Easements for Access in Colorado
May 6 and 7, 2014
Definition of an easement

• An easement is an interest in land in the possession of another which
  • (a) entitles the owner of the interest to a limited use or enjoyment of the land in which the interest exists;
  • (b) entitles the owner to protection as against third persons from interference in such use or enjoyment;
  • (c) is not subject to the will of the possessor of the land;
  • (d) is not a normal incident of the possession of any land possessed by the owner of the interest; and
  • (e) is capable of creation by conveyance.
Easement in Gross
Classification Of Easements

- Easements may be divided into two broad classes:
  - easements appurtenant
  - easements in gross.

- The classifications of easements having frequent significance in connection with a title insurance policy are those based on:
  1. The duration of the interest.
  2. The affirmative or negative character of the acts privileged thereby.
  3. The presence or absence of a dominant (as well as a servient) estate.
Concept

• An easement appurtenant is created for the benefit of another tract of land and cannot exist separate and apart from the particular land to which it is annexed.
• When granted or established, the same person must have unity of title to both the easement and the dominant estate.
• Merger - Grantor cannot own both the dominant and servient estate at the time of the easement’s creation. Exception - Declaration of Cross Easement

I. GRANT OF EASEMENT.

Declarant hereby grants and declares, to the extent described herein, for the benefit of the Easement Properties, an easement and right of way over and upon the Easement Area, which easement shall be appurtenant to and for the benefit of the Easement Properties and may be used by the owners of the Easement Properties, their heirs, successors, assigns, licensees and guests.
• It cannot exist separate and apart from the dominant estate to which it is annexed.
• If the easement is reciprocal, the same tract partakes of the condition of dominant and servient.
• It runs with the land and does not need to be mentioned in subsequent instrument of conveyance.
• It inures to the benefit of the dominant estate and cannot be separated from the land to which it is annexed.
Creating Appurtenances - Drafting

- To grantee, his heirs, successors and assigns
- Touches and concerns
- Runs with the land
- For the benefit of the following described parcel
- Reserving to the grantor and his successors and assigns and easement....
  - Not “subject to”
• Easement appurtenant may not physically abut dominant estate.
OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS that the undersigned owners of all the above-described tract of land having caused the same to be subdivided into lots and public streets to be hereafter known as:

SHELTER COVE

for good and valuable consideration received, do hereby dedicate and convey to the Town of Big Water for perpetual use of the public all parcels of land shown on this plat as public streets and easements and public park space, reserving, however, to the State of Utah the entire interest of the State of Utah in the mineral estate of lands so conveyed and dedicated, and subject to the Reversion of Property condition indicated hereon. All lots, streets, and easements are as noted or shown hereon.

Lots shown on this plat are subject to the Declaration of Covenants, Conditions and Restrictions, of the SHELTER COVE recorded in the office of the Kane County Recorder on this 22nd day of APRIL, 2003, at Book 0238, Page 577, said Declaration of
Easement And License Distinguished

- A license does not create an interest in the land in favor of the licensee; it is a personal right, of a temporary character, and it may be revoked at any time by the licensor.
• Entities that give licenses include the Forest Service, the Bureau of Land Management and various Railroads. These are sometimes insurable.
Insuring An Appurtenant Easement

• If the PIQ only has access by an easement, whether you show the easement on Sch. A or not, you are insuring the easement.
**Insuring An Appurtenant Easement**

- Easement Must Be Appurtenant
- The easement must have been created for a specific purpose (driveway, ingress and egress, party wall, etc.). A plain or nonspecific purpose easement is not insurable.
- The purpose of the easement, as stated in the easement grant, must be made a part of the easement description.
• **Exclusive or Nonexclusive**
  – Exclusivity, if claimed, must have been specifically stated in the instrument that created the easement.
  – In any other case, the easement must be referred to as a nonexclusive easement.
Easement Must Have Been Created By A Written Instrument

- Appurtenant easements cannot be created by parol. While it is possible to create an easement appurtenant by prescription, it is not insurable without a court decree.
The Instrument Creating The Easement Must Have Been Properly Executed

– The grantors must have possessed full legal capacity at the time of the execution of the easement.

– The instrument creating the easement was executed by all owners of the servient parcel.
Parties With Prior Interests

- If all those parties holding interests of record against the servient parcel have not joined in the execution of the instrument that created the easement, proper joinder or consents from the parties must be filed for record or they must be excepted to.
Public Roads on Federal Land

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Renewable Energy
The BLM is working with partners in building a clean energy future by providing sites for environmentally sound development of renewable energy on public lands.
General Information

General Information contains information for when a right-of-way (ROW) grant is needed, ROW regulations, definition of ROW terms, and appealing ROW decisions.

