

Rights of Way Specialist

A Resource Manual for the Yakama Nation Right of Way Specialist

A Special Project

Presented to

Dr. Jack McPherson

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In Partial fulfillment

Of the Requirement for the Degree of

Master of Education

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MASTER'S PROJECT

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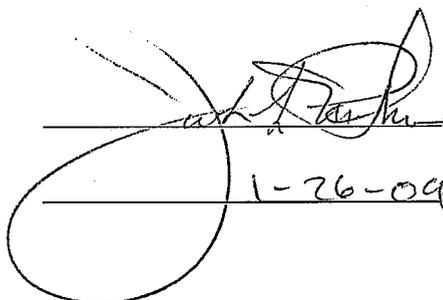
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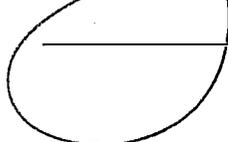
FACULTY APPROVAL

A Resource Manual for the Yakama Nation Right of Way Specialist

Approved for the Faculty



Faculty Advisor



1-26-09 Date

EXECUTIVE SUMMARY

The individual who holds the key position of Right-of-Way Specialist carries the authority to review and to approve or disapprove all applications for "right-of-way" (i.e., land usage) on the Yakama Nation Reservation (YNR) including, for example, roads, canals, dikes, utilities, homes or other buildings sites, etc. The Right-of-Way Specialist is one of the most important positions in the Yakama Tribal Administrative hierarchy and carries with it responsibility for managing real estate transactions estimated in the millions of dollars annually.

In view of the major responsibilities associated with this position, preparation of this Resource manual was intended to serve two purposes. First, the Manual provided an opportunity to organize, record and report what were perceived as the most important functions of the position of Right-of-Way Specialist, a position the writer (Mr. Rocco Clark, Jr.) has held for the past five years, while bringing focus to what was deemed most important to effectively carry out the most important responsibilities of the position.

Second, upon recalling that no Resource Manual existed, provided when the writer assumed the position as Right-of-Way Specialist in 2003, Mr. Clark believed strongly that, in the event he should leave the position at some future time, such a Manual, combined with appropriate mentoring, would help to guide

and to assure a quality job performance by the individual who succeeded to the position.

At the time of this writing, tribal and federal government rules and regulations governing "right-of-way" on YNR lands are undergoing review and possible revision. As a result, the writer has been directed by the YN Tribal Council to prepare both a summary of current rules and regulations governing Yakama Reservation right-of-way as well as a proposed plan for reservation land usage based on professional perceptions acquired during his five year tenure as Right-of-Way Specialist. For purposes of comparison, both current and proposed rules and regulations for Yakama Nation right-of-way have therefore been included in the Resource Manual.

Further, as the system of rules and regulations governing tribal land right-of-way have evolved over time as a by-product of Native American history, a portion of the Resource Manual has been devoted to reviewing and reporting that history.

Finally, to carry out duties and responsibilities of the position as Right-of-Way Specialist, the writer found it necessary to identify and to cultivate key resource people/personal contacts, and to locate and utilize information contained

in tribal and federal government documents/publications. These resources have also been featured in the manual.

Accordingly, the Resource Manual presented on the following pages has been organized into four parts, including:

Part I – Review of Selected Literature

Part II – Plan(s) for Managing Yakama Nation Indian Trust Lands

Part III – Resource Contacts and References

Part IV – Glossary and References

Appendices –

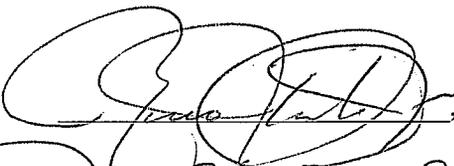
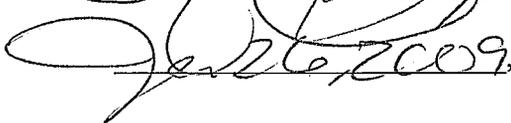
- A. United States Code Annotated Title 25 – Indians
- B. Code of Federal Regulations Title 25: Indians, Part 169 Right-of-Way
- C. Bureau of Indian Affairs Procedural Handbook
- D. Position Description

PERMISSION TO STORE

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PART I

REVIEW OF SELECTED LITERATURE

History of the Bureau of Indian Affairs

The Nineteenth Century

The Continental Congress (United States Government) was created in the year 1775 with three (3) Departments of Indian Affairs (North, Central, and South). As being the first departments dealing with the Indian, one of the first commissioners was former President at that time Benjamin Franklin. It was his responsibility to negotiate treaties with Indian Tribes. The idea of having the Indian and Tribes being neutral due to the build up of the Revolutionary War. The Continental Congress wanted the Indians neutrality which would be beneficial to the government. It was during this time that the Continental Congress (United States Government) established a War Department and Indians were its responsibility (Henson, 1996).

On July 21, 1821 by law the Indian Affairs Office was recognized. This bill gave the President to appoint a Commissioner of Indian Affairs to serve under the Secretary of War. This action, Office of Indian Affairs or Bureau had a Commissioner and now seemed possible to have more orderly methods of dealing with Indian relations (Henson, 1996).

In 1824, Secretary of War John C. Calhoun created the Bureau of Indian Affairs. This was accomplished without the approval from the Continental Congress. The Individual Thomas L. McKenney who dealt with Indian Trade was appointed to be the head of the office dealing with the Indian. It was then the responsibility of McKenney to appropriate the annuities and expenses; examine vouchers and expenditures, and administer funding that would civilize the Indian, decide claims between Indians and whites, and deal with the correspondence between the War Department. During this time, McKenney began to understand that he had inherited the Indian Affairs Department without the authority and responsibility which was still with the Secretary of War Department. McKenney created an action that would create an Office of Indian Affairs, the function of this action gave the head of the office the responsibility to act on all matters dealing with the Indian (Henson, 1996).

In 1849 the Office of Indian Affairs was transferred to the Department of the Interior. It was during this time that the Department of Interior controlled every aspect of dealing with Indians. This new time or age under the Department of the Interior gave rise to drastic change to Indians and tribes. Some change under this department was removal of Indian people from their homelands and placing them on reservations. This was also the time of treaty making that many

tribes signed with the intent of protecting their people and land. But during this time many periods of war broke out throughout Indian Country. After the treaty making era, the BIA had the idea to assimilate the Indian by acts of reform. The BIA had Indian Agents force children into schools, impose justice, distribute supplies, and administer allotments (General Allotment Act or the Dawes Act). By the year 1900, the Indian Agent had become the tribal government (Henson, 1996).

The next major occurrence in BIA services change occurred to response to the Meriam Report of 1938, which shed light on the government's broken promises in providing services to the Indian reservations. Congress had responded to the report by passing the Indian Reorganization Act (IRA), which was implemented to improve tribal economies and strengthen tribal governments. The BIA services were expanded to include forestry, range management, and agricultural extension service, construction, and land acquisition. The BIA services continued to expand until the 1950s and 1960s, the termination era, at which time congress had stricken some of the BIA agency's duties. The responsibility for educating Indian children passed to the states and Indian health care became the responsibility of the Department of Health, Education and Welfare (Henson, 1996).

In the 1970s, the new policy of self-determination reversed the policies of termination. Along with the new policy came greater application of Indian culture and tribal governments. Congress passed a series of laws, including the Indian Self-Determination Act, the Indian Child Welfare Act and the Health Care Improvement Act, which were aimed to improve the quality of reservation life without destroying tribal government. The BIA was trying to change its structure and character from a management to an advisory agency. Bureau goals, as stated in its BIA right of way manual, reflect this objective, and included:

1. Encouraging Indians and train Indians and Alaska Native people to manage their own affairs under a trust relationship with the federal government
2. Facilitating maximum involvement of Indian and Alaska Native people, full and development of their human and natural resource potentials
3. Mobilizing all public and private aids to ensure the advancement of Indian and Alaska Native people.
4. Using the skill and capabilities of Indian and Alaska Native people to direction and management of programs for their benefit (Henson, 1996).

In line with the fourth objective the BIA gave Indian applicants first consideration when hiring employees. Before the 1930s, few bureau employees were Indians. As part of the 1934 Indian Reorganization Act, Congress required that Indians be given preference in hiring. This requirement was challenged in the 1970s as unconstitutional and racially discriminatory. The Supreme Court ruled, however, that preferential hiring of Indians by the BIA did not violate the law but was proper given the government's special political relationship to tribes. Today more than 95 percent of the bureau's twelve thousand employees are Indian (Henson, 1996).

History of the Yakama Nation

The Yakama Nation has been referred to as the fourteen tribes and bands of the Nation which were Kahmiltpah, Ochechotes, Palouse, Wenatchapam, Klickitat, Posquouse, Seeapcat, Yakama, Klinquit, Shyiks, Skinpah, Kowwassayee, Liaywas, and Wishham. Although the Yakama Nation once had claim to approximately eleven million acres by Treaty of 1855, set aside one million three hundred thousand acres with all remaining land ceded to the United States Government (Meninick, 2008).

Before the coming of the white man, the Yakama people had a simple way of life which entailed culture and tradition. The Yakama people had the seven

drum religion or "Washat" which still in use today. The Washat service, longhouse, and seven drums were all part of the traditional religion of the Yakama people. Before tribal celebrations, commemorative or memorial services, Washat prayers were offered. Water was the most essential part of all longhouse rituals and has a deep symbolic significance for tribal people. One of the most important services was the First Foods Feast. This ceremony must occur before hunting, fishing, root digging, or gathering can take place. When one enters the longhouse they will witness tribal people standing shoulder to shoulder in two circles, women on the south and men to the north. The drummers of the longhouse were at front which series of prayer and songs had been expressed with the Yakama longhouse leader ringing the bell. The Yakama people sang songs and prayed for thanks to the resources giving its life to feed the people. These resources given were the salmon, deer or elk, roots, and huckleberries which water as the main source thanked to the creator (Meninick, 2008).

As Yakama people were living their lives, the newcomers came to the land of the Yakamas. These newcomers were Meriwether Lewis and William Clark. Meriwether Lewis and William Clark met some of the Yakama people at Quosispah, a village near the junction of the Yakima and Columbia Rivers. The two travelers were taking the breadth and depth of tribal lands all during 1805-

~~1806. Had it not been for the many tribes and bands they met on their journey~~
they would not have survived. Tribal people provided them with food and other goods needed by the travelers. Less than a year later British trapper David Thompson traveled down the Columbia. British and American fur trappers introduced manufactured goods to the Yakamas, and the Catholic missionary Charles Pandosy taught those who accepted it, Christianity. The Europeans found that the tribal people possessed tribal governments and were self sustaining. Along with the new people came diseases that decimated tribal populations (Meninick, 2008).

As early as the Revolutionary War provincial assemblies considered tribal affairs and the Continental Congress appointed a committee to secure and preserve the friendship of the tribal nations. Commissioners were appointed in 1783 to treat with tribal nations and the system continued until 1869 with the result of 360 treaties being made. Congress terminated the power in 1871, substituting a wardship policy (Meninick, 2008).

Reservations were created by executive order, authority of Congress and by treaty or agreement. The process of extinguishing land title was outlined under Article of Confederation on September 22, 1783 which prohibited all persons from settling lands inhabited or claimed by Indians (Meninick, 2008).

The War Department was created August 7, 1789 and supervision of tribal affairs was under the Secretary of War. Congress established an officer for the tribal service on July 2, 1832. The Department of Indian Affairs was created by the Act of June 30, 1834. The Department of the Interior was established on March 3, 1849 and tribal affairs were transferred from military to civil control (Meninick, 2008).

The Yakamas became concerned about the intentions of the United States government after 1853, when the government separated Washington Territory from Oregon Territory and Isaac I. Stevens became governor of the Washington Territory and Superintendent of Indian Affairs. On June 9, 1855, Stevenson concluded the Yakama Treaty, but not without opposition from Chief Kamiakin, the main chief. It was not the best of times for the tribes and bands during the negotiations as government officials made death threats to Chief Kamiakin and alcohol was introduced. Treaties involved the cessions of tribal territory or resolved boundary disputes that also affirmed recognition by the colonial powers of tribal ownership of land tribes used and occupied. Such rights had been asserted a century earlier by Spanish theological jurists such as Francisco de Victoria and Bartolome de las Casas (Meninick, 2008).

A newly appointed Governor Isaac I. Stevens received formal instructions in 1853 from the United States War Department to conduct a northern railroad survey. Governor Stevens selected Captain George McClellan to proceed from the Puget Sound through the Cascades. As time pressed on Governor Stevens observed commerce increasing on the Puget Sound. He saw the trapping and mining camps springing up (Meninick, 2008).

Governor Stevens also saw tribal people fishing, hunting, gathering roots, tules, berries and a cultural exchange was beginning to clash with the newcomers. He also had to quash Hudson Bay trading post titles. The diversified land required treaty making to obtain the tribal lands (Meninick, 2008).

The 1855 treaty reserved an original portion of their homeland known today as the Yakama Reservation. The treaty also directed the fourteen tribes and bands, speaking three distinct languages, to move to the reservation. At the signing of the Treaty of 1855, which took place near the present day Walla Walla, Washington. The fourteen tribes and bands were confederated into the Yakama Nation. The fourteen leaders who signed the Treaty of 1855 were Elit Palmer, Schnooa, Tecolekun, Tuckquille, Owhi, Slakish, Skloom, Lahoom, Makiakin, Meninock, Kalooas, Wishochknipits, Koolattoose, and Sheeahcotte (Meninick, 2008).

Kamiakin opposed the agreement and reservation. When miners discovered gold north of the Spokane River, non-tribal people began invading the inland Northwest through Yakama lands. After miners killed Yakama people, Yakama leader Qualchin killed the offenders. Learning of these deaths, Indian agent Andrew Jackson Bolon went to the Yakama Territory, but Kamiakin's brother Skloom warned Bolon that his life was in danger. Bolon was killed at Whak-Shum, triggering the Yakima War from 1855 to 1858. In 1858 Colonel George Wright executed the Yakima Chiefs Owhi and Qualchin as well as several warriors halting the war (Meninick, 2008).

The Office of Indian Affairs established a school at Fort Simcoe to assimilate and acculturate tribal boys and girls into the non-tribal society. Tribal parents who resisted sending their children to the school were jailed. Agents forced the tribal people to cultivate wheat, corn, and oats. The Yakamas eagerly raised horses and cattle, but farming did not interest them. Many continued to fish, hunt, and gather, but with great difficulty. Non-tribal ranchers and farmers established former Yakama lands. In 1894 the Allotment Act had federally appointees allotting the reservation into eighty-acre parcels, another way of non-tribal people to legally encroach upon tribal land (Meninick, 2008).

Goals of the Bureau of Indian Affairs

The mission and goals of the Bureau of Indian Affairs have been intended to enhance the quality of life and to promote economic opportunity in balance with meeting the responsibility to protect and improve the trust resources of American Indians, Indian tribes and Alaska Natives (Henson, 1996).

The BIA has changed significantly during the last three decades in response to a greater emphasis on Indian self-determination, the Indian tribes still look to the BIA for a broad spectrum of services. The extensive span of BIA programs covered virtually the entire range of State and local government services. Significant programs that were administered by either the Indian tribes or by BIA, included:

1. An educational system that consisted of schools and dormitories for approximately forty-seven thousand elementary and secondary students, included were resident only boarders.
2. Twenty-five tribal colleges, universities, and post secondary schools and two BIA owned post secondary schools.
3. Natural resource management on approximately fifty six million acres of trust land.

4. Economic development programs in some of the most isolated and

economically depressed areas of the United States.

5. Public safety and justice.

6. Social services.

7. Administration of tribal courts.

8. Implementation of land and water claim settlements.

9. Replacement and repair of schools.

10. Repair and maintenance of roads and bridges.

11. Repair of structural deficiencies on high hazard dams (Henson, 1996).

The Bureau programs have been funded and operated in a decentralized manner, with about 90 percent of all appropriations expended at the local level, and about 50 percent of appropriations provided directly to the tribes and tribal organizations through grants, contracts or compacts. In fact, these BIA programs uphold the government to government relationship with the tribes: honor the trust responsibilities; and provided many diverse services to American Indians and Alaska Natives. As a direct result of successful ongoing efforts within BIA and other major offices and agencies, BIA continues to work with the tribal groups and governments to:

1. Fulfill trust responsibilities and mandates of Federal law.
2. Protect their tribal land and natural resources.
3. Create the necessary infrastructure and educational opportunities that helped build stronger communities (Henson, 1996).

In essence, these continued and concerted efforts were based on long standing concepts of trust responsibility and self determination. Furthermore, the five hundred sixty one federally recognized Native American Indian tribes and Alaska Native villages within the United States each possessed inherent government authority derived from sovereignty. Their responsibilities involved education, job training, and employment programs that identified and promoted long term economic growth and social development, coupled with the management of approximately fifty six million acres of Indian Trust Land (Henson, 1996).

Within this framework, the BIA assisted the tribes in fulfilling selected responsibilities by funding government programs and services, including:

1. Education.
2. Social Services.
3. Public safety and justice.
4. Judicial courts.
5. business loans.

6. land records:
7. heirship records:
8. Forestry.
9. agricultural development.
10. water resources.
11. rangeland development.
12. fish conservation.
13. Roads.
14. Housing.
15. irrigation systems.
16. power systems (Henson, 1996).

These BIA programs and activities have been incorporated into the Department of the Interior Strategic Plan. This plan has integrated and aligned bureau responsibilities with specific major mission goals and has placed a strong, new emphasis on results and performance measurement. The Strategic Plan has helped to incorporate mission responsibilities together into an integrated blueprint for success (Henson, 1996).

Goals of the Yakama Nation

The Yakama Nation has elected officials that carry out the wishes of the general council membership. These Yakama Nation officials are established and responsible to promote the general welfare, conserve and develop our lands and other resources and secure the posterity and power to exercise certain rights of self government, not inconsistent with exercising federal law or regulations. The goals of the Yakama Nation are as follows set by the Yakama Nation general council membership:

- A) To establish and maintain, with the aid of the federal government a form of home rule that shall promote the advancement and welfare of the Indians of the Yakama Reservation, Washington.
- B) To establish and enforce such rules as may be necessary to safeguard Indian property and resources for the use of present and future generations.
- C) To safeguard, protect and secure all the rights, privileges and benefits guaranteed to the Yakama Indians by their original Treaty of June 9, 1855.
- D) To set forth the powers and authorities of the Yakama Tribal Council to carry out these goals and other tribal matters, not inconsistent with the delegation of authority by general council resolution dated February 18,

~~1944 and T-38-56 dated December 6, 1955, and approved by the~~

~~Commissioner of Indian Affairs on November 26, 1956 (Meninick, 2008).~~

The above named goals are mandates set by the Yakama people to the Yakama Tribal Council. Our wish is for the Yakama Tribal Council to follow these goals to better the Yakama Nation Reservation and tribal members. The focus of this part was to address the available evidence to the topics of (a) History of the Bureau of Indian Affairs, (b) History of the Yakama Nation, (c) Goals of the Bureau of Indian Affairs (d) Goals of the Yakama Nation. The history of the BIA and Tribe had been discussed to better enhance and paint a picture of the growing problem and how these two entities. As for the goals, the BIA and Tribe had developed goals which were implemented to resolve the ever changing and growing problem of Indian Trust Land (Meninick, 2008).

PART II

PLAN(S) FOR MANAGING YAKAMA NATION INDIAN TRUST LANDS

Current BIA Plan for Managing Indian Trust Lands

The right of way process developed by the Bureau of Indian Affairs was a long drawn out process with many obsolete procedures that hindered the progress of the right of way being completed. These procedures are mandatory steps that need to be addressed and followed before the Bureau of Indian Affairs will approve and grant any form of right-of-way.

Our United States Government under the Department of the Interior has the fiduciary responsibility on behalf of the Indian landowner to protect and conserve the resources on trust and restricted land. As fiduciary responsible, the BIA must ensure the highest and best use of the resources with protection against the misuse of the Indian trust property. Grants of Easement by the United States Government are to assist in the protection of trust lands from unregulated use.

As for most right of way granted, the delegated designee or Indian Agent grants the easement with owner consent but is not always the scenario. The grant issued by the Indian Agent is an easement. These steps toward obtaining an easement or any form of right-of-way is long and drawn out (see BIA Grant of Easement Process). As the BIA's current right-of-way process plan is in the form

of a procedural handbook. This handbook is one hundred twenty-two pages in length which is a daunting task to interpret and follow. Each procedural step has many other sub steps before a project can be implemented. The BIA mandated right-of-way process for project completion was too long which increased the backlog. The BIA process needed to be shortened due to Indian Trust Landowners not receiving trust income from their property. As the consequence from the BIA process, Indian Trust Landowners have suffered which includes the Tribe. Process of the tribes being self determined has resulted in many obstacles that have not been addressed by the Bureau of Indian Affairs or the Yakama Nation. The mandated BIA process of processing right-of-ways (ROW) have resulted in the accumulation of projects. These steady accumulations have now resulted in a major backlog that needed addressing (U.S., 2002).

Proposed Plan for Managing Yakama Nation Trust Lands

The Trust Real Estate Services (TRES) Program has been contracted from the Department of Interior (DOI), Bureau of Indian Affairs (BIA) by Public Law 93-638 contract. This contract between the Bureau of Indian Affairs and the Yakama Nation was established to have the tribe handle their own affairs. This effort by the federal government for tribes handling their own affairs was by Self-Determination. The purpose of this Resource Manual is to streamline the BIA

mandated right-of-way process to reduce the backlog and assist any staff or new

right-of-way specialist. The project objectives intended to accomplish are as

follows:

1. To evaluate obsolete procedures.
2. To develop procedural steps for projects.
3. To update obsolete procedures and to implement a timeline for project completion.
4. To prepare a resource manual for any staff or upcoming right of way specialist.

An assumption has been to be expressed to the reader or intended recipient of this manual. The mandated procedures under the Code Federal Regulations regulating for right-of-way process were addressed by all staff at the best of their ability. Each assumption made and requested by the Trust Real Estate Services were assumed to be priority to the next mandated program for circulatory approval. Assumption of streamlining the right-of-way process contributed to shorter time periods of project completion which reduced the backlog. A problem very evident was the transition between the Tribe and Bureau of Indian Affairs which supervised the program. The Bureau of Indian Affairs have the trust responsibility to the landowners but the Tribe contracted the program from the

~~Bureau. As a Tribe, the Yakama Nation under the contract by self-determination~~
took on the Bureau's trust responsibility to the Indian landowners.

The assumption made was that the current and past communication problems between the Tribe and Bureau made barriers within the program that dealt with trust land issues. The Bureau nor Tribe wanted the responsibility or blame for the ever growing backlog. Issues of responsibility, communication, supervision, and trust responsibility made these two entities sour to any idea of change. There was a continuous argument as to who would take the responsibility and initiative to implement change.

On significance to the project and manual, the purpose of this project was to provide a factual base of information regarding the streamlining of the right-of-way process. This project served as the foundation of how different sections of Trust Real Estate were streamlined to reduce the backlog which is/was in all sections of realty.

Tribal Council will use this project for program reform and mission statement change for the Trust Real Estate Services. Each Trust Real Estate section implements change similar to the findings of the project report which will be a mandate by Tribal Council. The reform of the obsolete procedures

demonstrated which process/procedure needed streamlining (see below on process streamlined).

Streamlined Process for Right-of-Way

Step 1. ROW Specialist receives and logs Application to conduct a Survey for ROW of Application for ROW/Easement-(Rights-of-Way Application, Application to Conduct a Survey).

Step 2. Verify and produce Schedule of Landowners (TAAMS).

Step 3. Request Title Status Report (TSR) from BIA Northwest Regional Office.

Step 4. Receive TSR from the BIA Northwest Regional Office.

Step 5. ROW Specialist sends out application for Permission to Survey for Right of Way(Statement of landowners to accompany application to make surveys).

Step 6. ROW Specialist informs BIA Environmental Coordinator on following the NEPA compliance.

Step 7. Land Committee Action sent over to Yakama Nation Land Enterprise for recommendation (if tribe owns interest in allotment).

Step 8. LCA sent over to Land Committee for approval.

Step 9. ROW Specialist prepares the application package and submits to Land Committee and Superintendent for approval-(Survey consent forms, Application to Survey, Maps).

Step 10. Survey request approved (Tribal Council/Superintendent).

Step 11. Notify applicant of approval-(standard letter approving survey.

Step 12. Applicant conducts survey.

Step 13. After survey ROW Specialist needs survey maps and legal description.

Step 14. When survey maps and legal description are obtained an appraisal request is formally requested.

Step 15. Receive appraisal from the Yakama Nation Appraisal Office.

Step 16. ROW Specialist helps the landowner(s) negotiate with the applicant to ensure that the landowner(s) are given enough advance notice and sufficient information regarding the terms of proposals for Rights of Way/Easements.

Step 17. Prepare final application package and submit to Land Committee for approval (needed in the application: Rights of Way Application, Application to Conduct a Survey, Schedule of landowners, and Appraisal).

Step 18. Does the tribe/allottee want to proceed at appraised value? Or negotiate additional funds to be paid for ROW- noted on consent forms- obtain consent to continue with the next step with the Consent of Owners to Grant Rights-of-Way.

Step 19. ROW Specialist drafts a written Grant of Rights-of-Way, with clearly defined intent, terms and specific conditions for the Rights-of-Way/Easement- applicant/allottee sign for approval.

Step 20. ROW Specialist receives FONSI or EA or EIS to satisfy the NEPA Compliance regulations.

Step 21. Realty Staff issues the Grant of Right of Way to the Superintendent for approval.

Step 22. ROW Specialist encodes granted easement in TAAMS.

Step 23. Realty Officer conducts a final legal and technical review of terms.

