

CACHUMA OPERATION & MAINTENANCE BOARD



LAND USE AUTHORIZATION POLICY AND PROCEDURES



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LAND USE AUTHORIZATION PROCESS

POLICY

The United States Bureau of Reclamation (USBR) is the owner of certain lands and permanent easements for water transmission and distribution through the Cachuma Project South Coast Conduit conveyance system (SCC).

The Cachuma Operation & Maintenance Board (COMB) operates and maintains the South Coast Conduit (SCC) through a Contract for the Transfer of the Operation & Maintenance of the Cachuma Transferred Project Works, Contract No. 14-06-02002-5222R dated March 1, 2003 (Transfer O & M Agreement) with USBR, and through said agreement has the authority to approve certain Land Use Authorizations for third party activities within the Real Property lands or easements.

COMB policy is to keep and maintain all USBR fee-owned property and easements free from all encumbrances not in existence at the time of Transfer O & M Agreement. However, from time to time, various public utilities, governmental agencies, and private property owners request to jointly use Real Property lands or easements. COMB hereby establishes policies and procedures whereby Real Property lands or easements, which COMB has the duty to operate and maintain, may be jointly used by others.

COMB is not authorized under the Transfer O&M Agreement to grant any permanent interest in any USBR fee owned property. Proposed land uses onto USBR easements will be considered on an individual basis, focusing on protection of USBR facilities and the ability of COMB to access, construct, operate, maintain, repair, and replace USBR facilities. Land uses that are authorized under this policy shall be in the form of a conditional Approval Letter, License or Permit stating applicable terms and shall not grant an interest in the real property.

The Cachuma Project South Coast Conduit conveyance system is a vital water delivery resource to the South Coast of Santa Barbara County. All Agency decisions regarding encroachments within the SCC easements will be made based on protecting this important resource.

GENERAL REQUIREMENTS

No person shall make or have an existing encroachment on USBR lands without authorization from COMB or the USBR. All encroachments granted on USBR lands shall conform to the approved plans and the conditions of the Land Use Authorization *Approval Letter, License or Permit*. Any Land Use Authorization shall be limited to the Permittee or to the Permittee's agents. COMB personnel are not authorized and shall not give oral authorization for encroachments on USBR lands. Authorization to encroach upon USBR lands may be given only in writing pursuant to the provisions of this policy.

TYPES OF LAND USE AUTHORIZATIONS

COMB is authorized to approve three types of Land Use Authorizations as defined below:

- (A) A conditional *approval letter* involves an encroachment on land held in easement by the USBR and is considered temporary and minor in nature. Examples include: *temporary staging area, minor grading, temporary structures.*
- (B) A *license* can be issued on land owned in fee by the USBR and grants personal, revocable permission or authority for a person or entity to utilize a specific parcel of land for a specific purpose. *Licenses* involve installation or construction that are permanent in nature, such as distribution lines, access roads, trails, pipelines, and power lines. These are generally issued for a term that expires with the Transfer O & M Agreement, but are revocable by COMB or the USBR.
- (C) A *permit* can be issued on land owned in fee by the USBR and is generally considered to be a type of license. *Permits* do not convey possessory interest, but grant permission to use real property under specific, limited conditions. *Permits* are short term or one-time authorizations for miscellaneous temporary uses or privileges.

USBR will review all other applications. COMB shall provide application information and land use type to USBR to begin the USBR process.

ADMINISTRATION OF LAND USE AUTHORIZATIONS

Land use authorizations shall be administered pursuant to this policy. The COMB Board of Directors hereby delegates the General Manager authority to review applications for, and to approve temporary/minor Land Use Authorizations in the form of *Approval Letters, Licenses, or Permits*. The General Manager, based on applicable ordinances, policies, and standards shall determine the extent and nature of the encroachments to be permitted under this policy, the type of application and Land Use Authorization required, and the applicable fees. Permanent or complicated applications shall be processed by USBR with COMB assistance. The General Manager shall administer and enforce this policy and shall do all things necessary to effect its purpose and intent, including:

- (1) Establish standards and promulgate regulations for Land Use Authorizations;
- (2) Accept applications, fees/deposits and impose conditions of approval;
- (3) Issue, and record if applicable, Encroachment Approval Letters, Licenses, or Permits when all applicable conditions are met;
- (4) Cause the property or easement to be inspected and assure completion of any work;

- (5) Terminate unauthorized encroachments by all appropriate legal means.
- (6) Address existing encroachments on real property easements by removal of encroachments at the expense of the owner, acceptance and issuance of a new Land Use Authorization, or relocation of USBR facilities at the expense of the owner.

