may elect to contract for a second appraisal in coordination with AVSO, may charge the Permittee for the cost of the second appraisal in addition to the first appraisal, and the second appraisal will be used to establish the annual fee; and
e. Nonpayment of these fees may lead to a termination of the ROW permit.

4. The following language must be added to the end of the section "Fees for Use and Occupancy" on page 5 of the 2016 NPS ROW Permit Template or included in the renewal:
    a. Permittee understands and agrees that Permittee is responsible for the fee for use and occupancy as follows:
        1. Upon completion of an appraisal, its approval by NPS, and Permittee's receipt of a bill for collection from the NPS, Permittee must pay the use and occupancy owed from the effective date of the Permit through the date of approval of the appraisal or through the first year of the Permit, as determined appropriate by the park.
        2. If Permittee paid "reimbursement of costs" in the time between the Permit effective date and the date of approval of the appraisal, the "reimbursement of costs" will be documented in the bill for collection and will be deducted from the use and occupancy due for that time frame.
        3. The required $_____ pre-payment will be deducted from the use and occupancy owed for the first year of the Permit on the bill of collection.
        4. After the first bill of collection, Permittee must pay the use and occupancy annually.

Once the above conditions are met and the rest of the ROW permitting process has been completed, the new ROW permit may be approved and signed by the Regional Director or, if a timely renewal, the Superintendent. If you have questions about the Expedited Process or how it may apply to a ROW permit application in your park, please contact your regional ROW Coordinator.

Example 1 – New Application:
A utility company files an application for a new buried fiber optic line through Acadia National Park on January 1, 2019. The company and project are not exempt from an annual use and occupancy fee. NPS coordinates with AVSO and the applicant, and an appraisal is under contract on April 1, 2019. The applicant has pre-paid a $25 annual fee to the NPS. All compliance and other pieces of the ROW permit process are complete by April 15, 2019. The park and region ***may choose*** *(but are not required) to execute the ROW permit after April 15, 2019, assuming all the conditions set forth in this memo have been met. The park is responsible for issuing a bill for collection for the use and occupancy fee upon approval of the appraisal by AVSO. The bill for collection should be less the $25 pre-payment and any cost reimbursement paid in the interim. Thereafter, the Permittee will be responsible for paying the fee annually.*

Example 2 – Renewal:
A cellular phone company files an application for a renewal of a ROW permit for an existing cell tower and antennas in Yellowstone National Park on February 1, 2019. The current ROW permit expires on September 1, 2019, and the company has been paying their annual fee of $5,000 as required on October 1 every year. Despite the fact that the appraisal for the renewed Permit is already under contract by an AVSO-approved appraiser, and the rest of the ROW permit renewal process is complete, the park realizes on August 15, 2019, that the appraisal will not be complete or approved by September 1, 2019.

The park may choose to proceed to execute the ROW permit renewal at this time, assuming all the conditions in this memo have been met. If the park chooses to renew the ROW permit, then one of the 2 options for renewal under the Expedited Process must be chosen. The options are explained below:

1. *Option 1: Park charges the $5,000 annual fee from the prior ROW permit as pre-payment of the first year's annual fee for the renewal and collects this fee prior to issuing the renewal. Upon receipt of the approved appraisal from AVSO, the park either issues a bill of collection for any additional annual fee due for the first year or issues a reimbursement for any overage paid for the first year.*
2. *Option 2: Park charges $25 as a pre-payment on the next year's annual fee and signs the renewal. Upon completion of the appraisal and approval by AVSO, the annual fee is set, and the park is responsible for sending out a bill of collection for the annual fee, less the $25 pre-payment and any cost reimbursement paid in the interim.*

After the first year, the Permittee will be responsible for paying the approved use and occupancy fee annually.

Example 3 – Calculating Pre-Payment, Cost Reimbursement, and the Annual Fee:
Background: ABC Power Company (ABC) has a powerline across Great Smoky Mountains National Park (GRSM). The park is working on a timely renewal application. The park decides to use Option 2, and charges ABC a $25 pre-payment when signing the renewal. While the appraisal is underway, ABC incurs and pays $250 in cost reimbursement (the initial $25 was also used as cost reimbursement). The approved appraisal is for $700 dollars a year.

Calculation for initial bill for collection: GRSM will charge ABC $425.
They subtract the $250 already paid in cost reimbursement and the $25 pre-payment from $700.

From this point on, cost reimbursement and the annual fee are calculated as usual and deposited in the appropriate accounts for ROW permits. See Director's Order #53, section 7, for details.