Step 24. NWRO sends back the Recorded Grant of Easement for ROW (Realty Staff files with our own filing number).

Step 25. ROW Specialist sends original Grant of ROW/Easement to applicant- gives permission to commence construction.

Step 26. Process payments to landowners (survey damages, Grant of ROW/Easement).

Step 27. ROW Specialist conducts field assessment for damages after the construction of the applicant.

Step 28. If possible damages are assessed the ROW Specialist contacts the appraiser to determine additional damages.

~~Step 29. Receive Appraisal, log appraisal, and review appraisal of damages.~~

Step 30. ROW Specialist monitors completion of repairs.

Step 31. Process payments to landowners for additional damages.

Step 32. END.

Conclusion and Recommendation

Conclusion

The conclusion with the streamlined right-of-way process and the current mandated BIA right-of-way process are very evident on steps taken to accomplish the issue of completing a project. Streamlined project is only thirty-two steps from start to finish. As for the BIA mandate process, the process is a one hundred twenty two page procedural handbook with many steps that are obsolete and outdated. As concluded, the process for the streamlining has less steps and easier to follow and quickens the project completion time.

Recommendation

The streamlined right-of-way process should be implemented by the Yakama Nation and approved by the Bureau of Indian Affairs. This process of changing the current contract with the Bureau of Indian Affairs and Yakama Nation can be implemented through the PL-93-638 contract with the Trust Real

Estate Services Program. A modification to the contract and agreed by both

parties can change how the right-of-way process is implemented on the Yakama

Reservation with regards to Indian Trust Allotments and Restricted land which

may include the Public Domain Allotments.

As a final recommendation, this resource manual should be implemented by the Yakama Nation Trust Real Estate Services Program. When implemented, this manual will be the sample on how all sections of Trust Real Estate can streamline each section. This manual will be to the benefit to the Yakama Nation, Bureau of India Affairs, staff, New Rights-of-Way Specialist, and tribal members.

PART III

RESOURCE CONTACTS, RERERECNCES, AND REGULATIONS

Resource Contacts.

Gregory Argel, Realty Officer, Northwest Regional Office, BIA Realty

Gary Sloan, Realty Specialist, Northwest Regional Office, BIA Realty

Gerald Ben, Deputy Regional Director, Northwest Regional Office, BIA

Maryanne Kenworthy, Attorney Advisor, Pacific Northwest Region, Office of the
Regional Solicitor

Guy Robbins, Yakama Agency Superintendent, BIA

Kevin Moore, Realty Officer, Umatilla Agency, BIA

Michael Morigeau, Deputy Yakama Agency Superintendent, BIA

Stephen Campbell, Researcher, Center for Applied Research

Gary Dorr, Office Manager, CoeurD'Alene Tribe, Land Services

Terry Beckwith, Land Professional, ICC Indian Enterprises

Chris Stainbrook, Chairman, Indian Land Tenure Foundation

David Lundgren, Attorney at Law

David Shaw, Fiduciary Trust Officer, Office of the Special Trustee

Margaret Schaff, Attorney at Law, Schaff & Clark-Deschene, LLC

Dave Ward, Attorney at Law, Yakama Nation Office of Legal Counsel

Raymond Wiseman, Yakama Power General Manager

Jerry Meninick, Yakama Nation Human Services Deputy Director

Reference Publications and Regulations (Appendices)

Appendix A (United States Code Annotated Title 25 –Indians)

Appendix B (Code of Federal Regulations Title 25: Indians, Part 169 Right-of-Way)

Appendix C (Bureau of Indian Affairs Procedural Handbook)

Appendix D (Position Description)

PART IV

GLOSSARY AND REFERENCES

Definition of Terms

Significant terms used in the context of the present study have been defined as follows:

compensation. Consideration or price of a privileged purchased

Continental Congress. The early name referred to but now known as the United States Government.

contract. An agreement between two or more persons or parties that created an obligation to do or not to do a particular thing.

Easement for Right-of-Way. A right of use over the property of another that created an interest in the land, was for limited use or enjoyment, can be protected against third parties, and was not terminable at will be the Indian landowner.

Environmental Assessment. A report outlining the quality of the land, determining the potential impact of the proposed activity on the land and if the potential for the damage was high, suggesting alternative measures for the action.

Environmental Impact Statement. A document required by federal and state laws to accompany proposals from major projects and programs likely impact on the surrounding environment.

Fair Annual Rental. The amount of rental income that a lease of trust restricted

Indian owned land would command in an open competitive market.

Fair Market Value. The amount at which property changed hands between a willing buyer and a willing seller. Neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. By fair market value was meant the price in cash, or its equivalent, that the property brought at the time of taking, considered its highest and most profitable use, if then offered for sale in the open market, in competition with other similar properties at or near the location of the property taken, with a reasonable time allowed to find a purchaser. Usually the fair market prices at which bona fide sales have been consummated for assets of like type, quality and quantity in a particular market at the time of acquisition.

Fractionated Tract. A tract of Indian land, a portion of which was in trust or restricted status owned by a tribe or individual in common with other owners. These other owners may own interest(s) therein.

Grant. To give or permit as a right or privilege, e.g. grant of route authority to a public carrier.

Government Owned Land. Land owned by the United States and under the jurisdiction of the Secretary which was acquired or set aside for the use and

benefit of Indians and not included in the definition of individually owned land or tribal land.

Indian Land. Any tract in which any interest in the surface estate was owned by a tribe or individual Indian in trust or restricted status.

Individually Owned Land. Land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

Interest. An ownership right to the surface estate of Indian Land that was unlimited or uncertain in duration, including a life estate.

Majority Interest. More than 50% of the trust or restricted interests in a tract of Indian land.

Right of Way. A non-possessory right of way person, class of persons, or entity to use or pass over the land of another for a specific purpose. The term ROW was often used interchangeably with the term easement.

Secretary. The Secretary of the Interior or his/her authorized representative acting under delegated authority.

Tribe. A band, nation, community, group or pueblo of Indians.

Tribal Land. The surface estate of land or any interest therein held by the United States in trust for a tribe, band, community, group or pueblo of Indians, and land that was held by a tribe, band, community, group or pueblo of Indians, subject to federal restriction against alienation or encumbrance, and includes such land reserved for BIA administrative purposes when it was not immediately needed for such purposes.

Tribal Law. The body of law that governs land and activities under the jurisdiction of a tribe, including ordinances and other enactments by the tribe, tribal court rulings, and tribal common, custom or traditional law.

Trust Land. Any tract of interest therein, that the United States hold in trust status for the benefit of a tribe or individual Indian.

Yakama. A growing family, a tribal expansion, pregnant one, something growing (DOI, 2006).

Acronyms

BIA. Bureau of Indian Affairs.

CFR. Code of Federal Regulations.

DOI. Department of the Interior.

EA. Environmental Assessment.

EIS. Environmental Impact Statement.

IIM. Individual Indian Monies Account.

LTRO. Land Titles and Records Office.

NWRO. Northwest Regional Office.

OST. Office of the Special Trustee for American Indians.

OS. Office of the Solicitor.

ROW. Right of Way.

TAAMS. Trust Asset and Accounting Management Systems.

TRES. Trust Real Estate Services (DOI, 2006).

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APPENDICES

- A) United States Code Annotated Title 25 – Indians
- B) Code of Federal Regulations Title 25: Indians, Part 169 Right-of-Way
- C) Bureau of Indian Affairs Procedural Handbook
- D) Position Description

TITLE 25--INDIANS

CHAPTER 8--RIGHTS-OF-WAY THROUGH INDIAN LANDS

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TITLE 25--INDIANS

CHAPTER 8--RIGHTS-OF-WAY THROUGH INDIAN LANDS

Sec. 323. Rights-of-way for all purposes across any Indian lands

The Secretary of the Interior be, and he is empowered to grant rights-of-way for all purposes, subject to such conditions as he may prescribe, over and across any lands now or hereafter held in trust by the United States for individual Indians or Indian tribes, communities, bands, or nations, or any lands now or hereafter owned, subject to restrictions against alienation, by individual Indians or Indian tribes, communities, bands, or nations, including the lands belonging to the Pueblo Indians in New Mexico, and any other lands heretofore or hereafter acquired or set aside for the use and benefit of the Indians.

(Feb. 5, 1948, ch. 45, Sec. 1, 62 Stat. 17.)

Effective Date

Section 7 of act Feb. 5, 1948, provided that sections 323 to 328 should not become operative until 30 days after Feb. 5, 1948.

Transfer of Functions

Enforcement functions of Secretary or other official in Department of the Interior relating to compliance with rights-of-way across Indian lands, issued under section 321 et seq. of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, Secs. 102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees, effective July 1, 1979, pursuant to Ex. Ord. No. 12142, Sec. 1-101, June 21, 1979, 44 F.R. 36927, set out as a note under section 719e of Title 15, Commerce and Trade. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

TITLE 25--INDIANS

CHAPTER 8--RIGHTS-OF-WAY THROUGH INDIAN LANDS

Sec. 324. Consent of certain tribes; consent of individual
Indians

No grant of a right-of-way over and across any lands belonging to a tribe organized under the Act of June 18, 1934 (48 Stat. 984), as amended [25 U.S.C. 461 et seq.]; the Act of May 1, 1936 (49 Stat. 1250) [25 U.S.C. 473a, 496]; or the Act of June 26, 1936 (49 Stat. 1967) [25 U.S.C. 501 et seq.], shall be made without the consent of the proper tribal officials. Rights-of-way over and across lands of individual Indians may be granted without the consent of the individual Indian owners if (1) the land is owned by more than one person, and the owners or owner of a majority of the interests therein consent to the grant; (2) the whereabouts of the owner of the land or an interest therein are unknown, and the owners or owner of any interests therein whose whereabouts are known, or a majority thereof, consent to the grant; (3) the heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary of the Interior finds that the grant will cause no substantial injury to the land or any owner thereof; or (4) the owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent, and also finds that the grant will cause no substantial injury to the land or any owner thereof.

(Feb. 5, 1948, ch. 45, Sec. 2, 62 Stat. 18.)

References in Text

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to subchapter V (Sec. 461 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

Section 496 of this title, referred to in text, was repealed by Pub. L. 94-579, title VII, Sec. 704(a), Oct. 21, 1976, 90 Stat. 2792.

Act of June 26, 1936, referred to in text, popularly known as the Oklahoma Welfare Act, is classified generally to subchapter VIII (Sec. 501 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 501 of this title and Tables.

Transfer of Functions

Enforcement functions of Secretary or other official in Department of the Interior relating to compliance with rights-of-way across Indian lands, issued under section 321 et seq. of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan

No. 1 of 1979, Secs. 102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees, effective July 1, 1979, pursuant to Ex. Ord. No. 12142, Sec. 1-101, June 21, 1979, 44 F.R. 36927, set out as a note under section 719e of Title 15, Commerce and Trade. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

TITLE 25--INDIANS

CHAPTER 8--RIGHTS-OF-WAY THROUGH INDIAN LANDS

Sec. 325. Payment and disposition of compensation

No grant of a right-of-way shall be made without the payment of such compensation as the Secretary of the Interior shall determine to be just. The compensation received on behalf of the Indian owners shall be disposed of under rules and regulations to be prescribed by the Secretary of the Interior.

(Feb. 5, 1948, ch. 45, Sec. 3, 62 Stat. 18.)

Transfer of Functions

Enforcement functions of Secretary or other official in Department of the Interior relating to compliance with rights-of-way across Indian lands, issued under section 321 et seq. of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, Secs. 102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees, effective July 1, 1979, pursuant to Ex. Ord. No. 12142, Sec. 1-101, June 21, 1979, 44 F.R. 36927, set out as a note under section 719e of Title 15, Commerce and Trade. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

TITLE 25--INDIANS

CHAPTER 8--RIGHTS-OF-WAY THROUGH INDIAN LANDS

Sec. 326. Laws unaffected

Sections 323 to 328 of this title shall not in any manner amend or repeal the provisions of the Federal Water Power Act of June 10, 1920 (41 Stat. 1063), as amended by the Act of August 26, 1935 (49 Stat. 838) [16 U.S.C. 791a et seq.], nor shall any existing statutory authority empowering the Secretary of the Interior to grant rights-of-way over Indian lands be repealed.

(Feb. 5, 1948, ch. 45, Sec. 4, 62 Stat. 18.)

References in Text

The Federal Water Power Act, referred to in text, is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, now known as the Federal Power Act, which is classified generally to chapter 12 (Sec. 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Tables.

Transfer of Functions

Enforcement functions of Secretary or other official in Department of the Interior relating to compliance with rights-of-way across Indian lands, issued under section 321 et seq. of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, Secs. 102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees, effective July 1, 1979, pursuant to Ex. Ord. No. 12142, Sec. 1-101, June 21, 1979, 44 F.R. 36927, set out as a note under section 719e of Title 15, Commerce and Trade. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

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[Laws in effect as of January 3, 2006]
[CITE: 25USC327]

TITLE 25--INDIANS

CHAPTER 8--RIGHTS-OF-WAY THROUGH INDIAN LANDS

Sec. 327. Application for grant by department or agency

Rights-of-way for the use of the United States may be granted under sections 323 to 328 of this title upon application by the department or agency having jurisdiction over the activity for which the right-of-way is to be used.

(Feb. 5, 1948, ch. 45, Sec. 5, 62 Stat. 18.)

Transfer of Functions

Enforcement functions of Secretary or other official in Department of the Interior relating to compliance with rights-of-way across Indian lands, issued under section 321 et seq. of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, Secs. 102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees, effective July 1, 1979, pursuant to Ex. Ord. No. 12142, Sec. 1-101, June 21, 1979, 44 F.R. 36927, set out as a note under section 719e of Title 15, Commerce and Trade. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

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TITLE 25--INDIANS

CHAPTER 8--RIGHTS-OF-WAY THROUGH INDIAN LANDS

Sec. 328. Rules and regulations

The Secretary of the Interior is authorized to prescribe any necessary regulations for the purpose of administering the provisions of sections 323 to 328 of this title.

(Feb. 5, 1948, ch. 45, Sec. 6, 62 Stat. 18.)

Transfer of Functions

Enforcement functions of Secretary or other official in Department of the Interior relating to compliance with rights-of-way across Indian lands, issued under section 321 et seq. of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, Secs. 102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees, effective July 1, 1979, pursuant to Ex. Ord. No. 12142, Sec. 1-101, June 21, 1979, 44 F.R. 36927, set out as a note under section 719e of Title 15, Commerce and Trade. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

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PART 169—RIGHTS-OF-WAY OVER INDIAN LANDS

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Authority: 5 U.S.C. 301; 62 Stat. 17 (25 U.S.C. 323–328), and other acts cited in the text.

Source: 33 FR 19803, Dec. 27, 1968, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 169.1 Definitions.

As used in this part 169:

(a) *Secretary* means the Secretary of the Interior or his authorized representative acting under delegated authority. Before proceeding under these regulations anyone desiring a right-of-way should inquire at the Indian Agency, Area Field Office, or other office of the Bureau of Indian Affairs having immediate supervision over the lands involved to determine the identity of the authorized representative of the Secretary for the purposes of this part 169.

(b) *Individually owned land* means land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

(c) *Tribe* means a tribe, band, nation, community, group or pueblo of Indians.

(d) *Tribal land* means land or any interest therein, title to which is held by the United States in trust for a tribe, or title to which is held by any tribe subject to Federal restrictions against alienation or encumbrance, and includes such land reserved for Indian Bureau administrative purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

(e) *Government owned land* means land owned by the United States and under the jurisdiction of the Secretary which was acquired or set aside for the use and benefit of Indians and not included in the definitions set out in paragraphs (b) and (d) of this section.

§ 169.2 Purpose and scope of regulations.

(a) Except as otherwise provided in §1.2 of this chapter, the regulations in this part 169 prescribe the procedures, terms and conditions under which rights-of-way over and across tribal land, individually owned land and Government owned land may be granted.

(b) Appeals from administrative action taken under the regulations in this part 169 shall be made in accordance with part 2 of this chapter.

(c) The regulations contained in this part 169 do not cover the granting of rights-of-way upon tribal lands within a reservation for the purpose of constructing, operating, or maintaining dams, water conduits, reservoirs, powerhouses, transmission lines or other works which shall constitute a part of any project for which a license is required by the Federal Power Act. The Federal Power Act provides that any license which shall be issued to use tribal lands within a reservation shall be subject to and contain such conditions as the Secretary of the Interior shall deem necessary for the adequate protection and utilization of such lands. (16 U.S.C. 797(e)). In the case of tribal lands belonging to a tribe organized under the Act of June 18, 1934 (48 Stat. 984), the Federal Power Act requires that annual charges for the use of such tribal lands under any license issued by the Federal Power Commission shall be subject to the approval of the tribe (16 U.S.C. 803(e)).

§ 169.3 Consent of landowners to grants of right-of-way.

(a) No right-of-way shall be granted over and across any tribal land, nor shall any permission to survey be issued with respect to any such lands, without the prior written consent of the tribe.

(b) Except as provided in paragraph (c) of this section, no right-of-way shall be granted over and across any individually owned lands, nor shall any permission to survey be issued with respect to any such lands, without the prior written consent of the owner or owners of such lands and the approval of the Secretary.

(c) The Secretary may issue permission to survey with respect to, and he may grant rights-of-way over and across individually owned lands without the consent of the individual Indian owners when

(1) The individual owner of the land or of an interest therein is a minor or a person non compos mentis; and the Secretary finds that such grant will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages;

(2) The land is owned by more than one person, and the owners or owner of a majority of the interests therein consent to the grant;

(3) The whereabouts of the owner of the land or an interest therein are unknown, and the owners or owner of any interests therein whose whereabouts are known, or a majority thereof, consent to the grant;

(4) The heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the grant will cause no substantial injury to the land or any owner thereof;

(5) The owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent, and also finds that the grant will cause no substantial injury to the land or any owner thereof.

[36 FR 14183, July 31, 1971. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 169.4 Permission to survey.



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Anyone desiring to obtain permission to survey for a right-of-way across individually owned, tribal or Government owned land must file a written application therefor with the Secretary. The application shall adequately describe the proposed project, including the purpose and general location, and it shall be accompanied by the written consents required by §169.3, by satisfactory evidence of the good faith and financial responsibility of the applicant, and by a check or money order of sufficient amount to cover twice the estimated damages which may be sustained as a result of the survey. With the approval of the Secretary, a surety bond may be substituted in lieu of a check or money order accompanying an application, provided the company issuing the surety bond is licensed to do business in the State where the land to be surveyed is located. The application shall contain an agreement to indemnify the United States, the owners of the land, and occupants of the land, against liability for loss of life, personal injury and property damage occurring because of survey activities and caused by the applicant, his employees, contractors and their employees, or subcontractors and their employees. When the applicant is an agency or instrumentality of the Federal or a State Government and is prohibited by law from depositing estimated damages in advance or agreeing to indemnification, the requirement for such a deposit and indemnification may be waived providing the applicant agrees in writing to pay damages promptly when they are sustained. An application filed by a corporation must be accompanied by a copy of its charter or articles of incorporation duly certified by the proper State official of the State where the corporation was organized, and a certified copy of the resolution or bylaws of the corporation authorizing the filing of the application. When the land covered by the application is located in a State other than that in which the application was incorporated, it must also submit a certificate of the proper State official that the applicant is authorized to do business in the State where the land is located. An application filed by an unincorporated partnership or association must be accompanied by a certified copy of the articles of partnership or association, or if there be none, this fact must be stated over the signature of each member of the partnership or association. If the applicant has previously filed with the Secretary an application accompanied by the evidence required in this section, a reference to the date and place of such filing, accompanied by proof of current financial responsibility and good faith, will be sufficient. Upon receipt of an application made in compliance with the regulations of this part 169, the Secretary may grant the applicant written permission to survey.

§ 169.5 Application for right-of-way.

Written application identifying the specific use requested shall be filed in duplicate with the Secretary. The application shall cite the statute or statutes under which it is filed and the width and length of the desired right-of-way, and shall be accompanied by satisfactory evidence of the good faith and financial responsibility of the applicant. An application filed by a corporation must be accompanied by a copy of its charter or articles of incorporation duly certified by the proper State official of the State where the corporation was organized, and a certified copy of the resolution or bylaws of the corporation authorizing the filing of the application. When the land covered by the application is located in a State other than that in which the applicant was incorporated, it must also submit a certificate of the proper State official that the applicant is authorized to do business in the State where the land is located. An application filed by an unincorporated partnership or association must be accompanied by a certified copy of the articles of partnership or association, or if there be none, this fact must be stated over the signature of each member of the partnership or association. If the applicant has previously filed with the Secretary an application accompanied by the evidence required by this section, a reference to the date and place of such filing will be sufficient. Except as otherwise provided in this section, the application shall be accompanied by a duly executed stipulation, in duplicate, expressly agreeing to the following:

- (a) To construct and maintain the right-of-way in a workmanlike manner.
- (b) To pay promptly all damages and compensation, in addition to the deposit made pursuant to §169.4, determined by the Secretary to be due the landowners and authorized users and occupants of the land on account of the survey, granting, construction and maintenance of the right-of-way.
- (c) To indemnify the landowners and authorized users and occupants against any liability for loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.
- (d) To restore the lands as nearly as may be possible to their original condition upon the completion of construction to the extent compatible with the purpose for which the right-of-way was granted.
- (e) To clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project.
- (f) To take soil and resource conservation and protection measures, including weed control, on the land covered by the right-of-way.
- (g) To do everything reasonably within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.
- (h) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.
- (i) That upon revocation or termination of the right-of-way, the applicant shall, so far as is reasonably possible, restore the land to its original condition.
- (j) To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.
- (k) That the applicant will not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.

When the applicant is the U.S. Government or a State Government or an instrumentality thereof and is prohibited by law from executing any of the above stipulations, the Secretary may waive the requirement

that the applicant agree to any stipulations so prohibited.

[33 FR 19803, Dec. 27, 1968, as amended at 45 FR 45910, July 8, 1980. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 169.6 Maps.



(a) Each application for a right-of-way shall be accompanied by maps of definite location consisting of an original on tracing linen or other permanent and reproducible material and two reproductions thereof. The field notes shall accompany the application, as provided in §169.7. The width of the right-of-way shall be clearly shown on the maps.

(b) A separate map shall be filed for each section of 20 miles of right-of-way, but the map of the last section may include any excess of 10 miles or less.

(c) The scale of maps showing the line of route normally should be 2,000 feet to an inch. The maps may, however, be drawn to a larger scale when necessary and when an increase in scale cannot be avoided through the use of separate field notes, but the scale must not be increased to such extent as to make the maps too cumbersome for convenient handling and filing.

(d) The maps shall show the allotment number of each tract of allotted land, and shall clearly designate each tract of tribal land affected, together with the sections, townships, and ranges in which the lands crossed by the right-of-way are situated.

§ 169.7 Field notes.



Field notes of the survey shall appear along the line indicating the right-of-way on the maps, unless the maps would be too crowded thereby to be easily legible, in which event the field notes may be filed separately on tracing linen in such form that they may be folded readily for filing. Where field notes are placed on separate tracing linen, it will be necessary to place on the maps only a sufficient number of station numbers so as to make it convenient to follow the field notes. The field notes shall be typewritten. Whether endorsed on the maps or filed separately, the field notes shall be sufficiently complete so as to permit the line indicating the right-of-way to be readily retraced on the ground from the notes. They shall show whether the line was run on true or magnetic bearings, and, in the latter case, the variation of the needle and date of determination must be stated. One or more bearings (or angular connections with public survey lines) must be given. The 10-mile sections must be indicated and numbered on all lines of road submitted.

§ 169.8 Public survey.



(a) The terminal of the line of route shall be fixed by reference of course and distance to the nearest existing corner of the public survey. The maps, as well as the engineer's affidavit and the certificate, shall show these connections.

(b) When either terminal of the line of route is upon unsurveyed land, it must be connected by traverse with an established corner of the public survey if not more than 6 miles distant from it, and the single bearing and distance from the terminal point to the corner computed and noted on the maps, in the engineer's affidavit, and in the certificate. The notes and all data for the computation of the traverse must be given.

§ 169.9 Connection with natural objects.



When the distance to an established corner of the public survey is more than 6 miles, this connection will be made with a natural object or a permanent monument which can be readily found and recognized, and which will fix and perpetuate the position of the terminal point. The maps must show the position of such mark, and course and distance to the terminus. There must be given an accurate description of the mark and full data concerning the traverse, and the engineer's affidavit and the certificate on the maps must state the connections.

§ 169.10 Township and section lines.



Whenever the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner shall be noted. The maps shall show these distances and the station numbers at the points of intersections. The field notes shall show these distances and the station numbers.

§ 169.11 Affidavit and certificate.



(a) There shall be subscribed on the maps of definite location an affidavit executed by the engineer who made the survey and a certificate executed by the applicant, both certifying to the accuracy of the survey and maps and both designating by termini and length in miles and decimals, the line of route for which the right-of-way application is made.

(b) Maps covering roads built by the Bureau of Indian Affairs which are to be transferred to a county or State government shall contain an affidavit as to the accuracy of the survey, executed by the Bureau highway engineer in charge of road construction, and a certificate by the State or county engineer or other authorized State or county officer accepting the right-of-way and stating that he is satisfied as to the accuracy of the survey and maps.

§ 169.12 Consideration for right-of-way grants.



Except when waived in writing by the landowners or their representatives as defined in §169.3 and approved by the Secretary, the consideration for any right-of-way granted or renewed under this part 169 shall be not less than but not limited to the fair market value of the rights granted, plus severance damages, if any, to the remaining estate. The Secretary shall obtain and advise the landowners of the appraisal information to assist them (the landowner or landowners) in negotiations for a right-of-way or renewal.