When the nature of the encroachment requested is subject to other legal requirements or administrative regulations, or affects COMB's operations, the General Manager shall make every effort to ensure that work adheres to those other requirements and shall be guided by the policies of the Board of Directors in determining the disposition of the application. Applications that are not consistent with the various requirements shall be denied. The General Manager shall cause to be inspected all encroachments permitted under this policy to ensure compliance.

If work is undertaken on USBR lands without a valid Land Use Authorization, or an encroachment currently exists on the property or easement, the General Manager is authorized to:

- (1) Give appropriate notice that, in the opinion of COMB, the work constitutes or may constitute an encroachment and order the work to be stopped or removed until a Land Use Authorization is executed or a determination is made that the work does not constitute an encroachment; and
- (2) Assess a fee of double the normal COMB processing and inspection fee for the Land Use Authorization;
- (3) If a Land Use Authorization is not applied for within ten (10) business days after the notice was given, the General Manager may give notice that the USBR lands and any associated facilities, pump stations, pipelines or other appurtenances must be restored to its original condition at the sole cost of the person encroaching upon the property or easement. Should restoration not begin promptly, legal action may be commenced to protect the USBR interests;
- (4) Order mitigation of the violation where the General Manager determines that reasonable restoration of the site to its original condition is infeasible or that irreparable damage has been done to an environmentally sensitive area, habitat, or structure. Mitigation requirements may include purchase or exchange by the violator of like-kind real property or easement of similar or greater quality and quantity. Mitigation shall be at the sole cost of the violator;
- (5) Cause the suspension of any other encroachment relating to the same property until the prerequisite Land Use Authorization is obtained; and
- (6) Promulgate additional administrative guidelines and regulations to implement and clarify the authority to require restoration and mitigation.

The General Manager may revoke a Land Use Authorization or may, without payment or compensation by COMB, require related plans to be amended under any of the following situations:

- (1) Upon request of the Permittee;
- (2) When the site conditions or operative facts upon which the Land Use Authorization was sought were not accurately presented in the application;
- (3) When work as constructed or as proposed to be constructed or existing encroachments create a hazard to public health, safety, or general welfare;
- (4) When the Land Use Authorization violates COMB policy or provisions of Federal, State, or local law; or
- (5) When COMB's repair or installation of public improvements requires the revocation
- (6) Where the Land Use Authorization interferes with COMB's ability to properly operate and maintain USBR or COMB facilities.

PROCEDURE TO ISSUE LAND USE AUTHORIZATIONS

Applications for Land Use Authorizations shall be made in accordance with the policy and procedures established by COMB. All Land Use Authorization applications shall be subject to the review of the General Manager.

Applications shall be accompanied by evidence of environmental compliance, three (3) sets of design drawings showing all construction and installations within the U.S. Bureau of Reclamation Right of Way, and appropriate fees as outlined in the fee schedule.

Applicants must provide detailed plans, specifications, schedules, and estimates as may be required to determine the nature and extent of the encroachment. Applications will not be considered complete until all items have been submitted and fee's/deposits are paid.

Full size (24 x 36), detailed plans shall be prepared showing at a minimum the boundaries of the proposed development, lot lines, public and private right-of-way lines, USBR facilities, and an indication of the intended use of the property or easement. The extent and nature of the encroachment shall be clearly shown. In certain cases, COMB may require that the SCC be located exactly within the right-of-way by potholing. An Underground Service Alert (USA) must be filed by the property owner or representative.

The Applicant shall notify all affected public utilities of his or her request to encroach on USBR easements and shall coordinate with the public utilities in order that any necessary relocation of existing facilities may be done in an orderly fashion without interrupting the continuity of service or endangering life or property.