United States Department of the Interior
National Park Service

Right-of-Way Permit for
[insert name of permittee]
Right-of-Way Permit No.: **[RW XXXX-XX-XXX]**

Whereas, on **[insert date of application] [insert full legal name and address of permittee]** (Permittee) applied to the National Park Service (NPS), United States Department of the Interior for a right-of-way to use or occupy NPS-administered lands or waters within **[insert name of park unit]** (Park), a unit of the National Park System, in order to operate and maintain an **[insert brief description of project]**;

Whereas, the Park was established by or pursuant to **[cite the specific authorizing legislation or proclamation for the park unit]**;

Whereas, 54 U.S.C. § 100101(a) directs the Secretary of the Interior, acting through the NPS, "to conserve the scenery, natural and historic objects, and wild life" in units of the National Park System and to provide for their enjoyment "in such manner and by such means as will leave them unimpaired for the enjoyment of future generations";

Whereas, 54 U.S.C. § 100101(b)(2) provides that the authorization of activities in the National Park System "shall be construed and the protection, management, and administration of the System units shall be conducted in light of the high public value and integrity of the System and shall not be exercised in derogation of the values and purposes for which the System units have been established, except as directly and specifically provided by Congress";

Whereas, 54 U.S.C. §§ 100902(a) and 100902(b) authorize the Secretary of the Interior to grant rights-of-way over, across, on, or through the Park for the purposes enumerated in those laws and subject to the other conditions in them, provided that the Secretary finds that the rights-of-way are not incompatible with the public interest;

Whereas, the NPS has promulgated regulations, codified at 36 C.F.R. part 14, governing the issuance, use, and management of rights-of-way over, across, on, or through federally owned or controlled lands administered by the NPS; and

Whereas, the NPS has determined that the proposed use or occupancy of the NPS-administered lands or waters described herein for the operation and maintenance of **[insert brief description of project]** is not incompatible with the public interest;

Now, therefore, the NPS, acting pursuant to the authority of **[cite here only the relevant authority for this Permit, either 54 U.S.C. § 100902(a) or § 100902(b)]** hereby grants to the Permittee this revocable, non-exclusive right-of-way permit (Permit) **[select one or more appropriate terms/adverbs from the following: over, across, on, or through]** the lands or waters described below (Permitted Area). This Permit constitutes only a revocable, non-exclusive license to use or occupy the Permitted Area for the purposes described in the Permit during the term of the Permit. By accepting this Permit, the Permittee agrees to comply with the regulations in 36 C.F.R. part 14 (or any successor regulations), other applicable laws and regulations, and the terms and conditions set forth in this Permit. The Park's Superintendent (Superintendent) will be the NPS official primarily responsible for administering this Permit.

Authority to Enter into Permit

The Permittee represents and warrants to the NPS that:

(1) The Permittee is authorized under the laws of **[insert name of appropriate state]** and by its governing documents to enter into this Permit; and

(2) The person signing this Permit on the Permittee's behalf is authorized to bind the Permittee to comply with the Permit's terms and conditions.

Legal Description and Map of Permitted Area

The legal description of the Permitted Area is as follows:

[Insert a legal description of the Permitted Area, including ingress and egress that meets the standards described in Reference Manual (RM) 53B for either built or not yet built infrastructure and linear or nonlinear ROWs]

[Choose one of the following:]

[If the infrastructure is already built:]
And as depicted on the dated map attached to this Permit as Exhibit A. **[Exhibit A must be a map of Permittee's as-built infrastructure, submitted with the application and meeting the applicable standards described in RM53B .]**

[If the infrastructure is not yet built:]
And as depicted on the dated map attached to this Permit as Exhibit A and labeled "Interim Map." **[Exhibit A must be a map submitted with the application and meeting the applicable standards described in RM53B, as noted above.]**

If the Permittee has not yet completed construction of its infrastructure, then the Permittee must also provide the NPS a final map and legal description of the Permitted Area as described in the paragraph below. The Permittee must submit any proposed deviation from the interim map and legal description to the NPS for review and written approval before construction commences. Any deviation from the interim map and legal description may require additional environmental compliance and reappraisal.

Within 90 days after the Permittee completes construction of its infrastructure, the Permittee must provide the NPS a dated final as-built map and legal description meeting the standards for infrastructure that already exists. If the map and legal description are based on DGPS points, then all DGPS points must be remeasured to match actual as-built conditions. These final documents must be delivered to the Superintendent. The NPS and the Permittee agree that the final map and legal description, once approved by the NPS in writing, will describe the area authorized for the Permittee's use or occupancy under this Permit and will be attached to this Permit as Exhibit B and labeled "Final Map and Legal Description." If the Permittee's infrastructure is not built as authorized, then the NPS may, in its sole discretion, decline to approve the final map and legal description and instead require the Permittee to remove the infrastructure from the Permitted Area.

[Include the following paragraph for all permits:]

The Permittee may not deviate from the approved Permitted Area in its operation and maintenance of the **[insert brief description of project]**. If the Permittee determines that it needs to use or occupy NPS-administered lands or waters not specifically described in this Permit for the operation and maintenance of the **[insert brief description of project]**, then the Permittee must apply in writing to the NPS for authorization to use or occupy the additional area. After considering the Permittee's application, the NPS, in its sole discretion, may authorize the use or occupancy of the additional area by amending this Permit or by issuing a new permit that includes such terms and conditions as the NPS deems appropriate. In its sole discretion the NPS may also deny the Permittee's request for authorization to use or occupy the additional area.