[45 FR 45910, July 8, 1980. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 169.13 Other damages.



In addition to the consideration for a grant of right-of-way provided for by the provisions of §169.12, the applicant for a right-of-way will be required to pay all damages incident to the survey of the right-of-way or incident to the construction or maintenance of the facility for which the right-of-way is granted.

§ 169.14 Deposit and disbursement of consideration and damages.



At the time of filing an application for right-of-way, the applicant must deposit with the Secretary the total estimated consideration and damages, which shall include consideration for the right-of-way, severance damages, damages caused during the survey, and estimated damages to result from construction less any deposit previously made under §169.4. In no case shall the amount deposited as consideration for the right-of-way over any parcel be less than the amount specified in the consent covering that parcel. If, in reviewing the application, the Secretary determines that the amounts deposited are inadequate to compensate the owners, the applicant shall increase the deposit to an amount determined by the Secretary to be adequate. The amounts so deposited shall be held in a "special deposit" account for distribution to or for the account of the landowners and authorized users and occupants of the land. Amounts deposited to cover damages resulting from survey and construction may be disbursed after the damages have been sustained. Amounts deposited to cover consideration for the right-of-way and severance damages shall be disbursed upon the granting of the right-of-way. Any part of the deposit which is not required for disbursement as aforesaid shall be refunded to the applicant promptly following receipt of the affidavit of completion of construction filed pursuant to §169.16.

§ 169.15 Action on application.



Upon satisfactory compliance with the regulations in this part 169, the Secretary is authorized to grant the right-of-way by issuance of a conveyance instrument in the form approved by the Secretary. Such instrument shall incorporate all conditions or restrictions set out in the consents obtained pursuant to §169.3. A copy of such instrument shall be promptly delivered to the applicant and thereafter the applicant may proceed with the construction work. Maps of definite location may be attached to and incorporated into the conveyance document by reference. In the discretion of the Secretary, one conveyance document may be issued covering all of the tracts of land traversed by the right-of-way, or separate conveyances may be made covering one or several tracts included in the application. A duplicate original copy of the conveyance instrument, permanent and reproducible maps, a copy of the application and stipulations, together with any other pertinent documents shall be transmitted by the Secretary to the office of record for land documents affecting the land covered by the right-of-way, where they will be recorded and filed.

§ 169.16 Affidavit of completion.



Upon the completion of the construction of any right-of-way, the applicant shall promptly file with the Secretary an affidavit of completion, in duplicate, executed by the engineer and certified by the applicant. The Secretary shall transmit one copy of the affidavit to the office of record mentioned in §169.15. Failure to file an affidavit in accordance with this section shall subject the right-of-way to cancellation in accordance with §169.20.

§ 169.17 Change of location.



If any change from the location described in the conveyance instrument is found to be necessary on account of engineering difficulties or otherwise, amended maps and field notes of the new location shall be filed, and a right-of-way for such new route or location shall be subject to consent, approval, the ascertainment of damages, and the payment thereof, in all respects as in the case of the original location. Before a revised conveyance instrument is issued, the applicant shall execute such instruments deemed necessary by the Secretary extinguishing the right-of-way at the original location. Such instruments shall be transmitted by the Secretary to the office of record mentioned in §169.15 for recording and filing.

§ 169.18 Tenure of approved right-of-way grants.



All rights-of-way granted under the regulations in this part 169 shall be in the nature of easements for the periods stated in the conveyance instrument. Except as otherwise determined by the Secretary and stated in the conveyance instrument, rights-of-way granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), for railroads, telephone lines, telegraph lines, public roads and highways, access roads to homesite properties, public sanitary and storm sewer lines including sewage disposal and treatment plants, water control and use projects (including but not limited to dams, reservoirs, flowage easements, ditches, and canals), oil, gas, and public utility water pipelines (including pumping stations and appurtenant facilities), electric power projects, generating plants, switchyards, electric transmission and distribution lines (including poles, towers, and appurtenant facilities), and for service roads and trails essential to any of the aforesaid use purposes, may be without limitation as to term of years; whereas, rights-of-way for all other purposes shall be for a period of not to exceed 50 years, as determined by the Secretary and stated in the conveyance instrument.

[37 FR 12937, June 30, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 169.19 Renewal of right-of-way grants.



On or before the expiration date of any right-of-way heretofore or hereafter granted for a limited term of years, an application may be submitted for a renewal of the grant. If the renewal involves no change in the location or status of the original right-of-way grant, the applicant may file with his application a certificate under oath setting out this fact, and the Secretary, with the consent required by §169.3, may thereupon extend the grant for a like term of years, upon the payment of consideration as set forth in §169.12. If any change in the size, type, or location of the right-of-way is involved, the application for renewal shall be treated and handled as in the case of an original application for a right-of-way.

§ 169.20 Termination of right-of-way grants.



All rights-of-way granted under the regulations in this part may be terminated in whole or in part upon 30 days written notice from the Secretary mailed to the grantee at its latest address furnished in accordance with §169.5(j) for any of the following causes:

- (a) Failure to comply with any term or condition of the grant or the applicable regulations;
- (b) A nonuse of the right-of-way for a consecutive 2-year period for the purpose for which it was granted;
- (c) An abandonment of the right-of-way.

If within the 30-day notice period the grantee fails to correct the basis for termination, the Secretary shall issue an appropriate instrument terminating the right-of-way. Such instrument shall be transmitted by the Secretary to the office of record mentioned in §169.15 for recording and filing.

[33 FR 19803, Dec. 27, 1968, as amended at 45 FR 45910, July 8, 1980. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 169.21 Condemnation actions involving individually owned lands.



The facts relating to any condemnation action to obtain a right-of-way over individually owned lands shall be reported immediately by officials of the Bureau of Indian Affairs having knowledge of such facts to appropriate officials of the Interior Department so that action may be taken to safeguard the interests of

the Indians.

§ 169.22 Service lines.



(a) An agreement shall be executed by and between the landowner or a legally authorized occupant or user of individually owned land and the applicant before any work by the applicant may be undertaken to construct a service line across such land. Such a service line shall be limited in the case of power lines to a voltage of 14.5 kv. or less except lines to serve irrigation pumps and commercial and industrial uses which shall be limited to a voltage not to exceed 34.5 kv. A service line shall be for the sole purpose of supplying the individual owner or authorized occupant or user of land, including schools and churches, with telephone, water, electric power, gas, and other utilities for use by such owner, occupant, or user of the land on the premises.

(b) A similar agreement to that required in paragraph (a) of this section shall be executed by the tribe or legally authorized occupant or user of tribal land and the applicant before any work by the applicant may be undertaken for the construction of a service line across tribal land. A service line shall be for the sole purpose of supplying an occupant or user of tribal land with any of the utilities specified in paragraph (a) of this section. No agreement under this paragraph shall be valid unless its execution shall have been duly authorized in advance of construction by the governing body of the Indian tribe whose land is affected, unless the contract under which the occupant or user of the land obtained his rights specifically authorizes such occupant or user to enter into service agreements for utilities without further tribal consent.

(c) In order to encourage the use of telephone, water, electric power, gas and other utilities and to facilitate the extension of these modern conveniences to sparsely settled Indian areas without undue costs the agreement referred to in paragraph (a) of this section shall only be required to include or have appended thereto, a plat or diagram showing with particularity the location, size, and extent of the line. When the plat or diagram is placed on a separate sheet it shall bear the signature of the parties. In case of tribal land, the agreement shall be accompanied by a certified copy of the tribal authorization when required.

(d) An executed copy of the agreement, together with a plat or diagram, and in the case of tribal land, an authenticated copy of the tribal authorization, when required, shall be filed with the Secretary within 30 days after the date of its execution. Failure to meet this requirement may result in the removal of improvements placed on the land at the expense of the party responsible for the placing of such improvements and subject such party to the payment of damages caused by his unauthorized act.

§ 169.23 Railroads.



(a) The Act of March 2, 1899 (30 Stat. 990), as amended by the Acts of February 28, 1902 (32 Stat. 50), June 21, 1906 (34 Stat. 330), and June 25, 1910 (36 Stat. 859; 25 U.S.C. 312-318); the Act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934); and the Act of March 3, 1909 (35 Stat. 781), as amended by the Act of May 6, 1910 (36 Stat. 349; 25 U.S.C. 320), authorize grants of rights-of-way across tribal, individually owned and Government-owned land, except in the State of Oklahoma, for railroads, station buildings, depots, machine shops, side tracks, turnouts, and water stations; for reservoirs, material or ballast pits needed to the construction, repair, and maintenance of railroads; and for the planting and growing of trees to protect railroad lines. Rights-of-way granted under the above acts shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way for the above purposes granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), shall also be subject to the provisions of this section.

(b) Rights-of-way for railroads shall not exceed 50 feet in width on each side of the centerline of the road, except where there are heavy cuts and fills, when they shall not exceed 100 feet in width on each side of the road. The right-of-way may include grounds adjacent to the line for station buildings, depots, machine shops, side tracks, turnouts, and water stations, not to exceed 200 feet in width by a length of 3,000 feet, with no more than one station to be located within any one continuous length of 10 miles of road.

(c) Short spurs and branch lines may be shown on the map of the main line, separately described by termini and length. Longer spurs and branch lines shall be shown on separate maps. Grounds desired for station purposes may be indicated on the map of definite location but separate plats must be filed for such grounds. The maps shall show any other line crossed, or with which connection is made. The station number shall be shown on the survey thereof at the point of intersection. All intersecting roads must be represented in ink of a different color from that used for the line for which application is made.

(d) Plats of railroad station grounds shall be drawn on a scale of 400 feet to an inch, and must be filed separately from the line of route. Such plats shall show enough of the line of route to indicate the position of the tract with reference thereto. Each station ground tract must be located with respect to the public survey as provided in §169.8 and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

(e) If any proposed railroad is parallel to, and within 10 miles of, a railroad already built or in course of construction, it must be shown wherein the public interest will be promoted by the proposed road. Where the Interstate Commerce Commission has passed on this point, a certified copy of its findings must be filed with the application.

(f) The applicant must certify that the road is to be operated as a common carrier of passengers and freight.

(g) The applicant shall execute and file, in duplicate, a stipulation obligating the company to use all precautions possible to prevent forest fires and to suppress such fires when they occur, to construct and maintain passenger and freight stations for each Government townsite, and to permit the crossing, in a manner satisfactory to the Government officials in charge, of the right-of-way by canals, ditches, and other projects.

(h) A railroad company may apply for sufficient land for ballast or material pits, reservoirs, or tree planting to aid in the construction or maintenance of the road. The authority to use any land for such purposes shall terminate upon abandonment or upon failure to use the land for such purposes for a continuous period of 2 years.

§ 169.24 Railroads in Oklahoma.



(a) The Act of February 28, 1902 (32 Stat. 43), authorizes right-of-way grants across tribal and individually owned land in Oklahoma. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, railroad rights-of-way in Oklahoma granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), shall also be subject to the provisions of this section.

(b) One copy on tracing linen of the map of definite location showing the line of route and all lands included within the right-of-way must be filed with the Secretary. When tribal lands are involved, a copy of the map must also be filed with the tribal council.

(c) Before any railroad may be constructed or any lands taken or condemned for any of the purposes set forth in section 13 of the Act of February 28, 1902 (32 Stat. 47), full damages shall be paid to the Indian owners.

(d) After the maps have been filed, the matter of damages shall be negotiated by the applicant directly with the Indian owners. If an amicable settlement cannot be reached, the amount to be paid as compensation and damages shall be fixed and determined as provided in the statute. If court proceedings are instituted, the facts shall be reported immediately as provided in §169.21.

§ 169.25 Oil and gas pipelines.



(a) The Act of March 11, 1904 (33 Stat. 65), as amended by the Act of March 2, 1917 (39 Stat. 973; 25 U.S.C. 321), authorizes right-of-way grants for oil and gas pipelines across tribal, individually owned and Government-owned land. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328) shall also be subject to the provisions of this section.

(b) Rights-of-way, granted under aforesaid Act of March 11, 1904, as amended, for oil and gas pipelines, pumping stations or tank sites shall not extend beyond a term of 20 years and may be extended for another period of not to exceed 20 years following the procedures set out in §169.19 of this part.

(c) All oil or gas pipelines, including connecting lines, shall be buried a sufficient depth below the surface of the land so as not to interfere with cultivation. Whenever the line is laid under a road or highway, the right-of-way for which has been granted under an approved application pursuant to an act of Congress, its construction shall be in compliance with the applicable Federal and State laws; during the period of construction, at least one-half the width of the road shall be kept open to travel; and, upon completion, the road or highway shall be restored to its original condition and all excavations shall be refilled. Whenever the line crosses a ravine, canyon, or waterway, it shall be laid below the bed thereof or upon such superstructure as will not interfere with the use of the surface.

(d) The size of the proposed pipeline must be shown in the application, on the maps, and in the engineer's affidavit and applicant's certificate. The application and maps shall specify whether the pipe is welded, screw-joint, dresser, or other type of coupling. Should the grantee of an approved right-of-way desire at any time to lay additional line or lines of pipe in the same trench, or to replace the original line with larger or smaller pipe, written permission must first be obtained from the Secretary and all damages to be sustained by the owners must be paid in advance in the amount fixed and determined by the Secretary.

(e) Applicants for oil or gas pipeline rights-of-way may apply for additional land for pumping stations or tank sites. The maps shall show clearly the location of all structures and the location of all lines connecting with the main line. Applicants for lands for pumping stations or tank sites shall execute and file a stipulation agreeing as follows:

(1) Upon abandonment of the right-of-way to level all dikes, fire-guards, and excavations and to remove all concrete masonry foundations, bases, and structural works and to restore the land as nearly as may be possible to its original condition.

(2) That a grant for pumping station or tank site purposes shall be subservient to the owner's right to remove or authorize the removal of oil, gas, or other mineral deposits; and that the structures for pumping station or tank site will be removed or relocated if necessary to avoid interference with the exploration for or recovery of oil, gas, or other minerals.

(f) Purely lateral lines connecting with oil or gas wells on restricted lands may be constructed upon filing with the Secretary a copy of the written consent of the Indian owners and a blueprint copy of a map showing the location of the lateral. Such lateral lines may be of any diameter or length, but must be limited to those used solely for the transportation of oil or gas from a single tract of tribal or individually owned land to another lateral or to a branch of the main line.

(g) The applicant, by accepting a pipeline right-of-way, thereby agrees that the books and records of the applicant shall be open to inspection by the Secretary at all reasonable times, in order to obtain information pertaining in any way to oil or gas produced from tribal or individually owned lands or other lands under the jurisdiction of the Secretary.

§ 169.26 Telephone and telegraph lines; radio, television, and other communications facilities.



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(a) The Act of February 15, 1901 (31 Stat. 790), as amended by the Act of March 4, 1940 (54 Stat. 41; 43 U.S.C. 959); the Act of March 4, 1911 (36 Stat. 1253), as amended by the Act of May 27, 1952 (66 Stat. 95; 43 U.S.C. 961); and the Act of March 3, 1901 (31 Stat. 1083; 25 U.S.C. 319), authorize right-of-

way grants across tribal, individually owned, and Government-owned land for telephone and telegraph lines and offices, for poles and lines for communication purposes, and for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities. Rights-of-way granted under these acts shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), shall also be subject to the provisions of this section.

(b) A right-of-way granted under the said Act of March 4, 1911, as amended, shall be limited to a term not exceeding 50 years from the date of the issuance of such grant.

(c) No right-of-way shall be granted for a width in excess of 50 feet on each side of the centerline, unless special requirements are clearly set forth in the application which fully justify a width in excess of 50 feet on each side of the centerline.

(d) Applicants engaged in the general telephone and telegraph business may apply for additional land for office sites. The maps showing the location of proposed office sites shall be filed separately from those showing the line of route, and shall be drawn to a scale of 50 feet to an inch. Such maps shall show enough of the line of route to indicate the position of the tract with reference thereto. The tract shall be located with respect to the public survey as provided in §169.8, and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

(e) Rights-of-way for poles and lines for communication purposes, and for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities, shall be limited to 200 feet on each side of the centerline of such lines and poles; radio and television, and other forms of communication transmitting, relay, and receiving structures and facilities shall be limited to an area not to exceed 400 feet by 400 feet.

§ 169.27 Power projects.



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(a) The Act of March 4, 1911 (36 Stat. 1253), as amended by the Act of May 27, 1952 (66 Stat. 95; 43 U.S.C. 961), authorizes right-of-way grants across tribal, individually owned and Government-owned land for electrical poles and lines for the transmission and distribution of electrical power. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328) shall also be subject to the provisions of this section.

(b) All applications, other than those made by power-marketing agencies of the Department of the Interior, for authority to survey, locate, or commence construction work on any project for the generation of electric power, or the transmission or distribution of electrical power of 66 kV or higher involving Government-owned lands shall be referred to the Office of the Assistant Secretary of the Interior for Water and Power Resources or such other agency as may be designated for the area involved, for consideration of the relationship of the proposed project to the power development program of the United States. Where the proposed project will not conflict with the program of the United States, the Secretary, upon notification to the effect, may then proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction, or utilization of the project in order to eliminate conflicts with the power development program of the United States, the Secretary shall obtain from the applicant written consent to or compliance with such requirements before taking further action on the application.

(c) A right-of-way granted under the said Act of March 4, 1911, as amended, shall be limited to a term not exceeding 50 years from the date of the issuance of such grant.

(d) Rights-of-way for power lines shall be limited to those widths which can be justified and in no event shall exceed a width of 200 feet on each side of the centerline.

(e) The applicant shall make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision, for avoiding inductive interference between any project transmission line

or other project works constructed, operated, or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference:

(f) An applicant for a right-of-way for a transmission line across Government-owned lands having a voltage of 66 kV or more must, in addition to the stipulation required by §169.5, execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(1) The applicant agrees that, in the event it becomes necessary for the United States to acquire the applicant's transmission line or facilities constructed on or across such right-of-way, the United States reserves the right to acquire such line or facilities at a sum to be determined upon by a representative of the applicant, a representative of the Secretary of the Interior, and a third representative to be selected by the other two for the purpose of determining the value of such property thus to be acquired by the United States.

(2) To allow the Department of the Interior to utilize for the transmission of electrical power any surplus capacity of the line in excess of the capacity needed by the holder of the grant for the transmission of electrical power in connection with the applicant's operations, or to increase the capacity of the line at the Department's expense and to utilize the increased capacity for the transmission of electrical power. Utilization by the Department of surplus or increased capacity shall be subject to the following terms and conditions:

(i) When the Department desires to utilize surplus capacity thought to exist in a line, notification will be given to the applicant and the applicant shall furnish to the Department within 30 days a certificate stating whether the line has any surplus capacity not needed by the applicant for the transmission of electrical power in connection with the applicant's operations, and, if so, the extent of such surplus capacity.

(ii) In order to utilize any surplus capacity certified by the applicant to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the applicant's line in a manner conformable to approved standards of practice for the interconnection of transmission circuits.

(iii) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate switching, relaying, and protective equipment so as to insure that the normal and efficient operation of the applicant's line will not be impaired.

(iv) After any interconnection is completed, the applicant shall operate and maintain its line in good condition; and, except in emergencies, shall maintain in a closed position all connections under the applicant's control between the applicant's line and the interconnecting facilities provided by the Department.

(v) The interconnected power systems of the Department and the applicant will be operated in parallel.

(vi) The transmission of electrical power by the Department over the applicant's line will be effected in such manner and quantity as will not interfere unreasonably with the applicant's use and operation of the line in accordance with the applicant's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the line which has been provided at the Department's expense.

(vii) The applicant will not be obligated to allow the transmission over its line by the Department of electrical power to any person receiving service from the applicant on the date of the filing of the application for a grant, other than persons entitled to statutory preference in connection with the distribution and sale of electrical power by the Department.

(viii) The Department will pay to the applicant an equitable share of the total monthly cost of maintaining and operating the part of the applicant's line utilized by the Department for the transmission of electrical power, the payment to be an amount in dollars representing the same proportion of the total monthly operation and maintenance cost of such part of the line as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the applicant's line during the month

bears to the total capacity in kilowatts of that part of the line. The total monthly cost may include interest and amortization, in accordance with the system of accounts prescribed by the Federal Power Commission, on the applicant's net total investment (exclusive of any investment by the Department) in the part of the line utilized by the Department.

(ix) If, at any time subsequent to a certification by the applicant that surplus capacity is available for utilization by the Department, the applicant needs for the transmission of electrical power in connection with its operations the whole or any part of the capacity of the line theretofore certified as being surplus to its needs, the applicant may modify or revoke the previous certification by giving the Secretary of the Interior 30 months' notice, in advance, of the applicant's intention in this respect. After the revocation of a certificate, the Department's utilization of the particular line will be limited to the increased capacity, if any, provided by the Department at its expense.

(x) If, during the existence of the grant, the applicant desires reciprocal accommodations for the transmission of electrical power over the interconnecting system of the Department to its line, such reciprocal accommodations will be accorded under terms and conditions similar to those prescribed in this paragraph with respect to the transmission by the Department of electrical power over the applicant's line.

(xi) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the applicant and the Secretary of the Interior or his designee.

(g) Applicants may apply for additional lands for generating plants and appurtenant facilities. The lands desired for such purposes may be indicated on the maps showing the definite location of the right-of-way, but separate maps must be filed therefor. Such maps shall show enough of the line of route to indicate the position of the tract with respect to said line. The tract shall be located with respect to the public survey as provided in §169.8, and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

[33 FR 19803, Dec. 27, 1968, as amended at 38 FR 14680, June 4, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 169.28 Public highways.



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(a) The appropriate State or local authorities may apply under the regulations in this part 169 for authority to open public highways across tribal and individually owned lands in accordance with State laws, as authorized by the Act of March 3, 1901 (31 Stat. 1084; 25 U.S.C. 311).

(b) In lieu of making application under the regulations in this part 169, the appropriate State or local authorities in Nebraska or Montana may, upon compliance with the requirements of the Act of March 4, 1915 (38 Stat. 1188), lay out and open public highways in accordance with the respective laws of those States. Under the provisions of that act, the applicant must serve the Secretary with notice of intention to open the proposed road and must submit a map of definite location on tracing linen showing the width of the proposed road for the approval of the Secretary prior to the laying out and opening of the road.

(c) Applications for public highway rights-of-way over and across roadless and wild areas shall be considered in accordance with the regulations contained in part 265 of this chapter.

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PROCEDURAL HANDBOOK

Grants of Easement for Right-of-Way on Indian Lands

Issue Date

March 6, 2006

Issued By:

Department of the Interior
Bureau of Indian Affairs
Division of Real Estate Services
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1.0 INTRODUCTION

This handbook is designed to provide procedural requirements in preparing a Grant of Easement for Right-of-Way (ROW) across lands in trust or restricted status under the jurisdiction of the Bureau of Indian Affairs (BIA). (See Glossary of Terms and List of Acronyms for additional assistance.) This handbook has been prepared for BIA Realty Staff, P.L. 93-638 contracts, and self-governance tribes in order to provide reference materials that align with the strategic direction described in the Department of the Interior's Fiduciary Trust Model. (See Exhibit 1 - Fiduciary Trust Model.)

1.1 BIA Mission Statement, Vision, and Guiding Principles

The Department of the Interior's Bureau of Indian Affairs (BIA) holds primary responsibility for the stewardship of Indian trust lands, specifically, the conservation and protection of the land. (See Exhibit 2 - The Bureau of Indian Affairs Organization)

Mission Statement

The Bureau of Indian Affairs' mission is to fulfill its trust responsibilities and promote self-determination on behalf of Tribal Governments, American Indians, and Alaskan Natives.

Vision

The Bureau of Indian Affairs is a challenging and dynamic place to work. We provide high quality services in a timely and professional manner. We have the organizational flexibility to meet the changing needs of our customers. Our employees are committed, knowledgeable, and empowered. Our policies are clear, consistent, and supported throughout the organization. We manage for excellence, fostering cooperation, and coordination in consultation with Indian Tribes while supporting self-determination and tribal sovereignty.

Guiding Principles

The Bureau of Indian Affairs takes pride in our ability to successfully manage a complex, multi-faceted organization.

- Integrity, accountability, and excellence are never compromised.
- We treat everyone with respect, trust, and dignity.
- Customers are the focus of everything we do.
- We set priorities and execute plans consistent with our strategic objectives.
- Employees are our most important asset.
- We achieve results through teamwork.
- Continuous improvement in the quality of services is vital to our success.
- Our priority is to support and enhance tribal government.
- We encourage innovation and risk taking and share responsibility for the results.

1.2 Overview

The Federal Government's fiduciary responsibility on behalf of the Indian landowners is to protect and conserve the resources on trust and restricted land, including the land itself. The Government must use sustainable yield principles and conservation management practices to regulate appropriate use and development of Indian trust lands. Other responsibilities include, but are not limited to, ensuring highest and best use of the resources whenever possible and protection against misuse of the property for illegal purposes. Grants of Easement for ROW assist in the protection of trust lands from inappropriate development and unregulated use.

Most ROW's are granted with owner consent, by the Secretary, pursuant to the Act of February 5, 1948, (25 U.S.C. §§ 323-328). The Secretary may also approve owner-granted ROW's, pursuant to the Indian Land Consolidation Act (ILCA), (November 7, 2000, 25 U.S.C. § 2218 Sec. 219). The grant is issued as an easement. An easement for ROW creates an interest in the land, is for limited use or enjoyment, can be protected against third parties, and is not terminable at will by the Indian landowner.

The ROW must be in writing. The ROW creates a non-possessory interest in the land which is a right to use or the right to restrict use of the property for a particular purpose. A "grant of easement" for ROW defines the type, extent, use, purpose, width, length, and duration of the ROW. Title to the property remains with the landowner, however a granted ROW encumbers the title.