FEES

Land Use Authorization fees or deposits required shall be collected in accordance with procedures established by the General Manager. A schedule of deposit fees to cover the costs of processing Land Use Authorization applications and related expenses incurred are shown in the attached fee schedule. The Permittee is responsible for all costs associated with the Land Use Authorization requirements. Deposit Accounts will be used for costs not covered in the fixed application fee. No Land Use Authorization shall be issued and no work shall be permitted on USBR easements until COMB has received the applicable fees.

TERMS AND CONDITIONS

In each case when the General Manager determines to issue a Land Use Authorization, the permit may include the following terms and conditions:

- (1) If terms and conditions require a covenant, the covenant shall run with the land and be binding upon and inure to the benefit of successors in interest including, the future owners, encumbrancers, successors, heirs, personal representatives, transferees, and assignees of the respective parties.
- (2) Permittee shall use the USBR real property easement only in the manner and for the purposes described in the Land Use Authorization and the attached plans.
- (3) By accepting the benefits herein, Permittee acknowledges that COMB's rights and obligations shall continue in full force and effect and shall not be affected by COMB's grant of permission to encroach.
- (4) The improvements shall be installed and maintained in safe and sanitary condition at the sole cost, risk, and responsibility of the Permittee, including but not limited to any damages to the encroachment caused by COMB's operations, repair, maintenance or construction requirements.
- (5) The Permittee shall at all times indemnify and save COMB and the USBR free and harmless from and pay in full, any and all claims, demands, losses, damages or expenses that COMB and/or the USBR may sustain or incur in any manner resulting from the demolition, construction, maintenance, use, repair, or presence of the encroachment installed hereunder, including any loss, damage or expense arising out of (1) loss of or damage to property; and (2) injury to or death of persons; excepting any loss, damage or expense and claims for loss, damage or expense resulting in any manner from the negligent act or acts of COMB, its contractors, officers, agents or employees.
- (6) COMB may remove at owners expense all or a portion of the encroachment in order to repair, replace, or install public improvements. COMB shall have no obligation to pay for or restore Permittee's encroachment.
- (7) Permittee waives the right to assert any claim or action against the Agency arising out of or resulting from the revocation of this Land Use Authorization or the removal of any improvements or any other action by COMB, its officers, agents, or employees taken in accordance with the terms of the Land Use Authorization.
- (8) As a condition precedent to Permittee's right to access USBR easements, this Land Use Authorization must first be signed by the Permittee, executed by COMB and recorded with COMB.
- (9) Whatever rights and obligations were acquired by COMB with respect to USBR easements shall remain and continue in full force and effect and shall in no way be

affected by COMB's grant of permission to construct and maintain the encroachment.

- (10) If applicable, Land Use Authorizations shall be recorded in the office of the County Recorder as an obligation upon the land involved.
- (11) Security for Land Use Authorizations may be required.

Additional terms and conditions may be added to the Land Use Authorization as determined by the General Manager.

UNAUTHORIZED ENCROACHMENTS PROHIBITED

The General Manager may direct staff to investigate unauthorized encroachments of the USBR easements in conflict with COMB or USBR improvements. The General Manager may request removal of encroachments which in his/her opinion conflict with COMB or USBR improvements. If the General Manager is unable to satisfactorily remove or restrict encroachments of property or easements by negotiation, then he/she may request the Board of Directors to authorize counsel to institute litigation to remove encroachments conflicting with COMB or USBR improvements.

ENFORCEMENT AUTHORITY AND REMEDIES

The Cachuma Operation & Maintenance Board's General Manager or his /her designee is authorized to administer and enforce the provisions of this policy. The remedies for a violation of this policy may include but are not limited to injunctive relief, civil penalties, or any administrative remedy set forth in this Land Use Authorization Policy.

APPEALS

COMB Denied

Within ten (10) days after receipt of a denial of a Land Use Authorization application, a Permittee may file with the Board of Directors a written request for a public hearing. Upon the filing of such a request, the Board of Directors shall set a time and place for the hearing and shall notify the party requesting the hearing at least five (5) days before the hearing date. The hearing shall be held as soon as is reasonably possible after the request is filed. The decision of the Board of Directors shall be final.

USBR Denied

Appealed pursuant to code 43CFR§429.34. An appeal from a denial of an application by USBR is governed by federal law. (See 43CFR§429.34)