Permitted Use of Right-of-Way

In connection with the **[insert brief description of project]**, this Permit authorizes the Permittee to operate and maintain the following facilities or equipment in the Permitted Area:

[List here or attach as an exhibit to the Permit a list or description of all authorized facilities or equipment; e.g., number and length of power lines and number of poles, including material and height; number of telecommunication towers, including material,

type, and height; number, length, and buried depth of fiber-optic cable.]

This Permit authorizes the operation and maintenance only of the facilities or equipment specifically described in the Permit. If the Permittee determines that it needs to operate and maintain facilities or equipment other than those specifically described in this Permit, then the Permittee must apply in writing to the NPS for authorization to operate and maintain the additional facilities or equipment. After considering the Permittee's application, the NPS, in its sole discretion, may authorize the operation and maintenance of the additional facilities or equipment by amending this Permit or by issuing a new permit that includes such terms and conditions as the NPS deems appropriate. In its sole discretion the NPS may also deny the Permittee's request for authorization to operate and maintain the additional facilities or equipment.

Effective Date and Term of Permit

This Permit will be effective on the date of its signature by the NPS Regional Director and will expire automatically 10 years after its effective date at noon, **[insert appropriate time zone]**, unless it is earlier revoked, terminated, or abandoned pursuant to the provisions of this Permit or in accordance with applicable federal law.

Reauthorization of Use

In order to continue use or occupancy of the Permitted Area beyond the initial term without interruption, the Permittee must submit to the Superintendent a written application for reauthorization, on the then-current NPS-approved form and in accordance with then-existing NPS regulations and policies, at least 6 months before the Permit's expiration date. After considering the application, the NPS, in its sole discretion, may reauthorize the use and occupancy of the Permitted Area by issuing a new permit that includes such terms and conditions as the NPS deems appropriate. The Permittee hereby acknowledges that reauthorization is not guaranteed, and that the Permittee does not have a preferential right to reauthorization as a result of the NPS's issuance of this Permit.

Termination of Permitted Right-of-Way

At any time during the term of this Permit the NPS, in its sole discretion, may, without incurring any liability whatsoever, terminate all or any part of the permitted right-of-way. If the NPS terminates all or any part of the right-of-way before the Permit expires by its own terms, then the NPS will provide the Permittee 30 days advance written notice of the termination, including the reasons for the termination.

Abandonment of Permitted Right-of-Way

At any time during the term of this Permit, if the Permittee fails to use or occupy the Permitted Area for a period of 2 years, then the NPS, in its sole discretion, may deem the permitted right-of-way abandoned and may take whatever action it determines is necessary to secure and restore the Permitted Area. The NPS will provide the Permittee written notice of its determination that the Permittee has abandoned the permitted right-of-way. In case of abandonment, the Permittee will be responsible for reimbursing the NPS for all of its costs to secure and restore the Permitted Area.

Reimbursement of Costs

[Choose one of the following:]

[If charging cost recovery:]

Pursuant to 54 U.S.C. § 103104 the Permittee has paid the NPS for administrative and other costs incurred by the NPS in processing the application for the Permit and agrees to reimburse the NPS for costs incurred by the NPS in monitoring the uses or activities authorized by this Permit.

[If not charging cost recovery:]

Pursuant to 54 U.S.C. § 103104 the NPS has elected not to recover the costs of providing necessary services associated with this Permit.

Fees for Use and Occupancy

[Choose one of the following:]

[If charging use and occupancy:]

Pursuant to 36 C.F.R. § 14.26(a) the Permittee will pay fair market value for the use and occupancy of NPS-administered lands or waters. The charge for use and occupancy of the Permitted Area will be $_____ per year. Pursuant to 36 C.F.R. § 14.26(e) the NPS may periodically review the charges for this Permit and impose such new charges as may be reasonable and proper.

[If not charging use and occupancy:]

The NPS and Permittee understand and agree that the consideration for utilization of the Permitted Area for this **[irrigation project, municipally operated project, or nonprofit or Rural Electrification Administration project or where the use is by a federal agency—specify which of the preceding applies]** is waived in accordance with 36 C.F.R. § 14.26(c)(1).

Terms and Conditions

This Permit and the uses or activities authorized under it are subject to the following terms and

conditions:

(1) This Permit may be amended only by a written instrument executed by the Superintendent and the Permittee.

(2) The Permittee may not transfer or assign this Permit to another party without obtaining the NPS's prior written approval.

(3) The Permittee is responsible for ensuring that its officers, employees, representatives, agents, contractors, and subcontractors are familiar with this Permit and comply with its terms and conditions. All persons working for the Permittee within the Permitted Area must carry a copy of this Permit.

(4) The Permittee must provide the NPS with current contact information (company address, points of contact, telephone numbers, email addresses, etc.) for both routine and emergency communications.

(5) The Permittee must post on its facilities in the Park at least one sign, of a design and in a location acceptable to the NPS, with the company's name, primary point of contact, and emergency telephone number.