In the preparation of a Grant of Easement for ROW, a thorough investigation of all aspects of the property, ownership, and potential conflicts with statutes, laws, and regulations is required. The long term best interest of the landowner(s), and the conservation and protection of the trust asset must also be considered. Investigative findings culminate in a written recommendation known as a Findings and Recommendation for Decision, or Report of Investigation, that provides the necessary background required for the delegated authority to make an informed decision in approving or disapproving a Grant of Easement for ROW. The investigation and recommendation becomes part of the permanent record and may be used in the future to support the BIA's or tribe's decision to approve, disapprove, or withdraw the request.

1.3 Title to the Land

Legal title to trust or restricted lands is held by the United States of America for the benefit of a tribe(s) or an individual Indian(s). This type of title document will usually read, "To the United States in trust for *name of tribe or individual*." Restricted title held by a tribe(s) or an individual Indian(s) can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to Federal law.

The Federal Government's fiduciary responsibility is to administer title on behalf of the Indian landowners by ensuring lawful and proper recordation of title documentation for transactions on trust and restricted Indian lands. The official recordation of the legal description, owners, and existing encumbrances of these lands is recorded and maintained by the BIA Land Titles and Records Office (LTRO). This office is also responsible for issuing a certified Title Status Report

(TSR) verifying ownership and any or all restrictions, encumbrances, and/or limitations. (See Exhibit 3 - How to Read a Land Description.)

1.4 Indian Landowner Property Rights

The Indian landowner has the right to use their trust or restricted property, as well as allow for a right-of-way across that property. To protect property rights, all alternative uses should be considered before determining if a grant of easement for ROW should be issued. Additionally, the proposed use may have an impact on the type of grant to be prepared. Some situations may require execution of a short-term lease or permit, depending on the complexity, duration, statutory and regulatory authority, and specific conditions affecting the property.

Consideration must be given to the owner's prospective or current use, owner's authorization and consent, joint ownership, fractionation of allotted lands, and the potential highest and best use of the property covered by the ROW. Additionally, input from property owners, both Indian and non-Indian, on public and private land adjacent to trust or restricted lands; and specific tribal concerns, land use plans, and zoning laws and ordinances must also be taken into consideration.

1.5 Tenure of an Approved Grant of Easement for Right-of-Way

The actual tenure or term of any ROW grant is discretionary within the maximum period stated in 25 CFR 169.18; however, in determining the tenure of a specific ROW, the consenting and granting parties should examine the effect and purpose served by the ROW and the consideration involved. Further, if an applicant has applied under a specific act and that act contains a maximum tenure less than the period specified under §169.18, the limitations of that specific act govern. No tenure shall exceed the statutory authority, nor exceed the regulations.

At the end of the tenure of an approved ROW the ROW may be extended for an additional period or "like term". A ROW cannot be extended for a longer tenure than is stated in the Landowners Consent to Grant Right-of-Way.

1.6 Types of Right-of-Way

Appurtenant Easement

Ownership of the easement, and the right to use the easement, pass with the title to the land benefited by the easement. There are three kinds of appurtenant easements:

1. Dominant Estate or Tenement - The real property benefited by the use of the easement. In other words, the easement is an appurtenance to the dominant estate.
2. Servient Estate or Tenement - The real property burdened with the easement. In other words, the easement is an encumbrance on the servient estate.
3. Transfer of Title - An appurtenant easement automatically passes with the title to the dominant estate.

Easement in Gross

An easement in gross is authorized for the benefit of particular persons or entities. Technically, there is no dominant estate because the benefit of the easement is not for a particular piece of land, but is for a particular person or entity, e.g., public highway or oil pipeline. There are two kinds of easements in gross: personal and commercial.

1. Personal Easement in Gross - The easement is the personal right of a person or persons to use the land of another for a particular purpose. The easement ceases upon the death of the person owning the easement and is non-transferable.
2. Commercial Easement in Gross - The easement terminates when the purpose for the easement terminates. However, the easement is transferable from one company to another as long as the use is for the same purpose. The easement may also be divided into fractional interests.

Avigation Easements (Permit, Avigation and Hazard Easement)

Avigation Easements are "Air Rights" Easements currently in use in the State of Alaska on Native Allotments. The State is required by the Federal Aviation Administration (FAA) to obtain these easements for aircraft approach zones. The process for these easements is nearly the same as other Grants of Easements for ROW.

The form of this easement has been designed, in the State of Alaska, to approximate a Memorandum of Agreement rather than a classic Grant of Easement for Right-of-Way. The verbiage is entirely different and has been tailored to meet the needs and approval of the State of Alaska and the FAA; but the instrument is executed in the same manner as a Grant of Easement for ROW. (See Exhibit 4 - Sample Avigation Easement Verbiage.)

Avigation Easements deviate from the normal linear scheme associated with most ROWs. The legal land descriptions for Avigation Easements define a "zone" of activities that allow the unobstructed ingress and egress through an allotment's airspace - defined in three dimensions - of all aircraft that require use of an adjacent (and appurtenant) runway.

The terms of that easement are both affirmative and negative. It is negative in that the landowner agrees that his activities within the zone "shall never interfere with the easements and rights granted," and affirmatively allows the Grantee to enter the land for activities consistent with maintenance of the Air Rights Zone as well as permitting access to aircraft through the airspace. The affirmative activities granted include the removal of any structure that may interfere with aircraft.

Avigation Easements are a good example of the flexibility of Grants of Easement for ROW under 25 CFR §169. Avigation Easements are granted on a case-by-case basis and Realty Specialists may need to consult with Senior Realty Staff or the Regional Solicitor's Office for assistance.

1.7 Right-of-Way Considerations for Other Special Uses

Broadband Rights-of-Way

RESERVED (Policy memorandum will be issued from Central Office)

Rights-of-Way for Railroads

Regulations regarding ROW for a railroad ROW across tribal, individually-owned, and Government-owned land, except in Oklahoma are found at 25 CFR 169.23. Regulations for a railroad ROW in Oklahoma are found at 25 CFR 169.24.

The applicant for a railroad ROW must certify that the road is to be operated as a common carrier of passengers and freight. The applicant must also file a stipulation obligating the company to use all precautions possible to prevent forest fires, maintain passenger and freight stations, and permit the crossing of the ROW by canals, ditches, and other projects. The ROW is limited to 50 feet in width on each side of the centerline of the road, except where there are heavy cuts and fills, in which case the ROW cannot exceed 100 feet in width on each side of the road. Additionally, if any proposed railroad is parallel to, and within 10 miles of, a railroad already built or under construction, it must be shown that the public interest will be promoted by the proposed road.

Rights-of-Way for Oil and Gas Pipelines

Regulations to grant a ROW for oil and gas pipelines are found at 25 CFR 169.25. All oil and gas pipelines, including connecting lines, should not interfere with existing uses of the property. If a line will be laid under a road, at least one-half of the width of the road must be kept open to travel during construction, and upon completion of the pipeline, the road must be restored to its original condition.

A pipeline easement should not be embedded in a surface or subsurface lease. Additionally, gas gathering lines and lines used to transport to sales should be identified separately and indicated as such in the grant. These easements should be limited to those used solely for the transportation from a single tract of tribal or allotted land to another lateral or branch of the main lines. For further discussion, see the BIA Fluid Minerals Handbook.

Rights-of-Way for Communications and Facilities

Regulations for telephone and telegraph lines radio, television and other communications facilities are found at 25 CFR 169.26. Grants of easement for several types of communications and facilities are limited to a term not to exceed 50 years from the date of the issuance of the grant. The width of these grants varies in size from 50 feet each side of the centerline to a 400-by-400 feet area depending on the Act under which the ROW is granted and the intended use.

Any ROW granted in excess of 50 feet must be fully justified and clearly identified in the application.

Rights-of-Way for Power Projects

Regulations governing power projects are found at 25 CFR 169.27. Most applications for a ROW involving the generation of electric power, or the transmission or distribution of electrical power of 66 kV or higher are referred to the Office of the Assistant Secretary of the Interior, for Water and Power Resources or other designated agency. No ROW will be granted in excess of 200 feet on each side of the centerline unless special requirements are clearly set forth in the application and limited to a term not to exceed 50 years.

Grants of ROW on tribal lands within the boundaries of a reservation cannot be issued for any project or portion of a project that requires a license by the Federal Power Act (FPA). The FPA requires that these licenses are subject to conditions that the "Secretary of the Interior shall deem necessary for the adequate protection and utilization of such lands" (16 U.S.C. 797(e)). In this instance, an applicant should apply to the Federal Power Commission, who in turn will request Secretarial participation for the necessary protective conditions.

Rights-of-Way for Public Highways

The appropriate state or local authority may apply to open public highways across tribal and individually owned lands. Refer to 25 CFR 169.26 for specific requirements.

2.0 PROCESS AND PROCEDURES OVERVIEW

Process a Request for Grant of Easement for Right-of-Way

The purpose of this procedure is to provide requirements to a Realty Specialist or Trust Officer in responding to a request from an interested party for a Grant of Easement for Right-of-Way on Indian land.

Issue a Grant of Easement for Right-of-Way

The purpose of this procedure is to provide requirements to document the tasks required of a Realty Specialist to issue, and a delegated official to approve, a Grant of Easement for Right-of-Way.

Post Granting of Easement for Right-of-Way Activity

The purpose of this procedure is to provide requirements to document activities that may be required to ensure compliance with the terms and conditions of a Grant of Easement for Right-of-Way.

Note: Not all of the steps may be required nor are all of the steps sequential.

Service Line Agreements

The purpose of this procedure is to provide requirements in the processing of a Service Line Agreement (SLA). A Service Line Agreement is used for the sole purpose of supplying an individual owner, or authorized occupant or user of trust land, with telephone, electrical power, gas, or other utilities for use by such owner, occupant, or user of the trust premises (25 CFR §169.22).

3.0 GENERAL AUTHORITIES AND POLICIES

3.1 Delegation of Authority

The authority of the Secretary of the Interior has been delegated to the Deputy Commissioner by the Assistant Secretary - Indian Affairs in 209 DM 8 and 230 DM 1, and redelegated to the Regional Directors. This delegation can be reviewed in the Indian Affairs Manual Release #00-03, Part 3, Chapter 4. Unless otherwise limited, the Regional Directors may redelegate this authority at their discretion. Delegations of authority are subject to change. Verify that you have the most recent authority when you use it as a citation. (See Exhibit 5 - Sample Redelegation of Authority Memo.)

Current Delegation of Authority can be found on-line at the Bureau of Indian Affairs Homepage.

3.2 Freedom of Information Act (FOIA) and Privacy Act

The Freedom of Information Act (FOIA) of 1966 as amended can be found at 5 U.S.C. 552. The Act provides for the right to access agency records and is enforceable in court. All records must be disclosed unless they are exempt and harm could occur because of a disclosure. The Departmental Manual (DM) as authorized in 383 DM 1, 4, 5, 6, 7, and 8 provide policy and general guidance for administering and implementing FOIA within the Department of the Interior.

The Privacy Act of 1974 can be found at 5 U.S.C. 522a. 383 DM 1-12 provides policies and procedures for implementing the Privacy Act of 1974.

For detailed information and assistance, contact your designated FOIA/Privacy Act Officer.

3.3 Laws and Authorities for the Granting of Easements for Right-of-Way

The primary authority for granting ROW across Indian lands is the Act of February 5, 1948 (62 Stat. §17), 25 USC §§323-328. This Act authorizes the granting of ROW for all purposes over and across trust and restricted lands. If any other authorities are used to grant a ROW, the grant must reflect that specific authority, including statutes or tribal laws, constitutions or ordinances.

The BIA regulations at 25 CFR §169 are designed to give the Secretary or his/her representative, acting under delegated authority, adequate latitude to act in the best interests of the owners in a wide variety of circumstances, and situations which arise at the field level in connection with ROW matters.

25 CFR 169.3 (a) allows that rights-of-way over and across any tribal land and permission to survey with respect to such lands, must have the prior written approval of the tribe.

25 CFR 169.3(b) Except as provided in section (c), no right-of-way shall be granted over and across any individually owned lands, nor shall any permission to survey issued with respect to such lands, without the prior written consent of the owner or owners of such lands and the approval of the Secretary.

Pursuant to 25 CFR 169.3(c) - Individual Consent Provisions, the Secretary can grant an easement or give permission to survey across individually-owned land with the consent of the individual Indian owners when:

- (1) The individual owner of the land or of an interest therein is a minor or a person *non compos mentis*, and the Secretary finds that such a grant will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages;
- (2) The land is owned by more than one person, and the owners or owner of a majority of the interest therein consent to the grant;
- (3) The whereabouts of the owner of the land or an interest therein are unknown, and the owners or owner of any interest therein whose whereabouts are known, or a majority thereof, consents to the grant;
- (4) The heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the grant will cause no substantial injury to the land or any owner thereof; or
- (5) The owners of interest in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent, and also finds that the grant will cause no substantial injury to the land or any owner thereof.

3.4 Indian Land Consolidation Act (ILCA)

While ROWs obtained under the 1948 Act are generally granted by BIA with the consent of the Indian owners, Section 219 of ILCA, 25 U.S.C. § 2218 - as enacted and made immediately effective on November 7, 2000 - authorizes grants by the individual Indian owners, subject to BIA approval. Section 219 was intended to facilitate the use and development of individually-owned land by establishing more flexible consent requirements for certain types of negotiated transactions.

Subsections 219(a) – (b) of ILCA provide the Secretary with general authority to approve ROW transactions which have been negotiated or agreed to by the owners of a sliding percentage of the trust/restricted ownership of a given tract, so long as the transaction is expressly found to be in the owners' best interest. As amended by the American Indian Probate Reform Act of 2004, the minimum consent requirements for these transactions to:

- (1) 90% if there are five or fewer owners;
- (2) 80%, if there are between six and ten owners;
- (3) 60%, if there are between eleven and nineteen owners; and
- (4) a simple majority, if there are twenty or more owners.

For purposes of determining what percentage is needed to satisfy these consent requirements, Section 219(b)(2) indicates that the number of owners will be that which is reflected in the BIA's records as of the date on which all of the necessary transaction documents have been received.

Under Section 219(c), the BIA may also consent on behalf of undetermined heirs/devisees and individuals whose whereabouts are unknown, and count those consents toward the percentage required for BIA approval.

As enacted in October 2004, subsection 219(g) preserves the majority consent authorities found in the 1948 Act. A question remains however, as to whether some/all of the additional authorities found in ILCA can or should be used in conjunction with those found in the 1948 Act. Specifically, those questions relate to the ILCA provisions which generally authorize BIA to: (1) consent on behalf of undetermined heirs and devisees, and count those consents toward the required "majority"; and (2) approve a transaction without the consent of a tribe which owns a "minority" interest, where the requisite majority consent has been obtained. Pending the issuance of implementation instructions or rule revisions, agency staff should rely solely on the 1948 Act and the current regulation in identifying/satisfying consent requirements, in view of the fact that the 1948 Act already contains a broad majority consent authority which allows us to grant with just the consent of a majority those owners whose whereabouts are known (thereby excluding from consideration not only interests owned by individuals whose whereabouts are unknown, but also any interest owned by undetermined heirs and devisees). In implementing either of the majority consent provisions in the 1948 Act Agency staff should consider only those interests held in trust or restricted status, and do so on a tract-by-tract (rather than a project-wide) basis.

Even where the 1948 Act is relied on and the application is supported by the requisite majority consent, notice to the Non-Consenting Owners should be documented prior to the grant of easement. In accordance with this guidance, agency staff tribe owns a fractional interest. This will allow tribes to negotiate more favorable terms, including "consent to tribal jurisdiction" provisions which might limit the effect of recent court decisions holding that certain rights-of-way will not be treated as "Indian Country" for jurisdictional purposes.

Recommended guidance for consent:

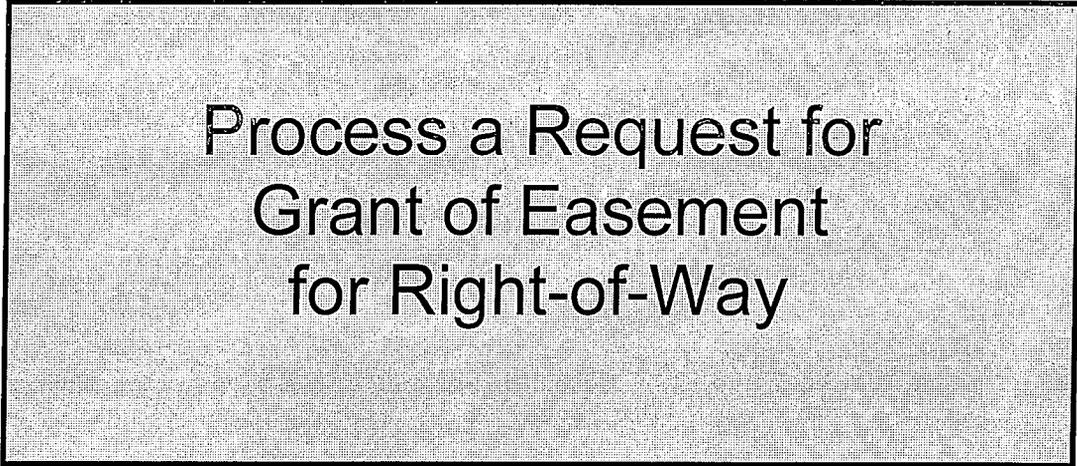
- Under § 2218(g), AIPRA expands on the "Rule of Construction" in § 2218(f) of ILCA 2000, to clarify that other pre-existing authorities - with less stringent consent requirements - which were not specifically excepted in ILCA 2000 (e.g., the grant authority for all types of surface leases, and prior majority consent authorities for timber sales and Rights-of-Way) may still be utilized.
- It is still an open question as to whether/when pre-existing majority consent authorities may be supported by the ILCA 2000 authority which allows the counting of unlocatable/undetermined owners toward the requisite percentage (i.e., majority) – pending further guidance, this ILCA 2000 consent authority should not be used except where the ILCA 2000 "Sliding Scale" is also being relied upon.
- Pending further guidance, where a negotiated transaction is supported by the requisite minimum consent, notice to the non-consenting owners should be required prior to approval, even though such notice is expressly not required under the new 25 CFR Part 162, Subpart B, for agricultural leases approved under AIARMA with majority consent.

- Pending further guidance, where the required minimum consent is obtained under ILCA 2000, approval may generally be granted without the consent of a tribe owning a “minority” interest, but notice should always be provided to the tribe (as well as other non-consenting owners).
- This authority should not be used in Right-of-Way transactions (where the land is exempt from condemnation if the tribe owns any interest), nor should it be used in any type of transaction made under pre-existing majority consent authorities.
- This authority should be distinguished from the § 2212 authority which allows BIA to grant consent on behalf of a tribe (with respect to interests still encumbered by “Buyback” liens), but the two sections are similarly ambiguous as to the enforceability of leases entered into (§ 2212) or approved (§ 2218) without tribal consent.

Even if the ILCA authority was to be utilized, obtaining tribal consent is encouraged whenever the tribe owns a fractional interest.

4.0 PROCEDURES

This section of the handbook presents the complete text and associated attachments (if applicable) for each standard operating procedure associated with the Grant of Easement for Right-of-Way on Indian lands.



Process a Request for
Grant of Easement
for Right-of-Way

Process a Request for Grant of Easement for Right-of-Way

Purpose

This procedure pertains to granting a person, or persons, the non-possessory right to use or cross over the Indian land of another for a specific purpose. The majority of the documentation required for approval of a Grant of Easement for Right-of-Way (ROW) is provided by the applicant, however, applicants often need assistance with completion of the application package.

Scope

This procedure provides guidance to a Realty Specialist or Trust Officer in responding to a request from an interested party for Grant of Easement for ROW on Indian land.

Process

Step 1: Reply to inquiry from an applicant regarding application for a Grant of Easement for ROW.

- Applicant will call or write to inquire about acquiring a ROW.
- Provide an application for Grant of Easement for Right-of-Way and procedural requirements of 25 CFR §169 to the applicant. (See Attachment 1 - Application for Grant of Easement for Right-of-Way.)

Step 2: Conduct preliminary discussions with the landowner and applicant.

- Preliminary discussions are frequently held with the prospective applicant and the landowner(s), depending on the type of ROW and the situation. If not previously provided, requirements for the application are explained and the applicant is provided the Application for Grant of Easement for Right-of-Way for completion. Each of the following topics should be discussed, when applicable:
 - Intent of the parties
 - Legal description
 - Purpose
 - Term
 - Provisions to be made inclusive in the Grant of Easement for ROW
 - Permission to survey
 - Landowners' consents
 - Tribal resolution
 - Maps
 - Improvements
- Consideration/compensation, including appraisal

- Payment
- Fees
- Renewal
- Suitability of purpose in relation to the land
- Affidavits and certificates
- Insurance
- Bonds
- Business plans
- Feasibility analysis
- Environmental and historic preservation compliance
- Limited Power of Attorney
- Termination
- Condemnation
- Tribal jurisdiction (As a result of several IBIA and court cases, the grant may need to include a provision that the respective tribe will retain jurisdiction over the fee corridor of the easement.)

These topics are the minimum that should be addressed. Information gathered during the discussion will assist in the preparation of the necessary background documentation and allow the approving official to be confident that a complete investigation has been conducted.

Step 3: Process an application for permission to survey.

- Provide the prospective applicant with the Application for Permission to Survey. (See Attachment 2 - Application for Permission to Survey for Right-of-Way.)
- The applicant is always responsible for survey of the subject property. The applicant completes a new application for each Right-of-Way. Do not accept or use copies of previously submitted applications that have been stored in the file.
- Prepare a determination of double the estimated damages that may be caused by the survey.
- Immediately upon receipt of the application, request a TSR from the LTRO to verify current ownership. (See Attachment 3 - TSR Request Form.)
- Provide the prospective applicant with Consent for Permission to Survey forms and a list of landowner addresses in order to facilitate the applicant's efforts to obtain the necessary consent. (See Attachment 4 - Consent for Permission to Survey.)
- A tribal resolution submitted by the tribe's federally recognized governing body and signed by duly authorized tribal officers is required if tribal land is involved. The resolution should include the following information:
 - Name of tribe
 - A statement specifically addressing what the tribe is requesting the Secretary to approve
 - Land description
 - Tract (allotment) number, if applicable
 - Tribal organizational authority
 - Authority for the signatories
 - Date the resolution was signed

- Date the tribe met on the resolution if different from the date the resolution was signed
- Consents to accompany an application for permission to survey will satisfy all consent requirements if they contain language specifically consenting to the grant of ROW in addition to permitting the survey. If both consents are requested simultaneously, the minimum consideration for use of the land established by an appraisal or valuation plus consideration for severance damages, if any, must also be provided to the landowner. (See Step 5 of this procedure.) (See Attachment 4 - Consent for Permission to Survey and Attachment 5 - Consent for Permission to Survey and to Grant a Right-of-Way.)
- When the applicant has returned an Application for Permission to Survey accompanied by the completed Consents for Permission to Survey forms to the Realty office, verify the ownership information with the Title Status Report as provided by the LTRO. Confirm that the landowner(s) have agreed to the survey. Survey does not commence until the appropriate permission has been acquired. A Tribal consent does not imply permission to construct--mobilizing or initiating construction activities--on Indian trust land.
 - If the United States is the applicant (e.g. BIA Roads) it is not exempt from securing landowner consent although the government is the trustee.

Step 4: Receive a survey of the subject property.

- The applicant will submit a map or plat and field notes prepared by a registered land surveyor to the agency Realty Officer.
 - In some cases, the documents will be submitted by the realty staff to the Indian Land Surveyor at the appropriate BIA Regional Office for review and comment with a recommendation for acceptance or revision. The survey will be returned to the Realty staff for processing with the Right-of-Way documents.
- The agency Superintendent or other designated approving official places his/her acceptance signature on the map.
- The map should be supplied in either hardcopy, on permanent and reproducible material, or as a GIS map that is geo-rectified to common PLSS survey points. The map or plat must comply with the following criteria:
 - Include the specific location of the ROW
 - Be drawn to a scale of 2,000 feet to the inch or larger in most instances
 - Identify the allotment number of each tract of allotted land
 - Designate each tract of tribal land affected
 - Identify the section, township, and range of the lands that will be crossed by the ROW
- A separate map must be filed for each section of 20 miles of ROW, but the map of the last section may include any excess of 10 miles or less.
- The applicant submits an Engineer's Affidavit executed by the engineer who made the survey and an Applicant's Certificate executed by the applicant certifying to the accuracy of the survey and maps. (See Attachment 6 - Engineer's Affidavit and Attachment 7 - Applicant's Certificate.)

- For a complete discussion on maps and field notes, refer to the Indian Trust Boundary Standards Handbook.

Step 5: Perform a baseline field inspection.

- Determine the condition of the property prior to any activity associated with the ROW. Photograph the proposed area, note the original condition of the land, and note any existing conditions that may have an adverse impact. Particularly note any unauthorized use of the area (e.g. a road). If such unauthorized use is discovered, initiate a trespass investigation. The notes and findings of the inspection should be included in the Report of Investigation.

Step 6: Request an appraisal or valuation of the subject property. (See Attachment 8 - Request for Appraisal Services.)

