Effective 5/10/2016

Part 5
Rights-of-way Authorization

63L-8-501 Title.

This part is known as "Rights-of-Way Authorization."

Enacted by Chapter 317, 2016 General Session

63L-8-502 Rights-of-way for roads or facilities.

(1) If the state receives title to public land from the federal government, the director shall, subject to Subsection (2), honor all:
  (a) pre-existing rights-of-way granted to individuals, corporations, or political subdivisions, subject to Subsection (2); and
  (b) rights-of-way asserted in quiet title lawsuits filed by the state or a county in federal court prior to taking ownership of the subject property.
(2) If the director determines it is in the best interest of the state, the director may modify the fees, if any, charged to the holder of a right-of-way.

Enacted by Chapter 317, 2016 General Session

63L-8-503 Grant, issue, or renewal of land use authorizations on public lands.

(1) The director is authorized to grant, issue, or renew land use authorizations over, upon, under, or through public land for:
  (a) a reservoir, canal, ditch, flume, lateral, pipe, pipeline, tunnel, or other facility or system for the impoundment, storage, transportation, or distribution of water;
  (b) a pipeline or other system for the transportation or distribution of:
    (i) liquid and gas other than water;
    (ii) natural gas, synthetic liquid, or gaseous fuels; or
    (iii) a refined product produced from natural gas, synthetic liquid, or gaseous fuels;
  (c) a storage or terminal facility in connection with the pipeline and other system described in Subsection (1)(b);
  (d) a pipeline, slurry and emulsion system, conveyor belt for transportation and distribution of solid materials, or facility for the storage of solid materials in connection with a pipeline, slurry and emulsion system, or conveyor belt;
  (e) a system for generation, transmission, and distribution of electric energy, if the applicant is in compliance with relevant state and federal requirements;
  (f) a system for transmission or reception of radio, television, telephone, telegraph, Internet, or other electronic signal used in communication;
  (g) a road, trail, highway, railroad, canal, tunnel, tramway, airway, livestock driveway, or other means of transportation, except where facilities are constructed and maintained in connection with commercial recreation facilities on lands in the state park system; or
  (h) other necessary transportation systems or facilities that are in the public interest and that require rights-of-way over, upon, under, or through public land.
(2) The director shall require, before granting, issuing, or renewing a right-of-way, that the applicant submit and disclose plans, contracts, agreements, or other information reasonably related

to the use, or intended use, of the right-of-way, that the director considers necessary for a determination on:
(a) whether a right-of-way shall be granted, issued, or renewed; and
(b) the terms and conditions that should be included in the right-of-way.
(3) After the state receives title to public land, any alteration to the substantive terms of a right-of-way, lease, or other authorization granted before the transfer of the land shall require issuance of a new authorization.
(4)
(a) Except as otherwise provided in this part, the director may, in accordance with Section 63L-8-509, terminate or suspend a right-of-way, easement, or authorization issued under this section, except for the road rights-of-way granted pursuant to Subsection (1)(b).
(b) An easement issued under this section may be terminated by the DLM without cause if the water system for which the easement was issued is used for any purpose other than agricultural irrigation, livestock watering, industrial use, or private or public culinary use.
(5) For purposes of this chapter, non-use for a continuous five-year period of a water system developed for agricultural irrigation, livestock watering, or private or public culinary purposes shall constitute a rebuttable presumption of abandonment of the easement and the facilities comprising the water system.
(6) Except as provided in Title 73, Water and Irrigation, nothing in this part shall confer on the director or other state official any power or authority to regulate or control the appropriation, diversion, or use of water for any purpose, or to require the conveyance or transfer to the state of any right or claim to the appropriation, diversion, or use of water.
(7) If a right-of-way issued under this section deteriorates to the point of threatening a person or property, and the holder of the right-of-way, after consultation with the director, refuses to perform the repair and maintenance necessary to remove the threat, the director may:
(a)
(i) undertake such repair and maintenance on the right-of-way; and
(ii) assess the holder for the costs of the repair and maintenance; or
(b) suspend or terminate the right-of-way pursuant to Section 63L-8-509.

