



ARIZONA STATE LAND DEPARTMENT

Rights of Way



HISTORICAL OVERVIEW

For over a century the Arizona State Land Department ("Land Department") has managed State Trust lands. The federal government granted these lands to Arizona at the time of its establishment as a territory in 1863, and conveyed additional lands upon statehood under the Federal Enabling Act of 1910. Arizona created the Land Department as a condition of statehood, and accepted the responsibility of State Trust land management. Today, the State Trust ("Trust") controls approximately 9.2 million acres, which represents 13% of all land in Arizona, and generates revenue for its 13 Trust beneficiaries.

It is the Land Department's responsibility, on behalf of its beneficiaries, to assure the highest and best use of Trust lands. The Enabling Act and the State Constitution mandate that a fair market value be obtained from all State Trust land transactions. Reflected in the unique properties offered for sale or lease throughout the state, the Trust's diversity of lands is historically its most valuable resource.

RIGHTS OF WAY

A right of way is an encumbrance on the property it crosses. Depending upon the alignment, it can benefit or damage the property's effectiveness and value. Rights of way are granted across State Trust land for a variety of public and private uses, such as access roads, infrastructure, power lines, communication lines and public roadways, and are issued for terms ranging from one year to perpetuity. The term of a right of way is determined by analyzing the proposed use, local jurisdictional permitted approvals, and its compatibility with the existing and/or anticipated use of adjacent State Trust land. The Land Department reviews an application to evaluate the necessity and suitability of the proposed use and alignment. If the alignment and purpose of the proposed right of way are acceptable, the application is considered and processed. The Land Department then completes a field inspection of the proposed alignment. Conditions for the right of way are established by addressing issues such as relocations, planning and engineering considerations, drainage, construction criteria, archaeology and native plants. The costs to comply with such conditions are borne by the applicant.

EVALUATION CRITERIA

All State Trust land transactions must be in accordance with the Trust's mandate to assure the highest and best

use of the land, and act in the best interest of the Trust. The right of way process is initiated by an application, which is completed by the applicant and filed with the Land Department. A preliminary conference is suggested but not required to submit an application. When reviewing a right of way application, the Land Department takes into consideration: viability of the proposed use; extent of improvements necessary for the use; compatibility with surrounding uses; local land use; planning and zoning; access; hydrology; geology; archaeology; and environmental implications. Submission of an application does not guarantee that a right of way will be issued; the Trust cannot subsidize development for any purpose, no matter how commendable, at the expense of its beneficiaries. The Board of Appeals, an independent body of five (5) members appointed by the Governor, must approve all rights of way in excess of 10 years.

RIGHT OF WAY PROCEDURES AND FEES

An Application Supplemental Form for the proposed use must accompany any new application, and may be downloaded from the Land Department website, www.azland.gov, under the link entitled "Applications and Permits". If the Application Supplemental Form does not accompany the application, the processing of the application will be delayed.

In general, a right of way application will require the following:

- 1. Legal Description:** A new application must contain the township, range, section, description, acreage and county wherein the land is located. A Certified legal survey or centerline legal description may be required as part of the application process.
- 2. Proposed use, Project Plans and Specifications:** Depending on the complexity of the proposed use of the right of way, the applicant may be required to furnish plans, specifications or cross sections for roads, drainage reports, detailed engineering documentation and/or other detailed information regarding its use and location, to support the proposed project.
- 3. Additional Expenses:** Depending on the location of the land, the proposed use, and the type of right of way, additional costs may be incurred, which are the responsibility of the applicant. These costs may include, but are not limited to: a certified legal survey and/or centerline legal description; ALTA land survey; archaeological survey; geotechnical report; infrastructure analysis report; drainage analysis; Phase I Environmental Assessment report; and appraisal report.

4. Appraised Rent: All State Trust land transactions must be in accordance with the Trust's responsibility to receive an appropriate return for the Trust beneficiaries. Rights of way are valued based on the highest and best use method, using the parcel of the whole. The final cost of the right of way is typically determined by applying a percentage of the appraised land value based on its use to the right of way acreage, multiplied by the appropriate term factor.

5. Payment Terms: The cost to obtain a right of way is a mix of land value, the purpose of the right of way, and the impact of the proposed use on adjacent State Trust land. Payment must be made in full for the term of the right of way prior to its issuance. If a public auction is required, payment for the minimum bid price must be paid at the time of the auction. Additional amounts, if any, above the minimum bid price will then be due as stated in the auction notice.

6. Reimbursable Improvements (Relocation): If the proposed right of way affects improvements currently on State Trust land, and if such improvements are deemed reimbursable by the Land Department, the improvements must either be relocated or their fair market value reimbursed by the applicant. Value is determined by an appraisal. If the successful bidder at auction is the owner of the improvements, no payment is required.

7. The Auction Process: A right of way, issued for a term exceeding 50 years, is typically sold at public auction. Per the Enabling Act and upon approval of the Land Commissioner and the Board of Appeals, the legal auction notice is advertised once a week, for not less than 10 successive weeks, prior to the public auction. An estimated advertising deposit is required from the applicant, and must be received by the Land Department, prior to scheduling the public auction.

8. Processing Time: The complexity and terms of the right of way are the determining factors in the length of time it takes to process an application and processing times vary from nine to 14 months.

The State Land Department encourages you to contact the Department's Rights of Way Section at (602) 542-4098, prior to submittal of the application, to address questions or concerns regarding the land you wish to utilize, prior to the expenditure of the **non-refundable** filing fee.

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