- The minimum consideration for use of the land is established by the appraisal or valuation, plus consideration for severance damages, if any. (See Attachment 9 - Sample Certificate of Appraiser.)
- If the appraisal was completed by an independent appraiser, his/her report must be reviewed and approved by the Office of Appraisal Services. Appraisal review reports generally contain a statement signed by the Review Appraiser certifying that all provisions, including all market evidence, were taken into consideration in the determination of value. (See Attachment 10 - Review of Land Appraisals.)
- The consideration for a ROW includes several types of compensation paid by the grantee for the use of the land:
 - Fair market value for the right to use the land unless otherwise waived in writing by the landowner(s)
 - Severance damages for separating the normal land use pattern by granting a ROW across the land
 - All other damages that are caused by the ROW or caused by the survey. In certain situations, the consideration for damages may be waived pursuant to 25 CFR §169.3(b), but only with prior written consent of the landowners and approval by the Secretary

Step 7: Determine, in consultation with regional environmental staff and the regional archeologist, the actions necessary to ensure compliance with the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), and Endangered Species Act (ESA).

- For further discussion, see the Bureau's NEPA Handbook.
- Consult with the Regional Environmental staff before providing copies of the NEPA, NHPA, and ESA analyses to the applicant.
- If the proposed ROW is categorically excluded, no consultation is necessary. Send the categorical exclusion (cat.ex.) exception checklist to the regional environmental office for signature.
 - See NEPA Handbook Chapter 3 for directions on completing the checklist.

- If there is no response within 10 business days, email the regional environmental office with copies to the Regional Director, the Realty Officer, and Central Office Division of Environmental and Cultural Resources Management for status of the pending categorical exclusion.
- If there is still no response after another five business days, draft a memo from the Regional Director to the regional environmental office requesting status.

Step 8: Request the consent of the landowner(s) to grant the ROW. (See Attachment 11 - Consent of Owners to Grant Right-of-Way.)

- Permissions for Grants of Easement for ROW will not be approved over tribal trust lands without the prior written consent of a tribe. Permission for Grant of Easement for ROW will not be approved over individually-owned trust or restricted lands, in most instances, without the prior written consent of the owner(s).
- The request for consent should include the minimum consideration for use of the land established by an appraisal or valuation plus consideration for severance damages, if any. (See Attachment 12 - Statement of Fair Market Value.)
- If a landowner signs by thumbprint, he must indicate which thumbprint is used and the mark must be witnessed by two persons.

Step 9: File the application for Grant of Easement for Right-of-Way.

- The applicant provides the Application for Grant of Easement for ROW in duplicate with the following to the BIA Realty Office:
 - Written consent of the landowners.
 - Satisfactory evidence of good faith and financial responsibility of the applicant.
 - Appraisal to determine damages.
 - A deposit equal to the total estimated consideration and damages, which includes consideration for the ROW, severance damages, damages caused during the survey, and estimated damages to result from construction, less any deposit previously made. The amount deposited must always be equal to or greater than the consideration for the ROW specified in the landowner consent.
 - Federal or state government agencies, which are prohibited by law from depositing advance damages or agreeing to indemnification, shall include a written statement that the applicant will pay damages when they are sustained.
 - State certified copy of corporate charter or articles of incorporation. If the applicant has previously filed this information with the Agency or Regional Realty Office, a reference to the date and place this information was filed is sufficient to meet these requirements. Review and update annually.
 - If the applicant is an unincorporated partnership or association, the required documentation includes a certified copy of the Articles of Partnership or Association, or each member of the partnership or association must sign that there are no Articles of Partnership or Association.
 - Certified Copy of the Corporate Resolution or By-Laws authorizing the filing of this application. (See Attachment 13 - Sample Evidence of Authority of Officers to Execute Papers.)
 - State certification that the applicant is authorized to do business in the State where

- the land is located.
- Map of definite location. (Survey map and field notes)
 - A tribal resolution submitted by the tribe's Federally recognized governing body and signed by duly authorized tribal officers, is required if tribal land is involved. See Step 3 for details.

REVIEW		
Revision #	Change	Effective Date
0	Initial Issuance	

END OF PROCEDURE

Attachment 1

Application for Grant of Easement for Right-of-Way

SAMPLE

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

RIGHT-OF-WAY APPLICATION

LANDOWNER NAME:

ALLOTMENT NUMBER:

ALLOTMENT DESCRIPTION:

COMES NOW THE APPLICANT _____ (applicant name) of this ___ day of _____, 20___, who hereby petition(s) the Bureau of Indian Affairs and respectfully files under the terms and provisions of the Act of February 5, 1948 (62 Stat. 17; 25 USC 323-328), and Departmental Regulations 25 CFR 169, an application of a (term of years) right-of-way for the following purposes and reasons:

Across the following described restricted land (easement description)

Said right-of-way to be _____ in length, _____ in width, and _____ in size (or area), as shown on attached map of definite location, attached hereto, and made a part hereof.

SAID APPLICANT UNDERSTANDS AND EXPRESSLY AGREES TO THE FOLLOWING STIPULATIONS:

1. To construct and maintain the right-of-way in a workmanlike manner.
2. To pay all damages and compensation, in addition to the deposit made pursuant to 169.4, determined by the Secretary to be due the landowners and authorized users and occupants of the land due to the survey, granting, construction and maintenance of the right-of-way.
3. To indemnify the landowners and authorized users and occupants against any liability for loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.
4. To restore the lands as nearly as may be possible to their original condition upon the completion of construction, to the extent compatible with the purpose for which the right-of-way was granted.

5. To clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way; and dispose of all vegetative and other material cut, uprooted or otherwise accumulated during construction and maintenance of the project.

6. To take soil and resources conservation protection measures, including weed control, on the land covered by the right-of-way.
7. To do everything reasonable within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.
8. To build and repair such roads, fences and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.
9. That upon revocation or termination of the right-of-way, the applicant shall, so far as in reasonably possible, restore the land to its original condition. The determination of "reasonably possible" is subject to Secretary's approval.
10. To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principal place of business and the names and addresses of its principal officers.
11. That the applicant will not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.
12. During the term of this Grant of Easement, if any previously unidentified cultural resources are discovered within the easement area, work should be halted immediately and the BIA and/or Tribal Contractor should be contacted immediately.

THE APPLICANT FURTHER STIPULATES AND EXPRESSLY AGREES AS FOLLOWS:

To conform and to abide by all applicable requirements with respect to the right-of-way herein applied for. The applicant agrees to conform to and abide by the rules, regulations, and requirements contained in the *Code of Federal Regulations*, Title 25 Indians, Part 169, as amended, and by reference includes such rules, regulations and requirements as a part of this application to the same effect as if the same were herein set out in full.

DATE _____

APPLICANT _____

REQUIRED SUPPORTING DOCUMENTS:

1. () Written consent of landowner (ROW Form 94-7).

- 2. () Map (plats) of definite location (2 original mylars & 2 copies, See 25 CFR 169.6, 169.7, 169.8, 169.9, 169.10 and 169.11).
- 3. () Deposit of estimated damages or compensation (See 169.4 and 169.14).
- 4. () Evidence of Authority of Officers to Execute Papers (ROW Form 94-4)
- 5. () For corporation or business, requirements of 25 CFR 169.4 and 169.5 (unless previously filed):
 - () a. State certified copy of corporate charter or articles of incorporation.
 - () b. Certified copy of corporate resolution, by-laws, articles of partnership or association authorizing signatory to file the application.

Attachment 2

Application for Permission to Survey for Right-of-Way

SAMPLE

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

APPLICATION FOR PERMISSION TO SURVEY FOR RIGHT-OF-WAY

LANDOWNER NAME:

ALLOTMENT NUMBER:

ALLOTMENT DESCRIPTION:

Applicant, _____ (applicant name) _____ having a residence or principal place of business at _____ (applicant address) _____ hereby files an application with the Bureau of Indian Affairs, pursuant to the terms and provisions of the Act of February 5, 1948 (62 Stat. 17; 25 USC 323), and to the regulations of the Department of the Interior contained in Title 25, *Code of Federal Regulations*, Part 169, for permission to survey a right-of-way.

Purposes and Reasons:

Across the following described Indian Land (Include sketches, describe width, length & location):

The applicant understands and hereby expressly agrees to indemnify the United States, the owners of the land, and occupants of the land, against liability for loss of life, personal injury and property damage occurring because survey activities and caused by the applicant, his employees, contractors and their employees, or subcontractors and their employees.

Applicant _____ Date _____

Witness _____

Required Supporting Documents:

1. () Signed Consent of the Landowner to Accompany Application for Permission to Make Survey (ROW Form 94-2).
2. () Evidence of Authority of Officers to execute Papers (ROW Form 94-4).
3. () Evidence of good faith and financial responsibility.
4. () Double estimated damages (deposit - 25 CFR 169.4).
5. () State certified corporate charter or articles of incorporation.
6. () Certified copy of resolution or by-laws of the corporation authorizing the filing of the application.
7. () State certification that the applicant is authorized to conduct business in the State of xxx.
8. () Certified copy of the articles of partnership or association.
9. () Other attachments:

Attachment 3

TSR Request Form

SAMPLE

REQUEST FOR TITLE STATUS REPORT

TO: Land Titles & Records Office Date:

FROM:

Please furnish this office with a Title Status Report on the following tract of land:

Land Area Code and Tract Number:

Allotment Name:

Legal Description and Acreage:

Priority (Please Indicate in how many days you need this Title Status Report):

() 1-10 Days () 10-20 Days () 21-30 Days

Urgent - No Later than:

List any new documents or probates since last TSR:

Signature

Title:
=====

(For Title Plant Use Only)

New TSR () Logged In:

Reissue () Examination Started:

No. of Docs/Probates/Mods : Examination Completed:

No. of Lines Chained : Total Time to Examine:

Modifications Created : Signed and Mailed:

Attachment 4

Consent for Permission to Survey

SAMPLE

~~UNITED STATES DEPARTMENT OF THE INTERIOR~~
~~BUREAU OF INDIAN AFFAIRS~~

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

CONSENT OF LANDOWNER TO ACCOMPANY APPLICATION
FOR PERMISSION TO MAKE SURVEY ON TRUST AND RESTRICTED INDIAN LAND

DATE:

LANDOWNER NAME:

ALLOTMENT NUMBER:

ALLOTMENT DESCRIPTION:

EASEMENT DESCRIPTION:

The undersigned owner of said land hereby consents to the **granting of permission to survey only**, as contemplated by the application submitted by (applicant name).

(It is understood that when the right-of-way location is definitely established that the applicant will submit a formal application for the right-of-way in accordance with current laws and regulations). This consent has been negotiated on the following terms and conditions:

Owner _____ Date Signed _____

Witnesses _____

(Use reverse side of this sheet if additional space is needed for the owners' signatures).

Attachment 5

Consent for Permission to Survey and to Grant a Right-of Way

SAMPLE

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

Landowner's Consent to Grant Right-of-Way
(For Applicant's Use)

LANDOWNER NAME:

ALLOTMENT NUMBER:

LEGAL DESCRIPTION OF ALLOTMENT:

EASEMENT DESCRIPTION:

(landowner name) the undersigned, owner of said land, hereby gives permission to make surveys and to the granting of (type of right-of-way), and (term of right-of-way) right-of-way thereover, as contemplated by the application of (applicant name) on payment of a negotiated monetary consideration in the amount of \$_____ for the rights granted and severance damages or the appraised fair market value of the rights granted and severance damages as determined by the Secretary, whichever is greater. Describe the right-of-way to be granted, including structures & appurtenances to be erected, installed and maintained:

Other terms and conditions:

Owner

Date

Witnesses:

Attachment 6

Engineer's Affidavit

SAMPLE

ENGINEER'S AFFIDAVIT

STATE OF :

: ss.

COUNTY OF :

_____ (name of engineer) _____, being duly sworn, states that he is a Civil Engineer; that he is employed by the United States Department of the Interior, Bureau of Indian Affairs; that he made the survey of a proposed right-of-way as described and shown on this map, to be granted to the United States Department of the Interior, Bureau of Indian Affairs, hereinafter designated the "applicant"; that the survey of such right-of-way was made under his supervision and under applicant's authority, commencing on _____ day of _____, 20____, and ending on the ____ day of _____, 20__; and that such survey is accurately represented on this map.

Civil Engineer

Subscribed and sworn to before me this ____ day of _____, 20__.

_(SEAL)

Notary Public.

My commission expires _____

Attachment 7

Applicant's Certificate

Attachment 8

Request for Appraisal Services

REQUEST FOR REAL ESTATE APPRAISAL SERVICES

All requests for real estate appraisal services will be made only after an Agency or tribal line officer has approved an action involving the transfer or encumbrance of interests in real property or an Office of Hearing and Appeals (OHA) deciding official has requested appraisals for probate and/or consolidation purposes.

All requests for appraisal services shall be submitted to the respective Office of Appraisal Services (OAS) regional office on the standardized "Request for Real Estate Appraisal Services" request form by the Bureau of Indian Affairs and P.L. 93-638 Contract or Self-Governance Compact tribal realty programs.

It is highly recommended that the requesting office consult with the respective Regional Supervisory Appraiser (RSA), as needed, to determine the type of appraisal service necessary, e.g., Appraisal, Appraisal Review, Appraisal Update, and/or Real Property Consultation.

- All approved appraisal requests shall be submitted directly to the appropriate OAS Regional Appraisal Office.
Attach supporting documentation:
 - Title status reports (TSR)
 - Survey Plats & Maps of Definite Location
 - Partition plan
 - Tribal resolution
 - Letter of intent
 - Letter of Consent
 - Right of Way Agreement or Application, and Proposed Leases and Permits
 - Quantified Water Rights, if any
- Incomplete appraisal requests will not be accepted. An incomplete request will be returned to the requestor within five working days with a statement providing reasons for canceling the appraisal request.
- Any appraisal request submitted to OAS to obtain an appraisal intended for loan/mortgage purposes by a financial institution shall be rejected (in accordance with the 1989 Financial Institutions Reform, Recovery and Enforcement Act, as amended, which require financial institutions to obtain appraisals to conduct internal risk management.)
- For appraisal requests for opinions of value with effective date other than current date, the requests shall identify whether the opinion of value is prospective or retrospective and provide the date to be used by the appraiser.
 - Prospective Value Opinion – A forecast of the value expected at a specific future date. A prospective value opinion is most frequently sought in connection with real estate projects that are proposed, under construction, or under conversion to a new use, or those that have not achieved sellout or stabilized level of long-term occupancy at the time the appraisal report is written.
 - Retrospective Value Opinion – An opinion of value that is likely to have applied as of a specified historic date. A retrospective value opinion is most frequently sought in connection with appraisals for estate tax, condemnation, inheritance tax, and similar purposes.

Appraisal requests should not be submitted to OAS for real estate transactions that do not require Secretarial approval, e.g., valuations for landowner personal use & knowledge, valuations of non-fixed portable classrooms, HUD tribal housing development program's subsidized loan originations, etc.

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
OFFICE OF APPRAISAL SERVICES

REQUEST FOR REAL ESTATE APPRAISAL SERVICES

AGENCY:
AGENCY CASE NO:
RESERVATION:
BIA REGIONAL OFFICE:

TO: REGIONAL SUPERVISORY APPRAISER,
REGION

SAMPLE

APPRAISAL SERVICE: () APPRAISAL () APPRAISAL REVIEW () APPRAISAL UPDATE () REAL PROPERTY CONSULTATION

GRANTOR/LESSOR: _____ GRANTEE/LESSEE: _____

PURPOSE OF APPRAISAL: () MARKET VALUE () MARKET RENTAL VALUE () JUST COMPENSATION
() DAMAGE ESTIMATE () USE FEE ESTIMATE

LEASE TYPE: () Cash Lease () Crop Share Lease () Percentage Lease () Gross Lease
() Index Lease () Net lease Lease No. _____

TRANSACTION TYPE	PROPERTY TYPE	UTILITIES	LEASE
() SALE () LEASEHOLD	() AGRICULTURAL	() PUBLIC WATER OR	() CURRENT
() ACQUISITION () LEASED FEE	() RESIDENTIAL	() DOMESTIC WELL	LEASE
() EXCHANGE () RENTAL ADJUSTMENT	() COMMERCIAL	() SEWER OR () SEPTIC	ATTACHED
() EASEMENT/RIGHT OF WAY	() INDUSTRIAL	() ELECTRICITY	or
() PARTITIONMENT	() RECREATIONAL	() TELEPHONE	() PROPOSED
	() OTHER	() GAS	LEASE
			ATTACHED

<u>AGRICULTURAL</u>	<u>RECREATIONAL</u>	<u>RESIDENTIAL</u>	<u>COMMERCIAL/INDUSTRIAL</u>
() PRODUCTION HISTORY	____ NO. OF FRONT FEET	() PURCHASE	() FINANCIAL
() IRRIGATABLE ACRES AND/OR	ON LAKE/RIVER	AGREEMENT/	STATEMENTS
WATER RIGHTS DATA	() PURCHASE	CONTRACT	() PURCHASE
() PURCHASE AGREEMENT/ CONTRACT	AGREEMENT/	() PHYSICAL DATA OF	AGREEMENT/
() CARRYING CAPACITY (AUM's)	CONTRACT	STRUCTURE, E.G., AGE,	CONTRACT
() WATER SOURCE: SPRING, PUMPS,	() STUMPAGE VALUE	FLOOR PLAN, ETC.	() FLOOR PLAN
WELLS	() HUNTING/FISHING	() OWNERSHIP DATA OF	
	RIGHTS	HOME & OTHER	
		STRUCTURES	

LEGAL DESCRIPTION: (ATTACH SURVEY AND TITLE STATUS REPORT, IF AVAILABLE)

ALLOTMENT NO.(S): _____ CONTAINING _____ ACRES, MORE OR LESS

IDENTIFY LAND CHARACTER AND/OR IMPROVEMENTS TO BE APPRAISED:

SPECIAL INSTRUCTIONS/REMARKS (INCLUDE DEVELOPMENT, IMPROVEMENT AND RENOVATION COSTS, IF ANY):

THE APPROVING OFFICIAL HAS REVIEWED THE NEED FOR APPRAISAL OF THE DESCRIBED PROPERTY FOR THE PURPOSE INDICATED AND CERTIFIES THAT THE APPRAISAL IS NEEDED AND REQUESTS THAT IT BE PREPARED ON A: () ROUTINE OR () RUSH PRIORITY BASIS.

DATE REQUESTED _____ SIGNATURE _____ REQUESTING OFFICIAL

DATE APPROVED _____ SIGNATURE _____ APPROVING OFFICIAL

REGIONAL OFFICE USE PROJECT NUMBER:
DATE RECEIVED: _____ OPINION OF VALUE: \$
DATE ASSIGNED: _____ DATE COMPLETED:
APPRAISER: _____ DATE APPROVED:
REPORT TYPE CODE: _____ TRANSMITTAL DATE:
DATE OF VALUATION: _____ REVIEWER:

Attachment 9

Sample Certificate of Appraiser

SAMPLE

CERTIFICATE OF APPRAISER

I hereby certify:

That I have personally inspected the property herein appraised. I have also made a personal field inspection of the comparable sales relied upon in making said appraisal. That to the best of my knowledge and belief the statements contained in the appraisal herein set forth are true, and the information upon which the opinions expressed therein are based is correct, subject to limiting conditions therein set forth.

That I understand that such appraisal is to be used in connection with the acquisition of right-of-way for a road to be constructed by the Bureau of Indian Affairs with Federal funding.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the values reported herein.

That I have no direct or indirect present or contemplated future personal interest in such property or in any benefit from the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the Bureau of Indian Affairs.

Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, has been disregarded in determining the compensation of the property.

That to the best of my knowledge and belief, the reported analysis, opinions and conclusions were developed, and this report has been prepared, in conformity with requirements of the Codes of Professional Ethics and the Standards of Professional Practice of the American Institute of Real Estate Appraisers.

That the use of this report is subject to the requirements of the American Institute of Real Estate Appraisers relating to review by its duly authorized representatives.

That my opinion of the fair market value of the acquisition as of _____ is \$_____ based upon my independent appraisal.

Date _____ Signed _____

Attachment 10

Review of Land Appraisals



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

38
Copy - BES Staff

IN REPLY REFER TO:

Office of Trust Services

OCT 6 2005

Memorandum

To: All Regional Directors

From: Director, Bureau of Indian Affairs

Subject: Review of Land Appraisals by the Office of Appraisal Services

An issue has arisen concerning whether controls exist to insure that land appraisals conducted by Indian tribes pursuant to compact or contract agreements have been reviewed by the Office of Appraisal Services (OAS). Discussion concerning this issue with the personnel of the National Business Center, OAS, confirmed their policy responsibility to review land appraisals conducted by Indian tribes pursuant to a contract or compact agreement before the execution and approval of a trust land or resource transaction. Further, they stated that the responsibility to review land appraisals has been declared to be an inherently Federal function in OMB Circular A-76.

We must ensure that the Bureau of Indian Affairs follows the existing policy and practice of the OAS to review land appraisals performed by contract and compact Indian tribes prior to the approval of a land or natural resource transaction. Therefore, the Agency Superintendents, Regional Directors, and other Bureau personnel, with the authority to approve a trust or natural resource transaction, to declare that the land appraisal conducted by a compact or contract Indian tribe has been reviewed by the OAS. Documentation of the OAS review of the land appraisal will be the evidence of the declaration and this evidence of the declaration will become part of the transaction file. An example of the declaration is attached to this memorandum.

If you have any questions or require further information, please contact my office or contact the Deputy Director, Trust Services, at (202) 205-5831.

Attachment

EXAMPLE

Declaration of Appraisal Review

I, _____, do hereby declare that the land appraisal for
_____ (state tract number or land description) was
performed pursuant to a contract/contract with the _____ Tribe
and was reviewed by the Office of Appraisal Services, as evidenced by the review
documentation attached hereto.

Date

Superintendent

Attachment 11

**Consent of Owners
to Grant Right-of-Way**

SAMPLE

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

CONSENT OF OWNERS - GRANT OF RIGHT-OF-WAY

LANDOWNER NAME:

ALLOTMENT NUMBER:

LEGAL DESCRIPTION:

The undersigned, owner of an undivided _____ percent interest in the subject lot, hereby consents and agrees to the following regarding the application submitted by:

Description of Easement:

Fair Market Value of the Right-of-Way, plus damages: \$

(Please check **one** of the following):

1. I do give permission to BIA to grant a right-of-way as proposed, in return for receipt of the negotiated compensation of \$_____ for my proportionate share of the rights granted including severance damages; or the appraised Fair Market Value (as determined by the Secretary), whichever is greater.
2. I desire to negotiate for other terms; however, I do give permission to BIA to grant the right-of-way upon negotiation of the following terms:
3. I do give permission to BIA to grant a right-of-way as proposed and hereby waive any monetary payment. I realize that I am entitled to receive at least the Fair Market Value of the property, but waive compensation based on:
4. I do not consent to the granting of the proposed right-of-way, and I have been adequately counseled on the alternatives available to me, and the consequences (e.g., condemnation, or continuing trespass, etc.).

Owner

Date

STATE OF _____)

)ss

COUNTY OF _____)

The foregoing instrument of writing was acknowledged before me this ____ day of _____, 20__, by

Notary Public
My commission expires _____

Attachment 12

Statement of Fair Market Value

SAMPLE

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

STATEMENT OF FAIR MARKET VALUE
(For internal BIA/Tribal Realty use)

LANDOWNER NAME:

ALLOTMENT NUMBER:

LEGAL DESCRIPTION:

I, _____ (landowner name) _____, have been fully informed that the present fair market value of the right-of-way requested by _____ (applicant name) _____ for a _____ (acre(s), square feet) right-of-way on the above restricted land, has been appraised at \$ _____. I own an undivided _____ interest in said land, and my proportionate share is in the amount of \$ _____.

Owner

Date

STATE OF :

: ss.

COUNTY OF :

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My commission expires _____, 20____.

Attachment 13

Sample Evidence of Authority of Officers to Execute Papers

SAMPLE

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

EVIDENCE OF AUTHORITY OF OFFICERS TO EXECUTE PAPERS

(To be sworn to by the President or Secretary of a Corporation and sealed with its seal)

I solemnly swear that _____ (Company official) _____ was on the ____ day of _____, 20__ the duly appointed _____ (title) _____ of _____ (company name) _____, a corporation organized under the laws of the State of _____ at which time he/she executed the application for and in behalf of said corporation, covering certain Restricted Indian lands in the State of _____; that _____ was fully empowered to execute said instrument and all papers in connection therewith, and that _____ action in executing the same binds the said corporation to full performance of all obligations there under.

[CORPORATE SEAL]

Name Title Date

STATE OF :

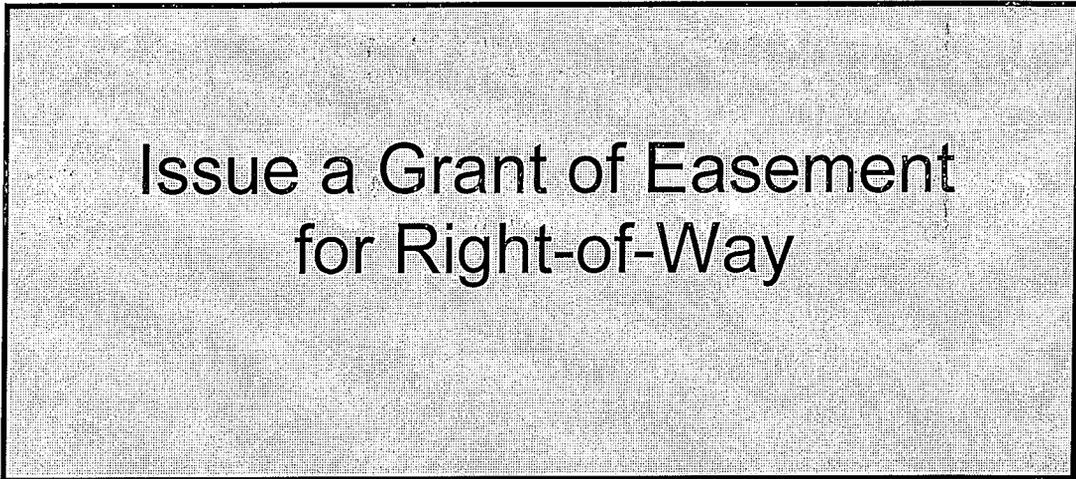
: ss.