(6) The Permittee must notify the Superintendent in writing at least 5 business days before conducting any maintenance or non-emergency repair work within the Permitted Area. The written notice must describe the location of the proposed work, the equipment to be used, and the size of work crews anticipated to be working in the Park. The Superintendent may require an on-site meeting before any maintenance or non-emergency repair work commences and may assign a site monitor to be present during such work. Except in emergencies, all work in the Permitted Area must be conducted during the Park's normal business hours. To respond to an emergency, the Permittee may enter the Permitted Area at other times to conduct repair work after notifying the Superintendent at **[insert Superintendent's email address]** and calling the Park's Chief of Facilities Management at **[insert Chief of Facilities Management's telephone number]**.

(7) The Permittee must erect and maintain appropriate warning signs, barricades, or other warning devices during all periods when it is using the Permitted Area, including periods of maintenance or repair.

(8) The NPS may enter and inspect the Permitted Area at any time without providing prior notice to the Permittee.

(9) If necessary to protect Park resources or visitors, the NPS may require the Permittee to suspend its activities in the Permitted Area or to relocate or remove its facilities or equipment; provided that if the NPS determines that the Permittee must relocate or remove its facilities or equipment, the NPS will exercise its best efforts to accommodate the Permittee at another location in the Park.

(10) Notwithstanding the issuance of this Permit, the NPS (a) may establish trails, roads, or other improvements across, over, on, or through the Permitted Area for use by the NPS, by Park visitors, or by others and (b) may authorize its contractors or other permittees to use the Permitted Area at the same time that the Permittee is using it, as long as those other uses will not unreasonably interfere with the Permittee's use of the Permitted Area under this Permit.

(11) The Permittee may not allow another party to co-locate equipment on the Permittee's infrastructure without obtaining the NPS's prior written approval. As a condition of such approval the NPS will require the co-locator to apply for and be issued its own NPS right-of-way permit.

(12) The Permittee must keep the Permitted Area clean and free of litter or other debris at all times.

(13) Except as expressly authorized by this Permit or subsequently approved in writing by the Superintendent, the Permittee may not move, remove, alter, damage, or destroy any Park resources within the Permitted Area or the Park. As directed by the Superintendent, the Permittee must take all reasonable measures to avoid or minimize damage to Park resources. The Superintendent may require reasonable mitigation in return for allowing impacts to Park resources under this Permit.

(14) The Permittee must immediately suspend all activities and notify the Superintendent upon the discovery of any threatened or endangered species or archeological, paleontological, or historical resources within or near the Permitted Area. All natural and cultural resources discovered in the Permitted Area are the property of the United States.

(15) The Permittee may not use pesticides or herbicides on Park lands without obtaining the Superintendent's prior written approval.

(16) The Permittee must do everything reasonably within its power to prevent and suppress fires resulting from the Permittee's activities under this Permit.

(17) Within 4 hours after the damage or disruption occurs, the Permittee must repair or restore any utilities within the Park that are damaged or disrupted as a result of the Permittee's activities under this Permit.

(18) Within 6 months after the expiration or termination of this Permit, the Permittee must remove all of its facilities and equipment from the Permitted Area and restore the Permitted Area to its pre-Permit

condition as directed and approved by the Superintendent. Any facilities or equipment not removed within that time will be deemed abandoned and will be disposed of in accordance with applicable federal law. In that event, the Permittee will be liable to the NPS for all of its costs in disposing of the facilities or equipment and restoring the Permitted Area.

(19) Before the Permit's effective date the Permittee must file with the NPS a performance bond payable to the NPS, issued by a surety satisfactory to the NPS, to guarantee its compliance with all terms and conditions of this Permit and with all applicable laws and regulations. The bond for this Permit must be in the amount of $_____ and must be filed with _____.

(20) The Permittee must procure and maintain in force and effect during the term of this Permit commercial general liability insurance to protect against claims arising out of the acts or omissions of the Permittee or its officers, employees, agents, or representatives while conducting the activities authorized by this Permit. The insurance policy must provide coverage for discharges or escapes of pollutants or contaminants into the environment, including sudden or accidental discharges or escapes. The policy must be in the minimum amount of $_____ ____ per occurrence and $_____ aggregate; must be issued by a company duly licensed to do business in **[insert name of state where park is located]**; and must name the United States of America as an additional insured. Before the NPS Regional Director executes this Permit, the Permittee must provide the NPS with a copy of its Certificate of Insurance showing the required coverage.

(21) In accordance with applicable law, including the Park System Resource Protection Act, 54 U.S.C. §§ 100721-100725, the Permittee will be responsible for any damage to or destruction of Park resources resulting from the Permittee's activities that are not reasonably inherent in the use of the Permitted Area authorized by this Permit. This Permit is not a defense to liability under 54 U.S.C. § 100722(c)(3) for any activity not expressly authorized by this Permit.

(22) The Permittee will indemnify and hold harmless the United States and its officers, employees, agents, and representatives from and against all liability of any sort whatsoever arising out of the Permittee's activities under this Permit. This agreement to indemnify and hold harmless from and against all liability includes liability under federal or state environmental laws, including the Comprehensive Environmental Response, Compensation, and Restoration Act, as amended; the Resource Conservation and Recovery Act, as amended; and what is commonly known as the Clean Water Act, as amended. This agreement to indemnify and hold harmless will survive the Permit's termination or expiration.