Enacted by Chapter 317, 2016 General Session

63L-8-504 Roads.
(1) The director, with respect to public land, is authorized to provide for the authorization, construction, and maintenance of new and necessary roads within the public land that will permit utilization of the natural resources on such land, including the seven principal or major uses described in Section 63L-8-103.
(2) The roads described in Subsection (1) shall be constructed to standards sufficient to provide for the safety of the authorized users of the road, and to protect the environment to the best available management standards applicable.
(3) Financing of the roads described in Subsection (1) may be accomplished by:
(a) the director utilizing appropriated funds;
(b) requirements on authorized users of the natural resources and other products from the public land, including provisions for amortization of road costs in contracts;
(c) cooperative financing with other public agencies and with private agencies or persons; or
(d) a combination of these methods, provided that:
(i) where roads of a higher standard than that needed for harvesting or removing natural resources and other products from public land covered by a particular sale are to be

constructed, the authorized user may not be required to bear that part of the costs necessary to meet such higher standard; or

(ii) when natural resource products are offered with the condition that the purchaser build a road or roads in accordance with standards specified in the offer, the authorized user is responsible for paying the full costs of road construction.

Enacted by Chapter 317, 2016 General Session

63L-8-505 Maintenance of facilities.

(1)

(a) The director may require a user of a road, trail, land, or other facility administered by the DLM, or authorized by a DLM issued land use authorization, to:

(i) maintain facilities in a satisfactory condition commensurate with the particular use requirements of each; or

(ii) reconstruct the facility when the reconstruction is determined necessary to accommodate use.

(b) If maintenance or reconstruction cannot be provided, or if the director determines that maintenance or reconstruction by a user would not be practical, the director may require that sufficient funds be deposited by the user to provide the user's portion of the total maintenance or reconstruction.

(2) Whenever the director obtains money for use on, or in connection with, a new or existing road or the right to use such roads, the money shall be placed in the Public Land Management Fund created in Section 63L-8-308.

Enacted by Chapter 317, 2016 General Session

63L-8-506 Right-of-way corridors -- Criteria and procedures applicable for designation.

(1) Utilization of a right-of-way in common is suggested to the extent practical in order to minimize adverse environmental impacts and the proliferation of separate rights-of-way.

(2) In designating a right-of-way corridor, the director shall take into consideration:

(a) national, state, and local land use policies;

(b) environmental quality;

(c) economic efficiency;

(d) national security;

(e) safety;

(f) good engineering and technological practices; and

(g) wildlife and wildlife habitat impacts.

(3) The director shall issue rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, containing the criteria and procedures the DLM shall use in designating such a corridor.

(4) An existing transportation or utility corridor may be designated as a transportation or utility corridor without further review.

Enacted by Chapter 317, 2016 General Session

63L-8-507 General requirements.

(1)

(a) Each land use authorization granted, issued, or renewed shall be limited to a reasonable term in light of all circumstances concerning the project, not exceeding 5 years.
(b) In determining the duration of a land use authorization, the director shall:
(i) take into consideration the cost of the facility, the facility's useful life, and any public purpose the facility serves; and
(ii) specify whether the land use authorization is or is not renewable and the terms and conditions applicable to the renewal.
(2) A land use authorization shall be granted, issued, or renewed:
(a) pursuant to this chapter;
(b) consistent with rules issued by the DLM in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
(c) subject to such terms and conditions as the director prescribes regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination.
(3) Before granting or issuing a land use authorization pursuant to this part for a new project that may have a significant impact on the environment, the director shall require the applicant to submit a plan of construction, operation, mitigation, and rehabilitation for the land use authorization.
(4) The director shall issue rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, with respect to the terms and conditions that will be included in a land use authorization.
(5) The director shall provide for cost-sharing agreements for the construction and maintenance of land use authorization facilities, pursuant to rules for such arrangements issued by the DLM.
(6) Money received for reimbursement of reasonable costs shall be:
(a) deposited into the Public Land Management Fund created in Section 63L-8-308; and
(b) authorized to be appropriated and made available until expended.
(7)
(a) The director shall promulgate rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying the extent to which a holder of a right-of-way may be liable to the state for damage or injury incurred by the state caused by the use and occupancy of the land use authorization.
(b) The rules described in Subsection (7)(a) shall also specify the extent to which a holder of a right-of-way shall indemnify or hold harmless the state for liabilities, damages, or claims caused by the use and occupancy of the right-of-way.
(8) The director may require a holder of a land use authorization to furnish a bond or other security to secure all or any of the obligations imposed by the terms and conditions of the right-of-way.
(9) The director may grant, issue, or renew a land use authorization under this part if the director is satisfied that the applicant has the technical and financial capability to construct the project for which the right-of-way is requested.