COUNTY OF :

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public

My commission expires _____, 20____.



Issue a Grant of Easement
for Right-of-Way

Issue a Grant of Easement for Right-of-Way

Purpose

This procedure includes the preparation of a Grant of Easement for ROW, the actions required to issue and approve the ROW, collection of funds, and recordation of the grant.

Scope

This procedure documents the tasks required of a Realty Specialist to issue, and a delegated official to approve, a Grant of Easement for Right-of-Way (ROW).

Process

Step 1: Prepare the Grant of Easement for Right-of-Way. (See Attachment 14 - Sample Grant of Easement for Right-of-Way.)

- The conveyance instrument, application, and maps must be provided to the Secretary or his/her designee in duplicate (25 CFR 169.15 and 16).
- As a result of several IBIA and court cases, the grant may need to include a provision that the respective tribe will retain jurisdiction over the fee corridor of the easement.

Step 2: Complete all actions and documentation required to issue a ROW decision.

- Review and complete the ROW checklist. (See Attachment 15 - Right-of-Way Checklist.)
- Prepare the Findings and Recommendation for Decision, sometimes previously referred to as the Report of Investigation, if the review of all documents is favorable to the ROW approval. The document indicates that a review was performed and that the recommendation is made pursuant to that review. (See Attachment 16 - Sample Report of Findings and Recommendations for Decision.)
- Address at length all the criteria and background that was used to formulate the decision. These criteria may include the TSR, environmental documents, surveys, appraisals, consent, unique provisions, and stipulations. The extent of the finding may vary in each ROW application. In all cases, the findings refer to the attached documents as the basis for the decision. The documentation follows this sequence of information:
 - Authority
 - Purpose
 - Background
 - Findings
 - Recommendation

Attachments consist of the following:

- Table of Contents
- Supporting documentation

- Sign and date the recommendation. An approval signature may also be required.
- Prepare a Letter of Decision for the approving official's signature based upon the Findings and Recommendation for Decision. The letter is addressed to the applicant, the landowner(s) and all interested parties to the ROW. The letter explains in detail the criteria that were used in the formulation of the recommendation. All decision letters must provide the right to appeal pursuant to Title 25 CFR Part 2.
- Notice of appeal rights are given to all interested parties whether or not they have previously agreed, authorized, or consented to the ROW. Refer to Section 5.4 for a discussion of administrative appeals.

Step 3: Collect compensation from the grantee on behalf of the landowner(s) for use of the land.

- Compensation is formally collected by OST; although the Realty Office's Collections Officer will initially receive the checks.
- Total compensation must be equal to or greater than the fair market value. The consideration for a ROW includes several types of compensation paid by the grantee for the use of the land:
 - Fair market value for the right to use the land unless otherwise waived in writing by the landowner(s)
 - Severance damages for separating the normal land use pattern by granting a ROW across the land
 - All other damages that are caused by the ROW or caused by the survey

Step 4: Approve the Grant of Easement for ROW.

- Once compensation has been collected and if there is no appeal of the decision to approve, the designated approving official signs the grant.

Step 5: Record the Grant of Easement for ROW.

- Attach a Title Recordation form to the Grant of Easement for ROW and forward it to the designated LTRO.
- Transmit survey plats, maps, tribal resolutions, and any other amendments, modifications, and addendums to the LTRO for recordation as deemed necessary.
- Determine if there are additional state or county recording requirements that apply.
- Maintain a copy of the approved Grant of Easement for ROW and the Title Recordation Request in the permanent file while the original documents are being recorded.
- Upon receipt of the original documentation back from the LTRO or other appropriate recording office, also include this documentation in the file. Make all future copies from

the recorded original approved documentation.

- Maintain the ROW file in accordance with the current records management requirements contained in 16-Bureau-Indian-Affairs-Manual-(BIAM)-4618b-T5.

Step 6: Process a change in location for the ROW, if required.

- Cancel the original ROW and process a revised ROW for the new route or location;
- OR**
- Modify the original grant to reflect the location change and reference the original LTRO document number on the modification.
 - The revised grant is subject to consent, approval, ascertainment of damages, and the payment thereof, in all respects as in the case of the original location.
 - File amended maps and field notes of the new location, if any change from the location described in the Grant of Easement for ROW is necessary due to engineering difficulties.
 - Record the revised grant of easement in the LTRO.

Step 7: Conduct a field inspection of the ROW.

- Determine if any further damages have occurred and if the grantee is in compliance with the stipulations of the use agreement.
- If the inspection reveals further damage, the Office of Appraisal Services establishes a value for the damages.
- The approving official may use his/her discretionary authority to determine if assessing additional damages is in the best interest of the landowner(s).
- When warranted, the grantee is invoiced for the damages and it is determined who should receive the compensation (i.e., the landowner or a lessee). He/she may appeal the findings.
- All damage payments are due prior to recording the Affidavit of Completion in the LTRO or appropriate recording office. Refer to Step 2.
- After all payments have been disbursed and there are no further damages, e.g., reseeding, fencing, or other reclamation, the balance of the funds collected is refunded to the grantee.

Step 8: Process completion of the ROW project.

- Receive the Affidavit of Completion from the Engineer on the ROW project. (See Attachment 17 - Affidavit of Completion.)
- Receive a Certificate of Completion executed by the grantee. (See Attachment 18 - Certificate of Completion.)

- Transmit a copy of the Affidavit and the Certificate to the LTRO for recordation.

REVIEW		
Revision #	Change	Effective Date
0	Initial Issuance	

END OF PROCEDURE

Attachment 14

Sample Grant of Easement for Right-of-Way

SAMPLE

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

GRANT OF EASEMENT FOR RIGHT-OF-WAY

KNOW ALL MEN BY THESE PRESENTS:

That the United States of America, acting by and through the Bureau of Indian Affairs, Department of the Interior, _____ (agency) _____ (address) _____ for, and on behalf of: _____ (applicant name) _____ American Indians of _____ (tribe) _____, hereinafter referred to as GRANTOR, under authority contained in 209 DM 8 dated November 17, 1981, 230 DM 1 and 3 IAM 4 dated July 19, 2000 and pursuant to the provisions of the Act of February 5, 1948 (62 Stat. 17; 25 USC 323-328); and Part 169, Title 25, *Code of Federal Regulations*, which by reference are made a part hereof, in consideration of \$ _____, the receipt of which is hereby acknowledged, does hereby grant to: _____ (applicant name) _____ of _____ (address) _____, its successors and assigns, hereinafter referred to as GRANTEE, an easement for right-of-way for the following purposes, specifically:

over the land embraced within a right-of-way situated on the following described lands:

said right-of-way is limited to and more particularly described to be _____ (acres) _____ in area, as shown on Exhibit A, attached hereto, and made a part hereof.

To have and to hold the said easement and right-of-way unto the GRANTEE and unto its successors and assigns subject to the following provisions:

1. GRANTEE agrees to indemnify the landowners and authorized users and occupants against any liability for loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.
2. GRANTEE agrees to restore the land to its original condition, as far as is reasonably possible, upon termination or revocation of this easement for any reason. Failing to comply with this stipulation, GRANTEE agrees to bear all expenses and costs incurred by the owner and/or the United States in accomplishing said restoration.
3. GRANTEE agrees to pay all damages and compensation, in addition to the deposit made pursuant to 169.4, determined by the Secretary to be due the landowners and

authorized users and occupants of the land due to the survey, granting, construction and maintenance of the right-of-way.

4. GRANTEE agrees to that during the term of this Grant of Easement, if any previously unidentified cultural resources are discovered within the easement area, work should be halted immediately and the BIA and/or Tribal Contractor should be contacted immediately.
5. GRANTEE agrees to construct and maintain the right-of-way in a workmanlike manner.
6. GRANTEE agrees to clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way; and dispose of all vegetative and other material cut, uprooted or otherwise accumulated during construction and maintenance of the project.
7. GRANTEE agrees to take soil and resources conservation protection measures, including weed control, on the land covered by the right-of-way.
8. GRANTEE agrees to do everything reasonable within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.
9. GRANTEE agrees to build and repair such roads, fences and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.
10. GRANTEE agrees to that upon revocation or termination of the right-of-way, the applicant shall, so far as is reasonably possible, restore the land to its original condition. The determination of "reasonably possible" is subject to Secretary's approval.
11. GRANTEE agrees at all times to keep the Secretary informed of its address, and in case of corporations, of the address of its principal place of business and the names and addresses of its principal officers.
12. GRANTEE agrees to not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.

This easement is subject to any prior valid existing right or adverse claim and is _____ so long as said easement shall be actually used for the purpose above specified; PROVIDED, that this right-of-way may be terminated in whole or in part by the GRANTOR for any of the following causes upon 30 days written notice, and failure of the GRANTEE within said notice period to correct the basis for termination (25 CFR 169.20):

1. Failure to comply with any term or condition of the Grant, or the applicable regulations.
2. A non-use of the right-of-way for any consecutive two-year period (for the purpose for which it was granted).

3. An abandonment of the right-of-way, as determined by the BIA.

The condition for this easement shall extend to and be binding upon and shall inure to the benefit of the successors and assigns of the GRANTEE.

IN WITNESS WHEREOF, GRANTOR has executed this grant of easement this _____ day of _____, 20____.

UNITED STATES OF AMERICA

BY _____
U.S. Department of the Interior
Bureau of Indian Affairs

ACKNOWLEDGEMENT

STATE OF :

: ss.

COUNTY OF :

Subscribed and sworn to before me this _____ day of _____, 20____.

Signature of Notary Public
My commission expires _____, 20____.

Attachment 15

Right-of-Way Checklist

SAMPLE

RIGHT-OF-WAY CHECKLIST

Landowner's Name: _____

Land Area Code: _____ Region: _____

Allotment Number: _____ Grant Number: _____

Preparer's Name _____ Title _____

<u>DATE:</u>	<u>ACTION:</u>	<u>YES</u>	<u>NO</u>	<u>N/A</u>
_____	Application for Permission to Survey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Authority of Officers to Execute Documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Consent of Landowner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Double estimated damage deposit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	State certified corporate charter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Certified copy of resolution or by-laws	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Articles of Partnership or Association	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	State business license	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Title Status Report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Right-of-Way Application (in DUPLICATE)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Survey plat (in DUPLICATE)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Field notes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Applicant's Certificate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Engineer's Affidavit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Landowner's Consent to Grant ROW	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Field Inspection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Appraisal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	NEPA Document	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Payment (Receipt)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Grant of Easement for ROW	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Attachment 16

Sample Report of Findings and Recommendations for Decision

SAMPLE

REPORT OF FINDINGS AND RECOMMENDATIONS FOR DECISION

EASEMENT

ON LAND DESCRIBED AS:

INVESTIGATED BY:

Realty Specialist

APPROVED:

Realty Officer

CERTIFICATION OF INVESTIGATION

I, (Realty Specialist Name), hereby certify the following to be true and accurate to the best of my knowledge and belief.

1. That I conducted the investigation hereinafter described.
2. That I prepared the hereinafter report of said investigation from my observations, field notes and conversations during the investigation.
3. That the hereinafter-contained information is an accurate report of said investigation and findings.
4. That I believe my conclusions and recommendations to be valid for the reasons I stated in said report.

Certified to this _____ day of _____, 20_____.

By _____
Realty Specialist

AUTHORITY

Pursuant to 5 U.S.C. 301; 62 Stat. 17 (25 U.S. C. 323-328) Rights-of-Ways may be granted with the consent of the restricted land owners and with the approval of the Secretary of Interior or his delegated representative. The regulations governing the granting are set forth under 25 CFR 169.

PURPOSE

(describe the reason for the granting of the easement)

BACKGROUND

(Describe when the owner acquired the lot, give the history of their ownership, noting any other transactions up until the time you were first notified of this right-of-way)

FINDINGS

(This section should cover all that has happened since you were first apprised of the project. Include conversations, counseling provided, contacts you had with other individuals, etc.)

CONCLUSION AND RECOMMENDATION

(Summarize the above and make your recommendation for approval)

REPORT ATTACHMENTS

Land Status Report

Order Determining Heirs, if appropriate

Trustee Deed

Appraisal Report

Section 106 Review (Archeological inventory)

Timber Report

Environmental Assessment

F.O.N.S.I.

Application for Permission to Survey with required supporting documents

Consent of Landowners...to survey

Evidence of Authority to Execute Papers

Right-of-Way Application with required supporting documents

Payment for Right-of-Way, if required

Consent of Landowners to Grant ROW

Applicant's Certificate

Engineer's Affidavit

Mylar plat - duplicate originals

Field Survey notes

Counseling record - Consent of Owner - Grant of Right-of-Way

Statement of Fair Market Value

Grant of Easement - duplicate originals

Certification of Conformity

Attachment 17

Affidavit of Completion

SAMPLE

STATE OF :

:ss

COUNTY OR RECORDING DISTRICT OF :

AFFIDAVIT OF COMPLETION

_____ (name of engineer) _____, being first duly sworn, says that he is the
 Engineer of _____ (company name) _____; that the right-of-way has been
 constructed under his supervision a distance of _____ miles across a portion
 of the _____ (landowner name) _____ Indian Reservation or Individual
 Allotment/Native Townsite, _____; that
 this construction began on _____, 20____, and was completed on
 _____, 20____; that the right-of-way does not materially deviate from
 the approved plans, notes, and maps filed _____, 20_____.

 Engineer

Subscribed and sworn to before me this _____ day of _____, 20____.

 Notary Public

My commission expires _____.

Attachment 18

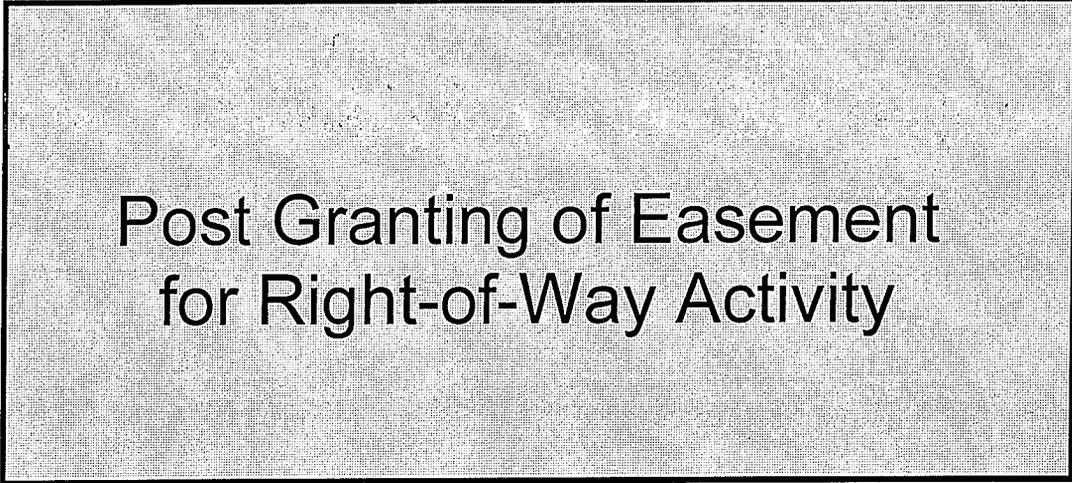
Certificate of Completion

SAMPLE

CERTIFICATE OF COMPLETION

I, _____, do hereby certify that I am
_____ for _____,
hereinafter designated the "Grantee"; that _____, who
subscribed the foregoing affidavit, is employed by the "Grantee"; that in its
construction the right-of-way does not deviate from the approved plans, notes, and
maps filed _____, 20__; and that the "Grantee" has in
all things complied with the requirements of the act of February 5, 1948, and
applicable regulations pursuant to which the "Grantee" has been granted the right-
of-way.

GRANTEE



Post Granting of Easement
for Right-of-Way Activity

Post-Granting-of-Easement-for-Right-of-Way-Activity

Purpose

The purpose of this procedure is to document activities that may be required to ensure compliance with the terms and conditions of a Grant of Easement for Right-of-Way (ROW).

Note: Not all of the following steps may be required nor are all of the steps sequential.

Scope

This procedure documents the tasks required of Realty Staff to administer a Grant of Easement for ROW.

Process

Step 1: Process a request for Grant of Easement for ROW extension.

- The grantee submits an application for renewal of a Grant of Easement for ROW.
- The applicant certifies that the renewal does not change the location, use, or status of the original grant.
- If a renewal would result in a change in the size, type, or location of a ROW then the renewal is considered a new application.
- The applicant obtains consent to extend the term of the grant from the landowner(s).
- A Grant of Easement for ROW may only be extended for a like term of years upon receipt of payment for the extension.

Step 2: Conduct a compliance inspection.

- On occasion, the landowner, a neighbor, or another tenant may contact the BIA advising that certain stipulations of the ROW are not in compliance. In such cases, compliance inspections are conducted to ensure the terms of the ROW and the Government's fiduciary responsibility to the Indian landowner are being met.
- Execute compliance inspections in strict conformance with the terms and stipulations inclusive in the Grant of Easement for ROW.
- Conduct a compliance inspection, at a minimum, on or before the expiration date of the ROW.

Step 3: Process a Grant of Easement for ROW violation.

- As a result of a compliance inspection, determine that the provisions of the Grant of Easement for ROW have been violated.
- Issue a Notice to Correct Violation.
- If the violation remains uncorrected, the grant may be terminated or canceled.

Step 4: Process a Grant of Easement for ROW termination.

- This termination may be in whole or in part and requires a 30-day written notice to the grantee. The notice must advise the grantee of his/her appeal rights. (See Attachment 19 - Termination of Easement.)
- A Grant of Easement for ROW may be terminated for the following reasons:
 - Failure to comply with any term or condition of the grant or applicable regulations
 - If the ROW has not been used for the purpose it was granted for a period of two years
 - The ROW has been abandoned

REVIEW		
Revision #	Change	Effective Date
0	Initial Issuance	

END OF PROCEDURE

Attachment 19

Termination of Easement

TRIBAL _____

ALLOTTED _____

FILE NO. _____

TERMINATION OF EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, by an easement for right-of-way dated the _____ day of _____, 20____, and recorded _____ the _____

(Name, Title and Office)

did thereby grant to

a certain right-of-way for _____
(Purpose)

over, across, in or upon the following described lands located in the _____
_____ Indian Reservation, _____ County,
State of _____: and,

WHEREAS, there exists a basis for termination of said easement by reason of: (Spell out in detail the facts constituting grounds for termination, A - B - C - D, etc., of the easement.) and,

WHEREAS, said Grantor, pursuant to 25 CFR 169.20, and did give Grantee written notice allowing 30 days to correct the basis for termination, and,

WHEREAS, the Grantee has failed, within the notice period, to correct the default,

NOW THEREFORE, the Grantor, pursuant to the terms of the grant of right-of-way, and pursuant to the authorities cited therein, does hereby revoke, rescind and terminate said

grant and the land is freed of any encumbrance created thereby.

UNITED STATES

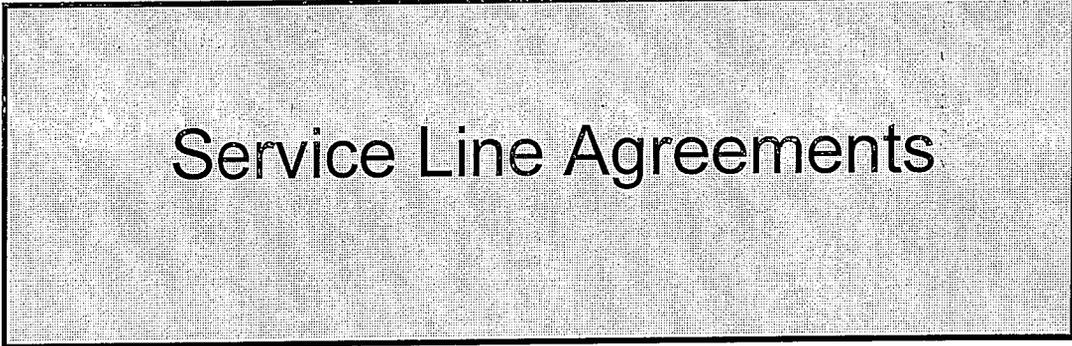
DEPARTMENT OF THE INTERIOR

(City and State)

Date: _____ By: _____

(Name and Title)

(Agency)



Service Line Agreements

Service Line Agreements

Purpose

A Service Line Agreement (SLA) is used for "... the sole purpose of supplying an individual owner or authorized occupant or user of trust land, with telephone, electrical power, gas, or other utilities for use by such owner, occupant, or user of the trust premises," (25 CFR §169.22). Service Line Agreements are not used for transmission lines with multiple users. Service Line Agreements have no limitation on the length of service and do not require BIA approval.

Scope

The parties to a service line agreement are the utility company and the customer for the utility service.

The Realty Specialist should always consider and assure that a service line agreement granted or approved is in the best interest and benefit of the land owners. The community or public interest and benefit should be secondary to the land owner(s).

Process

Step 1: Review Service Line Agreement for compliance with BIA requirements.

- Service Line Agreement is received at the BIA. (See Attachment 20 - Sample Service Line Agreement.)
- Review for compliance with BIA requirements.
- Agreement needs to be executed stating the purpose, terms, and conditions under which the agreement is made.
- Check accuracy of legal land descriptions.
- Review plat or diagram for location, size, and extent of the utility line.
- Optional step: Obtain a Title Status Report from the Land Titles and Records Office, review and identify any title conflicts.
- Check for language discrepancies such as added paragraphs to the Agreement that have no relevance or relationship to the purpose of the agreement, i.e., paragraph stating "... company shall have full and exclusive rights to and shall retain title and ownership of the power line extension."

- Confirm occupant/user authorization (lease or sole owner).
- Check for master easement.
- Review and verify execution of the Service Line Agreement – require notarized signatures.
- Confirm that the service line agreement is filed with the Secretary before any construction or improvements are made.
- Advise the applicant to contact the Tribal Natural Resources Office or appropriate tribal office to obtain consent and tribal resolution.
- Authorization shall be filed with Secretary within 30 days after the date of execution.

Step 2: Issue an acknowledgement letter to the applicant company.

- Return deficient Service Line Agreements to the applicant company with no acknowledgement.

Step 3: Provide applicant company with additional information regarding Service Line Agreement limitations.

- The company is to be informed that a Service Line Agreement:
 - Cannot link to another Service Line Agreement drop
 - Is to extend off an approved easement
 - Can only extend to a single or sole individual owner or authorized occupant or user of trust land
 - Needs a "Permission to Cross Existing ROW" if the line is crossing an established Right-of-Way
 - Cannot be unilaterally amended
 - Does not authorize the transfer to another entity

Step 4: Record the Service Line Agreement in the LTRO.

Grants of Easement for Right-of-Way on Indian Lands
Section 4 – Procedures

REVIEW		
Revision #	Change	Effective Date
0	Initial Issuance	

END OF PROCEDURE

Attachment 20

Sample Service Line Agreement

SAMPLE

SERVICE LINE AGREEMENT

WHEREAS, the _____ (applicant name), its successors and assigns, hereinafter termed "Applicant," has been requested to extend electrical service to _____ (landowner name), hereinafter termed "Owner," who is the owner of a tract of land identified and described as follows:

; and

WHEREAS, the location of the service line required to serve the above-described property, and its extent, is more particularly shown and delineated on the attached plat/diagram marked "Exhibit A," which has been prepared in accordance with 25 C.F.R. 169.22(c) and which by this reference is made a part hereof; and

WHEREAS, the regulations of 25 C.F.R. 169.22 provide that an agreement shall be entered into by and between the Owner and the Applicant before any work by the Applicant may be undertaken to construct a service line across such land; and

WHEREAS, those regulations further provide that a service line shall be for the sole purpose of supplying the Owner or authorized occupant or lessee of land, including schools and churches, with telephone, water, electric power, gas, or other utilities for use on the premises by such Owner, authorized occupant, or lessee of the land;

NOW THEREFORE, it is hereby agreed that in consideration of the Applicant furnishing electrical service to the within-described property, the Owner hereby grants permission to Applicant to construct a service line on and across the said property without the payment of any monetary compensation or damages by Applicant. Applicant agrees to comply with all the requirements of 25 C.F.R. 169.22.

The costs associated with any relocation of Applicant's service lines or facilities, requested by the Owner, shall be the responsibility of the Owner, occupant, or lessee requesting the relocation.

The service line herein established is subject to any prior, valid, existing right and is without limitation as to tenure so long as said service line shall be actually used for the purpose above specified; PROVIDED, that this agreement may be terminated for any of the following causes upon thirty (30) days' written notice from the Secretary if within the 30-day notice period the Applicant fails to correct the basis for termination:

1. Failure to comply with any term or condition of the agreement.
2. A nonuse of the service line for a consecutive two-year period.
3. Abandonment of the service line by Applicant.

Upon termination, Applicant shall have a reasonable period of time to remove Applicant's service lines and facilities. Applicant shall not be responsible for any restoration of the area cleared for the construction of the service line following termination.

APPLICANT

OWNER

COMPANY

Date:

Date:

5.0 ADDITIONAL INFORMATION/GUIDANCE

5.1 Compensation for Use of a ROW

Section 3 of the 1948 Act provides that “[n]o grant of right-of-way shall be made without the payment of such compensation as the Secretary of the Interior shall determine to be just.” The BIA’s key regulation, 25 CFR 169.12, provides as follows:

“Except when waived in writing by the landowners or their representatives as defined in §169.3 and approved by the Secretary, the consideration for any right-of-way granted or renewed under this Part 169 shall be not less than but not limited to the fair market value of the rights granted, plus severance damages, if any, to the remaining estate. The Secretary shall obtain and advise the landowners of the appraisal information to assist them (the landowner or landowners) in negotiations for a right-of-way or renewal.”