(23) In accordance with applicable federal law the Permittee will not discriminate against any person because of race, color, religion, sex, or national origin.

(24) Nothing in this Permit obligates the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated by the NPS for the purpose of this Permit, or to involve the NPS in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

[If this permit is for a communications facility as defined by the Mobile Now Act (47 U.S.C. § 1455(d)(1)), the following terms must be included in the final permit]

(25) Use of wireless communications equipment is contingent upon the possession of a valid Federal Communications Commission (FCC) or National Telecommunications and Information Administration (NTIA) authorization/license (if required), and the operation of the equipment in strict compliance with applicable requirements of FCC or NTIA. A copy of each applicable license or authorization must be maintained at all times by the Permittee for each transmitter being operated. The Permittee must provide the Superintendent, when requested, with current copies of all licenses for equipment in or on facilities covered by this Permit.

(26) Permittee must, at its sole cost and expense, take all necessary actions to comply with all applicable FCC radio frequency (RF) exposure regulations and requirements, and must take reasonable precautions so that neither workers nor the public are subject to RF exposures above the FCC specific levels.

(27) The provisions of the United States Code set forth at 18 U.S.C. § 431 (Contracts by Member of Congress) and 41 U.S.C. § 6306 (Prohibition on Members of Congress making contracts with the Federal Government), as such provisions may be revised from time to time, are hereby incorporated in this Permit by this reference, as if set forth in full.

[Add any additional park-specific conditions numbered sequentially below.]

By signing this Permit on the date indicated below, the Permittee's authorized representative acknowledges that he or she has read and understands all of the Permit's terms and conditions, agrees that the Permittee will abide by all of the Permit's terms and conditions, and requests that the NPS Regional Director execute the Permit and issue it to the Permittee.

[Insert Permittee's legal name.]

_____

(Signature)

_____

Printed name

_____

Title

_____

Date

By signing this Permit on the date indicated below, the NPS Regional Director hereby executes it and issues it to the Permittee.

_____

(Signature)
Regional Director, **[insert name of region]**
National Park Service
United States Department of the Interior

_____

Date

Exhibit A

[Insert map or drawing.]

EXHIBIT I

[letterhead]

[**date**]

Memorandum

To: Regional Director, [**insert region**]

Through: Land Resources Program Center

From: Superintendent, [**park unit**]

Subject: **Park Unit, right-of-way permit number XXXX-XX-XXXX**
Permittee Company Name

Attached you will find two original signed copies of the ten-year right-of-way permit #**XXXX-XX-XXXX**, that would authorize [**permittee**] to [**2-3 sentence description of project. Be sure to include type of equipment, location, and if any new construction will occur**].

This paragraph should include the date that the application was received, and level and date of completion of NEPA, NHPA, and any other compliance. Also include the PEPC number.

I recommend approval of the attached permit #**XXXX-XX-XXXX**. Please sign both copies if you concur with my recommendation.

Your assistance in completing this project is greatly appreciated. Please contact **[park contact name, email, phone number**] if you require any other information or documentation.

Attachments

EXHIBIT J

FCC Website Instructions

Information about licensed wireless services in a specific area is available on the FCC website, though you have to do a little digging. Here are the basic instructions:

Go on the Federal Communication Commission web site at www.fcc.gov

1) Under Bureaus & Offices
    - click Offices
    - click on Wireless Telecommunications
2) Under Licensing
    - click on License Search
3) Clink on Advanced License Search
4) Under "Call Signs & Radio Services"
    - Select "Match only the following radio service(s):"
    - Select CL-cellular and CW-PCS Broadband (Ctrl click to select more than one service)
5) Go to bottom of box – not bottom of page
    - Click on Geosearch
6) Within Geographic Search Criteria
    - Select a State
    - Select a County
7) Go to bottom of box- not bottom of page
    - Click on Search
8) Search Results
    - Call Sign (select the relevant call sign – Example - KNKA338)
9) Click on call sign to get contact and location information

EXHIBIT K

Application Materials

An application is not considered complete by the NPS until the NPS unit has received, reviewed, and approved all relevant application materials, including all materials necessary to begin the NEPA process, as well as the SF-299 and any materials required by regulation (including 36 CFR Part 14 Subparts D-H, as appropriate) or included below.