Enacted by Chapter 317, 2016 General Session

63L-8-508 Terms and conditions.

Each land use authorization shall contain terms and conditions that:
(1) carry out the purposes of this chapter and rules issued under this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
(2) minimize damage to scenic and esthetic values, fish and wildlife habitat, and otherwise protect the environment;

(3) require compliance with applicable air and water quality standards established by applicable federal or state law;
(4) require compliance with state standards for public health and safety, environmental protection, siting, construction, operation, and maintenance of or for rights-of-way for similar purposes if those standards are more stringent than applicable federal standards; and
(5) are necessary to:
(a) protect state property and economic interests;
(b) efficiently manage the land that is subject to the land use authorization; and
(c) protect the other lawful users of the lands adjacent to or traversed by the land that is subject to the land use authorization.

Enacted by Chapter 317, 2016 General Session

63L-8-509 Suspension or termination -- Grounds -- Procedures applicable.
(1) The following are grounds for suspension or termination of a land use authorization:
(a) abandonment; or
(b) noncompliance with:
(i) a provision of this chapter;
(ii) an applicable rule established by the DLM in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or
(iii) a term or condition of the land use authorization.
(2) The director may terminate or suspend a land use authorization by providing notice to the land use authorization holder and, if required, an administrative proceeding, upon finding that:
(a) a condition described in Subsection (1) has been met; and
(b) the suspension or termination serves the best interest of:
(i) the citizens of the state; or
(ii) a land use plan established pursuant to Section 63L-8-202.
(3) The administrative proceeding described in Subsection (2):
(a) shall be conducted according to rules established by the DLM, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
(b) shall comply with Title 63G, Chapter 4, Administrative Procedures Act; and
(c) is not required if the land use authorization, by its terms, terminates on the occurrence of a fixed or agreed-upon condition, event, or time.
(4) If the director determines that an immediate temporary suspension of activities within a land use authorization for violation of its terms and conditions is necessary to protect public health or safety or the environment, the director may abate the activities before an administrative proceeding.
(5) Before commencing a proceeding to suspend or terminate a land use authorization, the director shall give written notice to the holder of the grounds for suspension or termination.
(6)
(a) Except as provided in Subsection (6)(b), failure of the land use authorization holder to use the right-of-way for the purpose for which it was granted, issued, or renewed, for any continuous five-year period, shall constitute a rebuttable presumption of abandonment of the right-of-way.
(b) Where the failure of the holder to use the land use authorization for the purpose for which it was granted, issued, or renewed for any continuous five-year period is due to circumstances beyond the holder's control, the director is not required to commence proceedings to suspend or terminate the right-of-way.

Enacted by Chapter 317, 2016 General Session

63L-8-510 Rights-of-way for state departments and agencies.

The director may issue a land use authorization upon or under public land to a department or agency of the state, subject to such terms and conditions as the director imposes.

Enacted by Chapter 317, 2016 General Session

63L-8-511 Applicability.

(1) No land use authorization shall be granted, issued, or renewed over, upon, under, or through public land, except as described in this part.
(2) Nothing in this part shall be construed to preclude the use of public land covered by this section for a highway purpose.

Enacted by Chapter 317, 2016 General Session