The last sentence in this rule was added in July 1980 to expressly require that owners be given appraisal information to assist in their negotiations. The amendment was intended to ensure that:

- (1) Waivers are based on accurate information as to the compensation that would otherwise be due; and
- (2) Owners are not necessarily limited in their negotiations to any amount of compensation that might later be established, or found to be acceptable, by the BIA.

5.2 Condemnation on Individually-Owned Lands

With respect to the installation of utilities within a road ROW acquired under the above-referenced 1901 Act, such an action may be taken without the landowners consent (and without the payment of further compensation to the owners) even if the original ROW is limited to road purposes, so long as permitted by state law. This interpretation is based on a long line of Solicitor’s opinions and case precedents which are, in turn, based on the express incorporation of state law in the 1901 Act. By contract, the installation of utilities within a road ROW granted under the 1948 Act, which does not incorporate state law, should not generally be permitted without landowner consent unless the original ROW was expressly made for “road and utility” purposes. Where a BIA road has been granted under the 1948 Act for “road and utility” purposes, permission to install utilities should generally be given only where the utility line is tribally owned and operated or otherwise intended to primarily serve the reservation community; otherwise, such permission should be withheld by BIA Roads staff until the consent of the Indian owners has been obtained.

It should be noted that even where the installation of utilities without owner consent is generally authorized – based either on state law or the scope of the underlying road easement – that authority may not extend to certain types of “non-standard” utility lines that “overburden” the land. (This determination should be made on a case-by-case basis with assistance from the Solicitor’s Office). Owner consents should always specify all of the uses to be authorized in the

grant of easement to follow, and that the language in a grant must be read carefully in order to determine if a particular use may be permitted without the further consent of the owners.

Any attempt to take action to condemn individually-owned lands for a ROW must be reported immediately to the BIA office having administrative jurisdiction over the lands. The Bureau will exercise its fiduciary responsibility and take appropriate measures to ensure the interest of the landowner(s). (See Exhibit 6 - Condemnation Actions.) Without a specific Federal statute, condemnation of tribal lands is prohibited.

5.3 Pre-1948 Rights-of-Way

Rights-of-way granted prior to 1948 were not authorized by a formal grant document. A survey of the easement is all that exists to validate the ROW.

5.4 Assignment of Rights-of-Way

BIA does not have regulations addressing assignment of entire or partial interest in a ROW. Unless the owner(s) consent prohibits, the Grantee can assign the ROW without consent or BIA approval; the grant of easement document authorizes the assignment. However, some agencies accept assignment documents between companies or Tribal entities. Standard practice for the conveyance of ROW interests is in place to assure records are accurate.

5.5 Administrative Appeals

A grantee has the right to appeal most grant-related decisions under 25 CFR Part 2. If there is an appeal, the file is placed in suspended status. The appeal notice and a sheet of paper with the following note is inserted in the file: **“THIS FILE IS UNDER APPEAL AND ALL FURTHER ACTION IS SUSPENDED UNTIL A DECISION HAS BEEN RENDERED.”** There must be no further action taken on the ROW until all administrative remedies have been exhausted and a final decision regarding the appeal has been rendered. Depending on the outcome of the appeal, the ROW file is either closed and no further action taken, or the ROW granting process is continued. While the file is in suspended status, a supplemental file is established for all incoming documentation regarding the appeal. Once the appeal has been decided, this information will be incorporated with the ROW file.

The Interior Board of Indian Appeals (IBIA) must have an administrative record in order to decide an appeal. Title 43 CFR 4.335 requires BIA to assemble and transmit the record within 20 days after receipt of a notice of appeal or upon notice from the Board. The administrative record generally consists of the entire ROW file. The detailed requirements for administrative record for appeals before the IBIA can be reviewed in *BIA Administrative Appeals and Decision Writing, Board of Indian Appeals, February 1989*. These requirements, while specifically addressed to appeals before IBIA, should also serve as guidelines for preparing administrative records for appeals within BIA. (See Exhibit 7 - Administrative Record for Appeals.)

5.6 Waivers

Pursuant to 25 CFR Part 1.2, the Secretary of the Interior has the authority to waive a regulatory requirement; however, a statutory requirement cannot be waived. All requests for waiver should be submitted to BIA Central Office.

5.7 BIA's Overall Performance Plan

The quality of service provided to Indian landowners is a part of the BIA's overall performance plan. The BIA continues to further develop and improve customer service to tribes and individual Indians by improving access to data, program processes, and developing or improving automated systems to provide easier, more accurate access by authorized parties. Customer service includes responses by telephone, facsimile, memorandum, or e-mail and requires that all requests for information regarding operations and program service be complete, accurate, and timely.

6.0 EXHIBITS

Exhibit 1 - Fiduciary Trust Model (FTM)

Recently, the Department of the Interior has worked to build a highly effective fiduciary trust services organization. The FTM is the outcome of the business process redesign activity.

Exhibit 2 - The Bureau of Indian Affairs Organization

The Office of the Assistant Secretary for Indian Affairs and the organizational structure of the Bureau of Indian Affairs are explained.

Exhibit 3 - How to Read a Land Description

The ability to read and understand land descriptions is an essential competency for realty staff when preparing to issue a grant of easement for right-of-way.

Exhibit 4 - Sample Avigation Easement Verbiage

Avigation Easements are a good example of the flexibility of Grants of Easement for ROW under 25 CFR §169. The form of this easement has been designed, in the State of Alaska, to approximate a Memorandum of Agreement rather than a classic Grant of Easement for Right-of-Way.

Exhibit 5 - Sample Redelegation of Authority Memo

Unless otherwise limited, the authority of the Secretary delegated down to Regional Directors may be redelegated at the Regional Director's discretion.

Exhibit 6 - Condemnation Actions

BIA will take appropriate measures to ensure the interest of the landowner is protected whenever there is an attempt to condemn individually-owned trust lands for ROW.

Exhibit 7 - Administrative Record for Appeals

The Interior Board of Indian Appeals must have an administrative record in order to decide an appeal.

Glossary of Terms

List of Acronyms

Exhibit 1

Fiduciary Trust Model

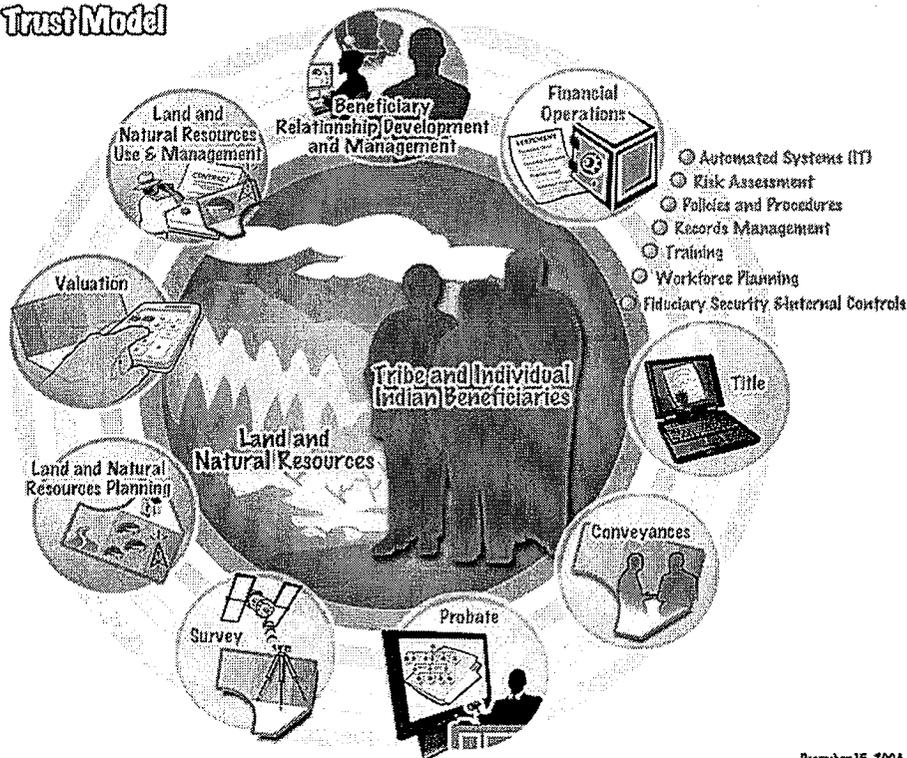
THE FIDUCIARY TRUST MODEL OVERVIEW

The American Indian trust involves the fiduciary management of approximately 56 million acres of land and natural resources for both tribes and individual Indians. The Fiduciary Trust Model (FTM) is designed to enhance beneficiary (American Indians, both tribes and individuals; and Alaskan Natives) services, ownership information, land and natural resources assets, trust funds assets, Indian self-governance and self-determination, and administrative services.

The Department of the Interior (DOI) developed the Comprehensive Trust Management (CTM) Plan to define an approach for improving performance and accountability in the management of the trust. The CTM provides the overall trust business goals and objectives for the DOI to achieve its fiduciary trust responsibilities and provides the foundation on which the FTM was designed. In addition to the CTM, recommendations from documenting the Trust "As-Is" Business Model, DOI subject matter experts, and Tribal leadership were used in the formulation of the FTM.

The FTM is comprised of five major business processes; Beneficiary Relationship Development and Management (BRDM), Financial Operations, Ownership, Land & Natural Resources Planning, and Land and Natural Resources Use and Management. Ownership is comprised of four sub-processes: Title, Probate, Conveyance, and Survey. Land & Natural Resources Planning is comprised of two sub-processes: Planning and Valuation. The FTM is not a static document, but rather a living model that will evolve to continue making improvements as warranted.

Fiduciary Trust Model



Version 1.0

December 15, 2004

Exhibit 2

The Bureau of Indian Affairs Organization

The Office of the Assistant Secretary for Indian Affairs

This office includes Indian programs at the Secretary level, including economic development, information management and external affairs.

The Bureau of Indian Affairs

BIA Office of Trust Services

One of the primary directorates under the BIA is the Office of Trust Services. This directorate includes the following responsibilities:

- Managing the Bureau's natural resources programs; Safety of Dams program; irrigation and power systems; energy resources; Land, Title and Records Offices.

Directorate Organization

The Deputy Bureau Director carries out the mission and functions of the office with assistance from the following divisions:

- Natural Resources
- Real Estate Services
- Forestry
 - Forest Resources Planning
 - Fire Management

The Division of Real Estate Services

The Division of Real Estate Services provides assistance, advice, policy, oversight, monitoring, and coordination for the protection, management, planning, conservation, development, utilization, and probate of trust and restricted Federal Indian-owned lands that include acquisition, disposal, tenure, rights-of-way, permits, leasing, and sales.

The Division also manages the Bureau's program to accept real estate on behalf of tribes under the Base Realignment and Closure Act and similar programs. The Division has entered into an interagency agreement with the Bureau of Land Management to provide cadastral survey services for Tribal and individually owned Indian trust and restricted lands.

The Central Office Real Estate Services staff:

- formulates Real Estate Services policy
- reviews and authorizes any regional handbook addendums of any national RES handbook
- performs oversight reviews
- evaluates the effectiveness of the regional real estate functions
- administers appeals
- performs title research
- reviews and recommends approval/disapproval of requests for declaring reservation lands, waivers of real estate regulations and administers the Bureau's nationwide oil and gas lease bonds
- reviews and makes recommendations for highly controversial real estate transactions
- develops regulations and policies affecting the trust lands and trust resources

The Regional Level

Within the twelve regional offices of the Bureau of Indian Affairs, there is a Real Estate Services program. Regional Offices provide policy direction, technical assistance, training, administrative review, and monitoring in the evaluation of Agency real property operations, thus, ensuring budget and performance integration.

Specific responsibilities include, but are not limited to:

- deciding appeals of Agency actions; assisting in the negotiation of Public Law 93-638 contracts for realty related functions
- litigation support
- review of real property initiatives
- review and approve numerous real estate services transactions, e.g. acquisition, disposal, surface and sub-surface lease, appraisal, and land use planning proposal transactions for Indian tribes who have contracted or compacted the program as well as those Indian tribes and individuals for whom the Regional Office serves as an agency office
- coordinate environmental studies; rights-of-way; easements; exchanges; partitions; patents in fee; removal of restrictions; permits; probate and estate planning; and initiation of rights protection issues such as trespass and land damages
- technical review of real estate transactions which are for the most part prepared at the Agency level
- approving real estate transactions for contract and self-governance Tribal transactions.

Exhibit 3

How to Read a Land Description

HOW TO READ A LAND DESCRIPTION

The present rectangular survey system for surveying public lands began in 1785 when a beginning point was established at the west boundary of Pennsylvania where it crosses the north bank of the Ohio River under the Articles of Confederation. All States in the Union, except the thirteen original colonies, and Kentucky, Maine, Vermont, West Virginia, Tennessee, and Texas are covered by the rectangular survey system. The rectangular system is now used in 30 states. The purpose of this system was to provide a means of land identification and legal descriptions pursuant to laws and ordinances. Initial points were established that have become the origin for surveys in each of these 30 states.

INITIAL POINT - PRINCIPAL MERIDIAN - BASE LINE

The control point for the entire rectangular survey system is developed around the initial point. The initial point is the intersection of a north-south line (true north, not magnetic north) and east-west line (that parallels latitude). The north-south line is called the Principal Meridian and the horizontal east-west line is called the Base Line.

TOWNSHIP LINE - RANGE LINE - SECTION

Within the rectangular survey system, Township lines are established at intervals of six miles to the north and south of the Base Line. Accordingly, Range lines are established at intervals of six miles to the east and west of the Principal Meridian creating a six mile square also called a Township. In each Township there are 36 sections of approximately one square mile in area. These sections are always numbered consecutively beginning in the northeast corner as follows:

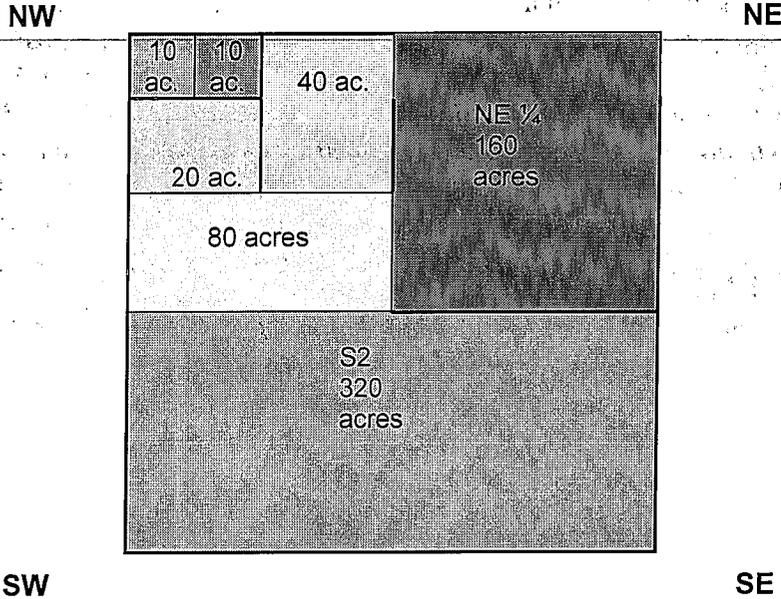
6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

Each section contains approximately 640 acres of land. This figure is important to remember since it is the basis of describing aliquot parts in a section.

ALIQUOT PART

A section can be divided into two more parts using an aliquot part description. To divide the section in two, the result would be two 320 acre tracts creating 2 half sections. These sections are referred to as the north half or the south half or the east half or the west half. Each portion could then again be divided into two 160 acre tracts creating quarter sections and so on. The whole section may be divided into thirds or fifths or any other equal part. The following is a schematic diagram of a section divided into aliquot parts the numbers show the amount of acres represented:

SECTION - 640 ACRES



READING AND WRITING ALIQUOT PARTS

The only fractions that appear in an aliquot parts description of land are $\frac{1}{2}$ and $\frac{1}{4}$. The west half of a section is W $\frac{1}{2}$. The same rule applies to the east half - E $\frac{1}{2}$, the north half - N $\frac{1}{2}$, and the south half - S $\frac{1}{2}$. To describe the quarter-sections it is necessary to add an east or west notation, i.e. SW $\frac{1}{4}$ would read: Southwest $\frac{1}{4}$. All subsequent halves or quarters are shown by adding one complete notation; i.e., SW $\frac{1}{4}$ SE $\frac{1}{4}$. It is extremely important to note that commas are used in the legal description to distinguish between descriptions. A comma in a description is read as "AND", whereas absence of a comma means "of the". For example:

SW $\frac{1}{4}$ SE $\frac{1}{4}$ reads aloud as "SW quarter of the SE quarter".
SW $\frac{1}{4}$, SE $\frac{1}{4}$ reads aloud as "SW quarter and the SE quarter."

In the sample section above, the following describes each tract:

ACRES	DESCRIBED AS	ALIQUOT PART
320	is	S $\frac{1}{2}$
160	is	NE $\frac{1}{4}$
80	is	S $\frac{1}{2}$ NW $\frac{1}{4}$
40	is	NW $\frac{1}{4}$ NE $\frac{1}{4}$
20	is	S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$
10	is	NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ or NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$

The correct use of a comma or its omission is imperative and placement is misleading when reading the description. In all situations the comma or its omission in a legal description will cause problems with the actual legal title and its encumbrances. An excellent example is:

SW1/4, NE1/4 - describes 320 acres
SW1/4NE1/4 - describes 40 acres

~~To read a legal description you begin with the smallest portion and proceed to the largest. For example:~~

Without aliquot parts - Sec. 26, T. 6 S., R. 6 W., PM reads as:

Section 26, Township 6 South, Range 6 West, Principal Meridian

With aliquot parts - W1/2NW1/4NE1/4, Sec. 26, T. 6 S., R. 6 W., PM reads as:

west half of the northwest quarter of the northeast quarter, Section 26,
Township 6 South, Range 6 West, Principal Meridian

FRACTIONAL LOTS

Fractional lots are irregular tracts of land within a section that cannot be described by aliquot parts. They are generally located on the north or west sides of a township or adjacent to lakes, ponds, or rivers that cover a part of a section.

Exhibit 4

Sample Avigation Easement Verbiage

SAMPLE

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

PERMIT, AVIGATION AND HAZARD EASEMENT
AND
AIR RIGHTS AGREEMENT

WHEREAS, the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, P.O. _____ Alaska, 20___, hereinafter called the "GRANTEE", operates and maintains a public airport at _____, Alaska; and

WHEREAS, the GRANTEE must have adequate title interest in and over the lands described herein, in order to protect the approach and departure path and transitional slopes at the _____ end of the _____ Airport; and

WHEREAS, the UNITED STATES OF AMERICA, acting by and through the Superintendent, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, Fairbanks Agency, 101 12th Ave., #16, Fairbanks, Alaska 99701 for, and on behalf of: _____, _____, _____, Alaska 20___, hereinafter referred to as GRANTOR, under authority contained in 209 DM 8 dated November 17, 1981, (*Insert appropriate citation(s)*) and pursuant to the provisions of the Act of February 5, 1948 (62 Stat. 17; 25 USC 323-328); and Part 169, Title 25, Code of Federal Regulations, which by reference are made a part hereof, in consideration of the benefits _____, the receipt of which is hereby acknowledged, does hereby grant to: _____, its successors and assigns, hereinafter referred to as GRANTEE, an easement for right-of-way for the following purposes, specifically: to make, construct, maintain, operate and service an underground utility system; over the land embraced within a right-of-way situated on the following described lands located within Township 23 North, Range 18 West, Umiat Meridian, State of Alaska:

Lot _____, Block _____, as shown in the official plat, Barrow Townsite Survey Number 4615, accepted by the Chief, Division of Engineering for the Director on September 2, 1964; Barrow Recording District, Second Judicial District, State of Alaska,

said easement is limited to and more particularly described as: Said right-of-way to be ___ square feet in area, as shown on Exhibit A, attached hereto, and made a part hereof.

In addition, a temporary construction easement is granted which shall terminate 5 years from the date of this document. This temporary construction easement shall be a strip of land five feet wide, adjoining the permanent easement described hereon and all as shown on Exhibit A attached hereto and by this reference made a part of this instrument.

Grants of Easement for Right-of-Way on Indian Lands
Section 6 – Exhibits

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To have and to hold the said easement and right-of-way unto the GRANTEE and unto its successors and assigns subject to the following provisions:

This easement is subject to any prior valid existing right or adverse claim and is perpetual, so long as said easement shall be actually used for the purpose above specified; PROVIDED, that this right-of-way may be terminated in whole or in part by the GRANTOR for any of the following causes upon 30 days written notice, and failure of the GRANTEE within said notice period to correct the basis for termination (25 CFR 169.20):

1. Failure to comply with any term or condition of the Grant, or the applicable regulations;
2. A non-use of the right-of-way for any consecutive two-year period (for the purpose for which it was granted).
3. An abandonment of the right-of-way, as determined by the BIA.

The condition for this easement shall extend to and be binding upon and shall inure to the benefit of the successors and assigns of the GRANTEE.

IN WITNESS WHEREOF, GRANTOR has executed this grant of easement this ____ day of _____ 20__.

Grantee

Grantee

UNITED STATES OF AMERICA

BY _____

U.S. Department of the Interior
Bureau of Indian Affairs

ACKNOWLEDGEMENT

STATE OF ALASKA)

)ss

Issued: March 6, 2006

**Grants of Easement for Right-of-Way on Indian Lands
Section 6 – Exhibits**

99

____ JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on this ____ day of _____,

20__ by _____

Notary Public, State of Alaska

My commission expires _____

Exhibit 5

Sample Redelegation of Authority Memo

SAMPLE

BUREAU OF INDIAN AFFAIRS
ALASKA REGION
BRANCH OF REAL PROPERTY MANAGEMENT

MEMORANDUM RELEASE NO. RE-00-000 REVISED (Supersedes all previous releases)

Date:

Subject: **Rights-of-Way on Indian lands**

To: All Agencies & Tribal Offices

The statutory authority for granting of rights-of-way on restricted lands is authorized by numerous acts of Congress. The specific authority for this granting is authorized by **(Insert appropriate citation(s))**

and the Acts cited in the text of the CFR. The implementing regulations are contained in 25 CFR Part 169 (Appendix 1) which are explained in 54 BIAM supplement 7 (Appendix 2).

The **delegation to the Regional Director** to act for the Secretary of the Interior's authority under 25 CFR part 169 is: **209 DM 8 dated November 17, 1981 (Insert appropriate citation(s))**

This authority has been **redelegated to the Superintendents at the Fairbanks and Anchorage Agencies** to exercise all authority set forth in 25 CFR 169 in **(Insert appropriate citation(s))**

The delegation of authority is subject to change. Check to see that you have the most current authority before using it.

25 CFR 169 and the guidelines herein set forth are to be followed in all granting of rights-of-way. Careful attention will be given to the mandatory provisions in 25 CFR 169.

This manual contains the guidelines and forms which shall be used (as appropriate) for the granting of rights-of-way across restricted land.

(Name of Regional Director)
Regional Director, Alaska Region

Exhibit 6

Condemnation Actions

CONDEMNATIONS ACTIONS

Step 1: A condemnation action is initiated with the filing of a Complaint in Condemnation, with the United States District Court together with a Notice to Defendants and Order Setting Date for Appointment of Commissioners. Condemnations of Indian lands are authorized pursuant to the provisions of 25 USC 357 and by applicable state laws.

Step 2: Immediately upon notice, request an appraisal of the property sought to be taken so that we may establish just compensation due the Indian owners(s). State in your request specific items of loss to be considered in their report, such as:

- a. Compute compensation due Indian owner(s) for loss of tax exempt status.
- b. Are minerals included?
- c. Check and confirm description.
- d. Will the taking isolate other tracts?
- e. Should the taking area be fenced?
- f. Will intended use by the plaintiff create any health or safety hazards to adjoining lands?
- g. Is the property leased? If so, to whom and for what term. Request that appraiser set out any tenant damages separately.
- h. Is taking in excess of necessity for intended use?

Step 3: Notify Indian owner(s) of pending condemnation action and ask if they wish to be represented by their own counsel or counsel provided by the government.

Step 4: As the Judge may order, ten (10) days after Notice to interested parties of said Application to Appointment Commissioners, the Court shall select and appoint three commissioners who are not interested in a like question and file for the record an Order Appointing Commissioners.

Step 5: Upon receipt of Appraisal, provide Field Solicitor's office the designated liaison of the Superintendent and the U. S. Attorney's office, with same, together with:

- a. Memorandum of facts with any recommendations or requests of the Indian owners(s) to be considered.
- b. Transcript of Title.
- c. Representation form acknowledged by owner(s), private counsel or U. S. Attorney.
- d. Copies of pertinent leases. If tenant is not part defendant, request that counsel petition the court to award tenant damages.
- e. Also, request that the court establish compensation due life tenants or other parties in interest.

- Step 6: If the Indian owner(s) choose to utilize the services of the government counsel or U. S. Attorney, any further inquiry regarding appraised value or facts of litigation will be released only at the discretion of that office.
- Step 7: Report of Commissioners received.
- Step 8: Upon payment of said commissioner's award into court for the intended use and benefit of those entitled thereto, plaintiff shall thereby be authorized to enter upon the premises for which condemnation is sought.
- Step 9: If defendant wished to present a legal challenge to the Report of Commissioners or contest the condemner's right to take, a written exception must be filed with the court not later than 30 days after filing of said report.
- Step 10: A demand for injury trial on the issue of just compensation must be filed with the court within 60 days after filing of said Report. Either plaintiff or defendant may file a demand for jury trial.
- Step 11: If no trial be had thereon, said Commissioner's report shall be confirmed and said premises ordered condemned; but in event of trial, either by Court or Jury, judgment will be entered in accordance therewith and said premises condemned.