It is the policy of the Bureau of Land Management (BLM) to authorize all ROW applications, at the discretion of the authorized officer, in the most efficient and economical manner possible. Depending on the specifics of your proposed activity, uses on the public land can be either casual use or will require a ROW grant. It’s a good idea to contact the BLM and discuss your plans before assuming your use is casual. The BLM can then make a judgment on the requirements in your particular case.

When do I need a grant?

As a general rule, you do need a ROW whenever you wish to build a project on the public land. Some examples of land uses which require a ROW grant include: electric transmission lines, communication sites, roads, highways, trails, telephone/fiber optic lines, canals, flumes, pipelines, reservoirs, etc.

You don’t need a ROW for so-called “casual use.” Examples of casual use activities include driving vehicles over existing roads, sampling, surveying, marking routes, collecting data to prepare an application for a ROW, and performing certain activities that do not cause any appreciable disturbance or damage to the public land, resources, or improvements.
1. A (right-of-way) (permit) is hereby granted pursuant to:


   b. □ Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185);

   c. □ Other (describe) ____________________________________________

2. Nature of Interest:

   a. By this instrument, the holder ______________________________________ receives a right to construct, operate, maintain, and terminate a __________________________ on public lands (or Federal land for MLA Rights-of-Way) described as follows:
b. The right-of-way or permit area granted herein is ___________ feet wide, ___________ feet long and contains ___________ acres, more or less. If a site type facility, the facility contains ___________ acres.

c. This instrument shall terminate on __________________________, ___________ years from its effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.

d. This instrument ☐ may ☐ may not be renewed. If renewed, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.

e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.
4. Terms and Conditions:

a. This grant or permit is issued subject to the holder’s compliance with all applicable regulations contained in Title 43 Code of Federal Regulations parts 2800 and 2880.

b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within ____________ days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.

c. Each grant issued pursuant to the authority of paragraph (1)(a) for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.

d. The stipulations, plans, maps, or designs set forth in Exhibit(s) __________________________, dated __________________________, attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.

e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.

f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.
EXPLANATION OF LEGEND ITEMS

Roads Open to Highway Legal Vehicles Only:
These roads are open only to motor vehicles licensed under State law for general operation on all public roads within the state.

Roads Open to All Vehicles:
These roads are open to all motor vehicles, including smaller off-highway vehicles that may not be licensed for highway use (but not to oversize or overweight vehicles under State traffic law).

Trails Open to All Vehicles:
These trails are open to all motor vehicles, including both highway legal and nonhighway legal vehicles.
RS 2477 Roads

- The right of way for the construction of highways across public lands, not reserved for public uses, is hereby granted.
- Repealed by FLPMA in 1976, but existing ROWs grandfathered in.
- No requirement to establish other than use.
- BLM cannot adjudicate RS 2477 roads – SUWA v. BLM 425 F.3rd 735 (10th Cir. 2005)
When Recorded Return To:
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IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY
FARMINGTON DEPARTMENT, STATE OF UTAH

CROSSLAND MORTGAGE CORP., -

Plaintiff,


JUDGMENT DECLARING
EASEMENTS

vs.


EARL L. PAGEL, BANK ONE UTAH,
N.A., and FEDERAL NATIONAL
MORTGAGE ASSOCIATION,


Defendants.


The Court having considered the Motion for Summary Judgment filed by
Plaintiff, having granted same, having entered Findings of Fact and Conclusions of Law
thereon, and good cause appearing, it is hereby ORDERED, ADJUDGED AND
DECREE as follows:

1. The Court hereby declares and decrees reciprocal easements burdening and
benefitting the "Chase property" (legal description attached) and the "Pagel property"
(legal description attached) located in Davis County, State of Utah, for the following uses
and purposes:
CLINT EASTWOOD

ESCAPE FROM ALCATRAZ

stewart WIDESCREEN COLLECTION
Relevant Facts

- April 1977 - Developer buys a piece of property abutting our predecessor in title’s East property line.
- August 1977 - Developer builds 600 North Street and dedicates it to the public.
- October 1997 - Our insured acquires their interest and begins building office condominiums.
Easement Created By Reservation Of Grant In Favor Of A Third Person

- This situation occurs when the owner conveys the premises and attempts to reserve an easement over the premises for the benefit of a third person (an owner of adjoining land). Any interest created in this manner is uninsurable.
• An appurtenant easement will not benefit any contiguous land acquired by the owner of the dominant estate subsequent to the creation of the easement.