1. Complete and signed SF-299, including materials requested on page 4 of the SF-299.

2. Applicable corporate documents as described below

If applicant is…	Then they must provide….
a private corporation	1. copy of charter or articles of incorporation, duly certified by proper State official of State where corporation was organized 2. Copy of resolution or bylaws authorizing filing of the application
a corporation other than private	1. file copy of law under which corporation was formed, 2. proof of organization under that law 3. Copy of resolution or bylaws authorizing filing of the application
A corporation operating in state other than that in which it was incorporated	1. certificate of Secretary of State that corporation has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such state 2. Copy of resolution or bylaws authorizing filing of the application
As association of individuals (including partnership)	1. certified copy of articles of association or other governing documents, if any, indicating appropriate signature authority 2. if no articles of association or other governing documents, all members must sign application 3. each member must furnish evidence of citizenship
An individual	proof of U.S. citizenship status
A naturalized citizen	date of naturalization, court in which naturalized, number of certificate, if known

3. Wireless Application Components

- FCC License, if one is required for the proposed service
    - A copy of the FCC license authorizing the applicant to provide wireless services for that geographic area
- FCC Service Area Map if an FCC license is required for the proposed service
    - A map, drawn to scale, showing the boundaries of the FCC authorized service area, laid over the boundaries of the park unit
- Narrative Site Description
    - A full description of the proposed site including:
        - Location
        - The type of service (i.e. cell, two-way radio)

        - Equipment and antennas
        - Structures
        - Electrical and telephone lines, either existing or proposed
        - Proposed road access
- Service Level Map
    - Map(s), drawn to scale, showing before and after service levels and signal strength in the area of the proposed new infrastructure
- Area Maps
    - Map(s), drawn to scale, showing sites operated or currently proposed by the applicant within a 15 mile radius of the proposed site and the coverage area of those other sites
    - Map(s), drawn to scale, showing the proposed build out of any sites operated or to be operated by the applicant within a 15 mile radius of the proposed site within the next 5 years (called a propagation map). Note that this information may be exempt under FOIA, but the NPS cannot guarantee that it will not be released.
- Site Plan
    - Schematic site plan and elevations showing the equipment and antennas proposed to be installed, as well as proposed and existing support structures, generators, solar panels, buildings, and connections to telephone and electrical service. The plan should be clearly labeled to show what infrastructure is proposed by the applicant and what infrastructure already exists. For existing infrastructure, the Site Plan should list the name of the owner.
- Photo-Simulation
    - A realistic photo-simulation depicting what the proposed telecommunication site would look like after installation of the proposed equipment. This does not preclude the park from requesting further studies later, including balloon tests.
- Frequency Interference Information
    - All materials required for review by the Radio & Spectrum Management Division (RSMD), as listed in the most current version of Director's Order (D.O.) 15. As of 2/4/2015, this includes:
        - Telecommunications System Diagram
        - System Specifications Data
        - Antenna Specifications Data
        - FCC Issuance of Radio Frequency Licenses
        - Radio Frequency Interference Analysis
        - Radio Propagation Signal Strength Map
        - Antenna/Tower Placement Map
        - Antenna/Tower Structural Analysis

It is the Applicant's responsibility to check whether D.O. 15 has been updated to include new required materials, and to meet the most current requirements.

4. As applicable, the park unit may also request that the following information (and other relevant documents not listed below) accompany an application, as appropriate:

- Construction-Related information

  - Construction drawings
  - List of machinery/material to be used in construction
  - Construction schedule
  - Map showing area of requested use for construction, in addition to area requested for operation and maintenance after the completion of construction
- Detailed list of all equipment either present or to be installed in the right-of-way
- Structural analysis of towers involved
- Maintenance schedule
- Revegetation plans
- Emergency plans
- Proof of relevant authorizations from other agencies
- Archeological surveys, vegetation surveys, steep slope surveys
- Photo-simulations of site or views of site after proposed installation

EXHIBIT K

Maps and GPS

In addition, the applicant must submit maps with their application, meeting the applicable standards described below. The NPS has adopted the following standards to replace the suggested standard from 36 CFR 14.25(a), which is out-of-date with current mapping technology.

All reported Global Positioning System (GPS) point features noted herein require, at a minimum, field-collected GPS data differentially corrected to sub-meter accuracy (differential GPS or DGPS). The correction process can be achieved either in real-time or by post-processing the data using a service like the Online Positioning User Service (OPUS) operated by United States National Geodetic Survey (NGS).

The following deliverables are required as part of every ROW permit application:

1. AutoCAD (.dwg or .dxf), GIS (.shp or .gdb), or Google Earth (.kmz) files including the required information and meeting the following requirements:

    a. AutoCAD or GIS files shall be projected to the local state plane coordinate system covering the project area in NAD83 or future state plane systems (ensure that the datum realization is specified in the files).[1]

    b. Features will include:
        i. points, lines or polygons[2] identifying the permit area, and associated control points;
        ii. all DGPS points as required below; and
        iii. feature attributes (e.g., acreage, Permittee name) or applicable layer names.

    c. Each file shall include an associated metadata file with fields describing the attributes, data collection method and accuracy of the dataset. Metadata must be Federal Geographic Data Committee (FGDC) compliant (see https://www.fgdc.gov/dataandservices/fgdcmeta).

2. Four 24” x 36” hard copies of the map(s). Linen or rag paper is not required.

3. A PDF file of each map, Adobe file version 1.7 or higher

[1] The current state plane coordinate system is NAD83. A new version, NAD 2022, is expected to be released in 2022.
[2] Park staff may request point, line, or polygon data, depending on park needs and on the project. Generally, nonlinear ROW permit requests (such as for cell towers) will require polygons, while parks may vary between requiring points, lines, or polygons for linear ROW permit requests (such as power lines) depending on the project.