Exhibit 7

Administrative Record of Appeals

ADMINISTRATIVE RECORD OF APPEALS

The Administrative record generally consists of the entire lease file. The Interior Board of Indian Appeals must have an administrative record in order to decide an appeal. 43 CFR 4.335 requires BIA to assemble and transmit the record within 20 days after receipt of a notice of appeal, or upon notice from the Board. The requirements discussed below, while specifically addressed to administrative records in appeals before the Board, should also serve as guidelines for preparing administrative records for appeals within BIA.

A. The record must contain:

1. A copy of the decision being appealed.
2. All documents that were before the BIA decision maker.
3. All documents referred to in the decision.
4. All background documents necessary to an understanding of the decision.
EXAMPLE: If an appeal involves interpretation of a tribal constitution, a copy of the constitution is an essential part of the record.
5. Documents should be complete if possible, even though only certain portions of the documents are directly involved in the appeal. If, because of volume or other reason, it is not feasible to include an entire document, the excerpts should be clearly identified as such.
6. Documents that are published and readily available to the public need not be included. (e.g., statutes, regulations published in CFR). Internal BIA directives, including BIA Manual excerpts, should be included, because they are not readily available to the Board or to the parties to the appeal.

B. The documents in the record should be in chronological order unless some other order is more appropriate to the particular case.

C. The record must have a table of contents.

The Board attaches a copy of the Table of Contents to the notice of docketing which it sends to all parties involved in the an appeal. This is the only way most parties have of knowing what is in the administrative record. The Table of Contents should therefore clearly identify the documents referred to.

Example of Table of Contents Entry:

1. Letter from Area Director to Chairman, X Tribe, June 15, 1986, concerning oil and gas lease to Y, with five attachments as follows:

(list attachments separately)

Although the Board will be able to see what these documents are by looking at the record, the parties who only have the Table of Contents will not.

D. The record is available to the parties.

Parties may inspect the record in the custody of the Interior Board of Indian Appeals. Since most parties do not live in the vicinity of the Board's office in Arlington, Va., they must rely on the Table of Contents. The Board tries to assist parties by sending them copies of documents that they do not have, as long as the requests are within reasonable limits. Alternatively, the Board may request BIA to make copies available to parties who request them.

E. The documentation in the record should provide a rational basis for the decision.

1. Plan ahead. Keep copies of written communications concerning the BIA action in a place where they can easily be found in case it later becomes necessary to compile an administrative record. Prepare memos to the file or other written records of oral communications as they occur.
2. If necessary, include affidavits of BIA employees in the administrative record to explain factual matters not otherwise reflected in the record. Contemporaneous documentation of events is preferable, because memories are fallible.

Glossary of Terms

GLOSSARY OF TERMS

ADMINISTRATIVE FEES

Administrative fees are collected pursuant to the regulations, such as 25 CFR 162.241 for agricultural leases. 25 U.S.C. § 415, states that the Secretary is authorized to "... collect reasonable fees to cover the cost of any and all work performed for Indian tribes for individual Indians, to be paid by vendees, lessees, or assignees, or deducted from the proceeds of sale, lease, or other sources of revenue ..." There are additional regulatory provisions regarding how the fees will be collected and where they will be deposited and credited.

ALIQOT PARTS

Strictly speaking, aliquot means contained in something else an exact number of times. The term is used in legal descriptions of rectangular surveys to divide a parcel of land by divisions of one-half or one-quarter section or any further division of that section by equal halves and quarters. Aliquot parts are described in relation to the four points of the compass using the compass abbreviations of N, S, E and W.

APPURTENANCE

Property that is considered incidental to the principal property for purposes such as passage of title, conveyance, or inheritance. Something belonging to something else such as an easement to land. The appurtenance is considered part of the property and passes with the principal property upon sale or other transfer.

ARPA

Archaeological Resources Protection Act of 1979, P.L. 96-95; 93 Stat. 721; 16 U.S.C. 470aa. This Act provides for the protection and management of archaeological resources, and specifically requires notification of affected Indian tribes, especially if the proposed archaeological investigation is within an application for lease or permit and the investigation would result in harm or destruction of any location considered by the tribe to have religious or cultural importance.

ASSIGNMENT

A transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein. It includes transfers of all kinds of property including negotiable instruments. The transfer by a party of all of its rights to some kind of property, usually intangible property such as rights in a lease, mortgage, agreement of sale or a partnership. For example, transfer of a lessee's entire interest in a lease to an assignee through an agreement. The assignee acquires all of the lessee's rights and assumes all the lessee's obligations under the lease.

BASE LINE

In the rectangular survey system, the true east-west line extending from the initial point in both directions. For example, the survey line used in the government survey to establish township lines or the horizontal elevation line used as centerline in a highway survey.

BOND

A certificate or evidence of a debt. For example, a performance bond protects against loss due to the inability or refusal of a lessee to perform certain lease obligations. A bond is furnished by the lessee, or a guaranty of performance is furnished by a third-party surety.

BUSINESS LEASE

Any commercial/business development on trust or restricted lands except for management contracts, joint venture agreements, or other encumbrances of tribal land as covered by 25 U.S.C. § 81, as amended.

BUSINESS VALUATION

The act or process of estimating the value of a business enterprise or an interest therein.

CHAIN OF TITLE

Successive conveyances, or other forms of alienation, affecting a particular parcel of land, arranged consecutively, from the government or original source of title down to the present holder.

CLEAN WATER ACT OF 1972

This act was designed to restore and maintain the chemical, physical and biological integrity of American waters. Any action that constitutes a discharge of certain materials into lakes, streams, rivers, ponds, wetlands, or other waters requires a permit from the Corps of Engineers. The tenant should be responsible for maintaining any and all permits required.

CLOUD ON TITLE or CLOUDED TITLE

An outstanding claim or encumbrance which, if valid, would affect or impair the title of the owner of a particular estate, and on its face has that effect, but can be shown by extrinsic proof to be invalid or inapplicable to the estate in question.

COMPENSATION

Consideration or price of a privilege purchased, for example value given in exchange for a contract.

CONDEMNATION

A process by which the property of a private owner is taken for public use under the power of eminent domain for just compensation.

CONSULTATION STATEMENT

A range of potential market values provided by an appraiser for use with low risk transactions.

CONTRACT

An agreement between two or more persons or parties that creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.

CONVEYANCE

The transfer of legal title to the land or interest in the land from one person, or class of persons, to another.

EASEMENT FOR RIGHT-OF-WAY

A right of use over the property of another that creates an interest in the land, is for limited use or enjoyment, can be protected against third parties, and is not terminable at will by the Indian landowner.

EMANCIPATED MINOR

A person under 18 years of age who is totally self-supporting. For example the person may be married or a person determined by a court of competent jurisdiction to be able to take care of him or herself.

ENVIRONMENTAL ASSESSMENT

A report outlining the quality of the land, determining the potential impact of the proposed activity on the land and if the potential for damage is high, suggesting alternative measures for the action.

ENVIRONMENTAL IMPACT STATEMENT

A document required by federal and state laws to accompany proposals for major projects and programs that will likely have an impact on the surrounding environment.

ESCROW

A writing, deed, money, stock, or other property delivered by the grantor, promissor or obligor into the hands of a third person, to be held by the latter until the happening of a contingency or performance of a condition, and then by him delivered to the grantee, promisee or obligee.

ESTATE

The degree, quantity, nature, and extent of interest which a person has in real property. The term estate is also used to designate the property in which someone owns a right or an interest.

EXECUTE

To complete; to make; to perform; to do; to approve; to carry out according to its terms; to fulfill the command or purpose of. To perform all necessary formalities, as to make and sign a contract, or sign and deliver a note.

FAIR ANNUAL RENTAL/FAIR MARKET RENTAL

The amount of rental income that a lease of trust/restricted Indian owned land would command in an open competitive market.

FAIR MARKET VALUE

The amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. By fair market value is meant the price in cash, or its equivalent, that the property would have brought at the time of taking, considering its highest and most profitable use, if then offered for sale in the open market, in competition with other similar properties at or near the location of the property taken, with a reasonable time allowed to find a purchaser. Usually the

fair market prices will be the price at which bona fide sales have been consummated for assets of like type, quality and quantity in a particular market at the time of acquisition.

FEASIBILITY ANALYSIS

A study of the cost-benefit relationship of an economic endeavor in order to determine if the endeavor is capable of being done, executed, affected or accomplished with reasonable assurance of success. An analysis undertaken to investigate whether a project will fulfill the objectives of the investor. The profitability of a specific real estate project is analyzed in terms of criteria of a specific market or investor.

FEE INTEREST

An interest in land that is owned in unrestricted fee status and is freely alienable by the fee owner.

FRACTIONATED TRACT

A tract of Indian land, a portion of which is in trust or restricted status owned by a tribe or individual in common with other owners. These other owners may own interest(s) in trust status, restricted status, or fee status, each holding undivided interest(s) therein.

FONSI

A Finding of No Significant Impact is a document issued in association with a lease and determines that the lease or permit purpose will have no significant impact on the natural and human environment. This document is based upon the findings of an environmental assessment and is usually provided by local BIA environmental staff.

GPRA

The Government Performance and Results Act (GPRA) of 1993, requires government agencies to submit annual performance plans to Congress along with fiscal year budget requests.

GRANT

To give or permit as a right or privilege; e.g. grant of route authority to a public carrier. The Secretary, as provided by Congress, may grant a right-of-way with the consent of the Indian landowner(s).

GROSS RECEIPTS

Rent is computed as a percentage of the gross business income or revenue of the lessee.

GOVERNMENT OWNED LAND

Land owned by the United States and under the jurisdiction of the Secretary which was acquired or set aside for the use and benefit of Indians and not included in the definition of individually owned land or tribal land.

INDEMNIFICATION

Security against liability for any loss, damage, or injury or claims from a liability, such as those arising from the use of the leased premises, shifting from one person held legally responsible to another person. This security against liability includes all costs and expenses that may be connected with any claim.

INDIAN LAND

Any tract in which any interest in the surface estate is owned by a tribe or individual Indian in trust or restricted status.

INDIVIDUALLY OWNED LAND

Land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

INGRESS/EGRESS

The act of entering on or exiting off the land. The right of ingress and egress may be granted a lessee.

INTEREST

An ownership right to the surface estate of Indian land that is unlimited or uncertain in duration, including a life estate.

LEASE

A written agreement for an agricultural lease, residential lease, or business lease, between Indian landowners and a lessee. The lessee is granted a right to possess Indian land for a specific purpose and duration.

LESSEE

One who rents property from another. The person/entity using the land of another through a lease. This term is used interchangeably with tenant.

LEASEHOLD ENCUMBRANCE

A mortgage, deed of trust, or other lien on the leasehold interest given to secure the repayment of a loan obtained by the lessee.

LEASEHOLD INTEREST

The interest in real property acquired by a lessee to use and profit from that interest.

LESSOR

One who rents property to another; the landowner or entity leasing land to another.

LOT

Any portion, piece, division or parcel of land, usually a fractional or odd shaped tract of land not generally describable by aliquot parts.

MAJORITY INTEREST

More than 50% of the trust or restricted interests in a tract of Indian land.

MASS APPRAISAL

The process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing.

MASTER LEASE

The original approved lease or lease contract. The main lease which governs leases or sub-leases that follow it.

METES AND BOUNDS

A land description that is measured by the limits (metes and bounds) of all courses on the outside boundary of the parcel being described. In legal land descriptions, this measurement is shown as degrees, minutes and seconds. The symbols used in this type of description are:

degrees °

minutes .

seconds .

i.e. 27°53'02" would be read aloud as 27 degrees 53 minutes 02 seconds

MINOR

A person who is under the age of legal competence, usually described as a person under a certain age. In most states, a person is no longer a minor after reaching the age of 18.

MODIFICATION

A change; an alteration or amendment which introduces new elements into the details, or cancels some of them, but leaves the general purpose and effect of the subject matter intact. The instrument used to change a provision of an active lease contract.

MORTGAGE

An interest in land created by a written instrument providing security for the performance of a duty or the payment of a debt. For example, a deed of trust or other instrument that pledges a lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

NAGPRA

Native American Graves Protection and Repatriation Act of 1999, P.L. 101-601; 25 U.S.C. 3001. This Act provides that Federal Agencies must consult with Indian tribes or individuals prior to authorizing the intentional removal of Native American human remains, funerary objects, sacred objects, and objects of cultural heritage. Federal agencies and affected tribes or individuals must agree as to the handling and disposition of "cultural items" as defined by the Act.

NAHASDA

Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), 25 U.S.C. § 4211. Section 702 of this act provides that leases for "housing development and residential purposes" may run for a primary term of up to 50 years (this includes residential leases granted to non-tribal, privately-financed developers).

NEPA

National Environmental Policy Act of 1969, as amended, P.L. 91-190; 83 Stat. 852; 42 U.S.C. 4321. This Act establishes national policy for protection and enhancement of the human environment. As stated in the Act, a portion of the function of the Federal Government, is to “preserve important . . . cultural . . . aspects of our national heritage and maintain whenever possible an environment which supports diversity and variety of individual choice.”

NET LEASE

A lease in which provision is made for the lessee to pay, in addition to rent, other expenses that may include, but are not limited to, taxes, insurance premiums, irrigation operation and maintenance charges, utility costs, and improvement assessments.

NHPA

National Historic Preservation Act of 1966, P.L. 89-655; 80 Stat. 915; 16 U.S.C. 470, as amended in 1980, P.L. 96-515; 94 Stat. 3000; 16 U.S.C. 470a. This Act addresses the preservation of historic properties, including historical, archaeological, and architectural districts, sites, buildings, structures, and objects that are eligible for the National Register of Historic Places. Properties may be eligible in whole or in part because of historical importance to tribes, Alaska Natives, and individual Indians including traditional religious and cultural importance.

NON COMPOS MENTIS

Not sound of mind. A person who has been legally determined by a court of competent jurisdiction to be of unsound mind or incapable of managing his or her own affairs.

NOTARY PUBLIC/NOTARY

A public official appointed under the authority of a state, district, territory, or commonwealth law that gives the individual the power to administer oaths, certify affidavits, take acknowledgments, and attest to the authenticity of signatures.

PERMIT

The revocable right to use the land of another for a specific purpose, usually for a limited period of time. Permits are non-exclusive and not assignable.

PRINCIPAL MERIDIAN

In the rectangular survey system, the true north-south line extending from the initial point in both directions.

RANGE

In the rectangular survey system, a row or tier of townships lying east or west of the Principal Meridian and numbered successively to the east and to the west from the Principal Meridian.

RANGE LINES

True north-south lines approximately six miles apart either east and/or west of the Principal Meridian and of each other that make up the east and west boundaries of each township.

RECLAMATION

The process of bringing economically unusable land to a higher dollar value by physically changing it; e.g. draining a swamp, irrigating a desert or replanting a forest. Measures undertaken to bring about the necessary reconditioning or restoration of land or water that has been affected by exploration or mineral development, mining or onsite processing operations, and waste disposal, in ways which will prevent, or control onsite and offsite damage to the environment.

REMAINDER/REMAINDERMAN

One who is entitled to the remainder of the estate after a particular estate carved out of it has expired. For example: A life estate in a piece of property expires upon the death of the life estate holder and the remainder/remainderman is the rest of the estate owners.

RENTAL/RENT

The consideration paid for use or occupation of property, such as land or buildings.

RESIDENTIAL LEASE/HOMESITE LEASE

A lease for the surface and or development of a parcel, together with improvements thereon, for the purposes of housing.

RESTRICTED FEE LAND OR RESTRICTED STATUS

Title to land which is held by a tribe or an individual Indian subject to restrictions that can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to Federal law.

RIGHT-OF-WAY (ROW)

A non-possessory right of a person, class of persons, or entity to use or pass over the land of another for a specific purpose. The term ROW is often used interchangeably with the term easement.

SECRETARY

The Secretary of the Interior or his/her authorized representative acting under delegated authority.

SECTION

A tract of land, one mile square, within a township containing approximately 640 acres. Approximately 1/36 of a township.

SECTION LINES

North-south and east-west lines that are respectively parallel to and at intervals of one mile from the eastern and southern boundaries of each township.

STATUTE

A law enacted by a legislative body (e.g. the U.S. Congress, a tribal government, or a local or State legislature, etc.)

SUBLEASE

A written agreement by which the lessee grants to an individual or entity a right to possession no greater than that held by the lessee under the master lease.

§

Section. For example: 25 U.S.C. § 476, would be read as Title 25 U.S.C. Section 476.

TOWNSHIP

A tract of land contained within the boundaries of the north-south range lines and the east-west township lines containing approximately 36 square miles or approximately 23,040 acres.

TOWNSHIP LINES

The east-west lines that run on a true parallel approximately six miles apart and make up the north and south boundaries of each township.

TRESPASS

Any unauthorized possession, occupancy, or use of trust/restricted land.

TRIBE

A band, nation, community, group or pueblo of Indians.

TRIBAL LAND

The surface estate of land or any interest therein held by the United States in trust for a tribe, band, community, group or pueblo of Indians, and land that is held by a tribe, band, community, group or pueblo of Indians, subject to federal restriction against alienation or encumbrance, and includes such land reserved for BIA administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under Section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. § 476). In some instances, tribal fee land may be subject to Secretary approval for leases (Lummi vs. USA 9th Circuit Case and 25 U.S.C. 177).

TRIBAL LAW

The body of law that governs land and activities under the jurisdiction of a tribe, including ordinances and other enactments by the tribe, tribal court rulings, and tribal common, custom or traditional law.

TRUST LAND

Any tract or interest therein, that the United States holds in trust status for the benefit of a tribe or individual Indian.

USPAP

The Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Standards Board of the Appraisal Foundation to establish requirements and procedures for professional real property appraisal practice.

List of Acronyms

LIST OF ACROMYNS

The following list of acronyms and terms are not all used in this handbook. We have included several acronyms commonly used in a Realty office.

A & E Cards	Allotment and Estate Interest Cards
ADM	Attorney Decision Maker
AIARMA	American Indian Agricultural Resources Management Act
AIPRA	American Indian Probate Reform Act
ALJ	Administrative Law Judge
APAL	Annual Performance, Acreage, and Lease Report
ATSC	Alaska Title Services Center
AUM	Animal Unit Month
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
CAT. EX. or CAT or CX	Categorical Exclusion
CFR	Code of Federal Regulations
CO	Central Office, BIA - Washington, DC
DOB	Date of Birth
DOD	Date of Death
DM	Departmental Manual
DOI	Department of the Interior
EA	Environmental Assessment
EIS	Environmental Impact Statement
E-FOIA	Electronic Freedom of Information Act
EFT	Electronic Funds Transfer
E.O.	Executive Order
ESA	Endangered Species Act
FFS	Federal Finance System
FOGRMA	Federal Oil and Gas Royalty Management Act
FOIA	Freedom of Information Act
FONSI	Finding of No Significant Impact
FR	Federal Register
FRC	Federal Records Center
GMAR	Guaranteed Minimum Annual Rental
GPRA	Government Performance Results Act
HUD	Department of Housing and Urban Development
IAM	Indian Affairs Manual
IBIA	Interior Board of Indian Appeals
IBLA	Interior Board of Land Appeals
IIM	Individual Indian Monies Account
IFA	Indian Finance Act
IRMS	Integrated Records Management System
LCIR	Lease Compliance Inspection Report
LSR	Land Status Report (this term used in Alaska)
LRIS	Land Records Information Systems

LTRO	Land Titles and Records Office
NAHASDA	Native American Housing Assistance and Self-Determination Act
NARA	National Archives and Records Administration
NEPA	National Environmental Policy Act
OHA	Office of Hearings and Appeals
OIRM	Office of Information Records Management
OST	Office of the Special Trustee for American Indians
OPAC	Online Payment and Collection System
OTFM	Office of Trust Funds Management
OTR	Office of Trust Responsibilities (BIA)
	or
	Office of Trust Records under the office of OST
P.L.	Public Law
RDRS	Royalty Distribution and Reporting System
ROW	Right-of-Way
SDA	Special Deposit Account (OTFM)
STAT	Statute
TAAMS	Trust Asset and Accounting Management Systems
TIN	Taxpayer Identification Number

CLASS	REALTY RIGHT-OF-WAY AGENT
CODE RANGE:	5229-24
DATE:	04/23/03 bgstrong

POSITION DESCRIPTION

TITLE: REALTY RIGHT-OF-WAY AGENT
CLASSIFICATION:
LOCATION: YAKAMA NATION REAL ESTATE SERVICES
STATUS: EXEMPT

DESCRIPTION OF DUTIES:

All duties performed by this employee are in carrying out the trust responsibilities in the Real Estate Services Program, CTP11T122437, Scope of Work, 25 CFR, and 43 CFR, and other applicable federal and tribal laws, regulations, resolutions and land use plans. As such, all documents created by this office become the property of the United States.

This is not a (career-ladder) position. The Realty function on this position will be solely in Rights-of-Way (R/W) and easements.

The employee functions in the Realty Office with responsibility for the technical accuracy and legal sufficiency of all types of transactions and documents concerning Right-of-way and easements across Indian trust lands. Negotiates rights-of-way and easements for power lines, service lines, pipeline, telephone or telegraph lines, radio and television, or other communication facilities and tribal or public highways.

The employee must understand fractions and decimal interests. Must be able to compute, divide, and distribute or insure correct payment. Employee will also be required to explain the interest to landowners who may not comprehend fractions and decimals. Also, employee must understand and interpret appraisals concerning right of way schedule of damages and interpret the rules, regulations, and directives contained in 25 Code of Federal Regulations, 43 Code of Federal, and other federal tribal and other laws concerning rights of way and easements over and across Indian trust lands.

SUPERVISION RECEIVED:

Employee will work under the supervision of the Realty Officer who counsels with regard to established policies and administrative procedures, assuring coordination of work with other functions and offices within agency, both BIA and Tribal. Work will be evaluated in terms of accomplishment of the objective to the satisfaction of the landowner, grantee, and final document approval to payment deposited to landowners.

SUPERVISION EXERCISED:

Will have technical supervision over a Realty Technician. Will review tasks which were assigned to Realty Technician.

GUIDELINES:

Code of Federal Regulations, Bureau of Indian Affairs Manual, Area and Agency Memorandum of Instructions, Secretarial and Central Office Memorandums and directives, all federal and tribal regulations affecting land use, zoning, and rights of way and easements.

COMPLEXITY:

Acts as reviewing and recommending officer, therefore must assure completeness and accuracy, adherence to regulations, of all types of rights of way and easement documents, and insure adequate financial compensation, or other types of compensation are in line with fair market appraisals. Must review ownership record to insure correctness, check for tribal, estate, or life use interests, as well as type of ownership, joint tenancy or tenants with right of survivorship, and any other ownership, such as fee interest, etc.

Will provide professional assistance to tribal officials having responsibility of approving easements, as well as explaining ownership to individuals and tribal officials, and the long term effect of said right of way or easement. Will adhere to air quality, control, environmental and other issues pursuant to federal, state and tribal statutes and rules.

Will review proposals and consider land use plan, flood plain, zoning, and other agricultural, home-site, and potential future use.

WORK ENVIRONMENT AND PHYSICAL DEMANDS:

A majority of the time will be spent in an office which is heated, lighted, and ventilated. And work performed in the office may require walking, lifting plat books, file folders, office supplies or equipment. However, employee may be required to walk over agricultural, range, or mountainous timbered area. Will check proposed use in the field to view neighboring lands, creeks, other rights of way, and evaluate impact. Will inspect those rights of way construction projects during construction to insure that any objects being placed are within the right of way area surveyed and approved. Employee will be responsible for taking proper care, wearing appropriate clothing, and use judgment and safety precautions when required.

EXAMPLES OF WORK:

Rights of Way and Easements: Will accept applications, draft surveys, and estimate of value from applicant, will see that owner consents are prepared and mailed with appropriate letter of explanation, request and appraisal of taking, and prepare draft documents. and recommendations to Realty Officer prior to Superintendents approval.

KNOWLEDGE, SKILLS, AND ABILITIES:

Knowledge of all requirements in Real Estate, including 25 Code of Federal regulations, 43 Code of Federal regulations, Executive Orders, and memoranda, Bureau of Indian Affairs Manual, and all tribal resolutions, laws, and accepted customs applicable to management of Indian trust land.

Knowledge of supervision, tribal personnel manual and other personnel directives in order to be an effective leader and supervisor.

Knowledge of appraisal requirements for determining scheduled of damages.

Knowledge of land legal descriptions and Geographical Information Systems.

Knowledge of Yakama Nation traditions, customs and practices.

Skill in oral and written communication.

Skill in supervisory techniques, adverse actions, and promotional opportunities.

Skill in use of personal computer software, and other office equipment.

Skill in managing a complex diversified office work force.

Ability to work in a stressful environment, and respond to clients who may be hostile and /or cognizant of services they are entitled to.

Ability to plan the workflow, evaluate progress, and provide timely reports as required.

Ability to proofread; check for adherence to law and policy, and to see that documents R/W are finalized.

Ability to work independently and on own initiative.

GENERAL RECRUITING INDICATORS:

Minimum:

College degree, or four years or more documented satisfactory experience in R/W and easements. Other documented experience in a position with similar responsibility may be used after evaluation such as with natural resources, land use planning, appraisal, forestry, credit or other technical position where work was done on R/W and easements. Must be able to pass a drug and alcohol test as a required by Yakama Nation Personnel manual.

Must be able to pass and extensive criminal background check required by BIA for working with trust assets.

Must have a Washington State driver's License and be able to get a Tribal Drivers license.