Regardless of the standard in this Reference Manual, in any situation where the NPS unit and the regional ROW Coordinator deem it appropriate, they may require the applicant to provide a formal survey and legal description. This survey must be signed by a licensed surveyor.

<u>If the infrastructure has not yet been built, the maps must show</u>:

1. Proposed permit area and associated features:

    a. **If the permitted area is a linear feature**
        i. DGPS points at the proposed beginning and terminus points within the park boundary, labeled with their respective coordinate pairs.
        ii. Proposed centerline and proposed location of any poles or ground disturbance.
        iii. The proposed width, length, and acreage of the permit area

    b. **If the permit area is a non-linear feature**
        i. DGPS points at all proposed corners and angle points of the permit area, labeled with their respective coordinate pairs.
        ii. Proposed tower location, and location of proposed appurtenances (buildings, fuel, etc.).
        iii. The proposed acreage and dimensions of the permit area.

2. Crossings of property lines and NPS unit boundaries[3:]

    a. DGPS points must be included on all crossings of NPS property lines and NPS unit boundaries.

    b. If within ¼ mile of NPS unit boundary, unit boundary must be shown if the map scale allows.

    c. Identify any lands that are not administered by the NPS (e.g., such as inholdings) being crossed by the project area within the NPS unit.

    d. Buildings, existing roads, and utilities located within 25 feet of the project area must be shown.

3. Access:

    a. **If access is along a road within the NPS unit**, list the name of the road and the distance along the road needed for access to the permit area. Note whether the roads to be used for access are open to the public or are administrative access only.

[3] NPS unit boundaries are the legislated (or proclaimed) boundaries of an NPS unit. Property lines are lines where NPS-managed land borders land owned by another entity or individual and may occur along a boundary or elsewhere inside a park if another entity or individual owns land within the NPS boundary.

b. **If access is not along a public or administrative road**, include DGPS points at the beginning and terminus points of the proposed project area access route(s).

4. Also include:

   a. Township, section, and range if Public Land Survey System (PLSS) state, or the equivalent survey grid if it is not a PLSS state.

   b. County, State, and NPS unit name (i.e., Yellowstone National Park).

   c. The scale should be appropriate to show the requested ROW. The park may request a different scale as needed.

   d. Map legend.

   e. North arrow.

   f. The map base may be aerial photography, USGS topographic base, or another base, subject to park approval.

5. Legal Description (may be attached as an exhibit to the map):

   a. Linear ROWs
      i. Legal description must include sub-meter accuracy GPS points for the centerline.
      ii. Legal description must include courses and distances of the centerline.
      iii. The entire area (in acres and square feet) must be included.

   b. Nonlinear ROWs
      i. Legal description must include sub-meter accuracy GPS points for all corners of the proposed ROW area.
      ii. The entire area (listed in both acres and square feet) must be included.

6. Within 90 days of the completion of construction, the applicant must then provide a final as-built map and legal description meeting the standards for infrastructure that already exists, as set forth below. These final documents must be delivered to the NPS unit Superintendent. This includes remeasuring all DGPS points to match actual as-built conditions.

<u>If the infrastructure already exists, the maps must show:</u>

1. ROW permit area and associated features:

   a. **If the permitted area is a linear feature**

i. DGPS points at the beginning and terminus points within the park boundary labeled with their respective coordinate pairs.
ii. Centerline and location of any poles.
iii. The width, length, square feet, and acreage of the permit area.

b. **If the permit area is a non-linear feature**
   i. DGPS points at all corners and angle points of the permit area labeled with their respective coordinate pairs.
   ii. Tower location and location of appurtenances (buildings, fuel, etc.).
   iii. The acreage, square feet, and dimensions of the permit area.

c. Major utility infrastructure features (pole locations, tower corners, buildings, fence corners, etc.).

2. Crossings of property lines and NPS unit boundaries[4]:

   a. DGPS points at all crossings of NPS property lines and NPS unit boundaries.

   b. If within one-quarter mile of NPS unit boundary, unit boundary must be shown if the map scale allows.

   c. Identify any lands that are not administered by the NPS (e.g., such as inholdings) being crossed by the project area within the NPS unit.

   d. Buildings, existing roads, and existing utilities located within 25 feet of the permit area must be included.

3. Access:

   a. **If access is along a road within the NPS unit**, list the name of the road and the distance along the road needed for access to the permit area. Note whether the roads to be used for access are open to the public or are administrative access only.

   b. **If access is not along a public or administrative road**, include DGPS points at the beginning and terminus points of the permit area access route(s).

4. Also include:

   a. Township, section, and range if Public Land Survey System (PLSS) state or the equivalent survey grid if it is not a PLSS state.

[4] NPS unit boundaries are the legislated (or proclaimed) boundaries of an NPS unit. Property lines are lines where NPS-managed land borders land owned by another entity or individual and may occur along a boundary or elsewhere inside a park if another entity or individual owns land within the NPS boundary.

b. County, State, and NPS unit name (i.e., Yellowstone National Park).

c. The scale should be appropriate for the requested ROW. The park may request a different scale as needed.

d. Map legend.

e. North arrow.

f. Data shall be georeferenced to NAD83, in US Feet, and the appropriate State Plane Zone.

g. The map base may be aerial photography, USGS topographic base, or another base subject to park approval.

5. Legal Description (may be attached as an exhibit to the map) must be either:

    a. Linear ROWs
        i. Legal description must include DGPS points for the centerline.
        ii. Legal description must include courses and distances of the centerline.
        iii. The entire area (in acres and square feet) must be included.

    b. Nonlinear ROWs
        i. Legal description must include DGPS points for all corners of the proposed ROW area.
        ii. The entire area (listed in both acres and square feet) must be included.

EXHIBIT L

[LETTERHEAD]

Date

Contact name
Company name
Company address

[NPS UNIT NAME], a unit of the National Park Service, has received a proposal from [**company]**, for [**type of service**] at [**location in park]**. [**one sentence describing the area]**.

Your address was obtained from a search of the Federal Communications Commission website for companies who may provide similar services in the area. If your FCC license applies to [**location in park**] and you would like to have further notification of the proposal's progress, please reply to this letter with your contact information.

You may write or directly contact [**park contact**], at [**name and phone number**].

Sincerely,

Superintendent

EXHIBIT M

Right-of-Way Permit Number RW **XXXX-XX-XXX** Issued: **XX/XX/XXXX**
Amendment Number **XX** Renewed: **XX/X/XXXX**
Expires: **XX/XX/XXX**

Right-of-Way Permit # RW XXXX-XX-XXX (Permit), issued **XX/XX/XXXX** to the [**Permittee Name]** (hereinafter Permittee), authorizes [**activities and infrastructure authorized by the ROW Permit**] across [**NPS unit name**]. This Permit is hereby amended to [**state amendment; what is changing – minor change of equipment, access abilities, etc. If specific term being changed, identify which term**].

The purpose of the change is [*Why is this being undertaken? Is there a problem being resolved, a management efficiency being gained, reliability improved, etc.*].

This Amendment is categorically excluded from NEPA compliance under [**CITATION***, or change to reflect appropriate NEPA compliance level*].

If any changes to the Permit terms, conditions, or clauses are necessary, include them here. For example (your regional ROW coordinator can assist with this part of the process):

- *The original drawing is hereby amended to show . . .*
- *The original annual fee is hereby amended to reflect the additional equipment. The new fee, as determined by appraisal on XX/XX/XXXX is [amount].*
- *Permit Term and Condition 5 is hereby amended to read . . .*

All other terms, conditions, and clauses of the original Permit remain in effect and unchanged by this Amendment.

The undersigned hereby accepts this Amendment subject to the terms, covenants, obligations, and reservations, expressed or implied in the original, and this Amendment # **XX** to right-of-way permit # RW **XXXX-XX-XXX**.

ACCEPTED THIS _____ day of _____, 20__.

_____
Permittee, name and title

Issued this _____ day of _____, 20___.

_____
Superintendent or Regional Director, as appropriate

EXHIBIT N

Right-of-Way Permit RW **XXXX-XX-XXX**
Amendment Number **XX**

Issued: [**insert date**]
Expires: [**insert date**]
Original Permit date: **[insert date]**

National Park Service Right-of-Way Permit RW **XXXX-XX-XXX** (attached as Exhibit A), issued [**insert date**], to [**name of original Permittee**], authorizing [**describe activities and infrastructure**], within [**park unit**], is hereby amended to change the Permittee from [**original Permittee**] to [**new Permittee**].

The effect of this change is to transfer responsibility for compliance with all terms and conditions of RW **XXXX-XX-XXX** from [**original Permittee**] to [**new Permittee**]. However, **[original Permittee]** remains responsible for any damage to the site that occurred as a result of breach of the permit terms and conditions that occurred during **[original Permittee's]** tenure, and where the time of the damage cannot be determined, both parties will be held jointly and severally liable.

The purpose of this change is to recognize the transfer of RW **XXXX-XX-XXX** from [**original Permittee**] to [**new Permittee**] via Assignment of the permit (attached as Exhibit B – *this should be the transfer agreement between the old and new Permittee, if there is a separate written agreement between them*). In signing this Amendment, [**park unit**] approves the transfer of RW **XXXX-XX-XXX** to [**new Permittee**] and [**new Permittee**] agrees to be bound by and comply with the terms of RW **XXXX-XX-XXX** as owner and operator of the infrastructure described in the Permit.

Contact information for [**new Permittee**] is as follows:

Name
Company name
Address
Phone number
Email address

This Amendment is covered by [**list NEPA compliance level and date of completion, as well as any other pertinent compliance**].

The undersigned hereby accepts this Amendment subject to the terms, covenants, obligations, and reservations, expressed or implied in the original right-of-way permit RW **XXXX-XX-XXX**, subject to this Amendment Number **XX**.

_____
Name and Title

_____
Attest (**or notary public**)

Issued this _____ day of _____, 20__.

_____
Superintendent
Park Unit
National Park Service
United States Department of the Interior