



PROCEDURAL HANDBOOK

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

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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**

TO: REGIONAL SUPERVISORY APPRAISER,
REGION

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

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

AGRICULTURAL	RECREATIONAL	RESIDENTIAL	COMMERCIAL / INDUSTRIAL
C () PRODUCTION HISTORY	_____ NO. OF FRONT FEET	() PURCHASE	() FINANCIAL
H () IRRIGATABLE ACRES AND/OR	ON LAKE/RIVER	AGREEMENT/	STATEMENTS
E WATER RIGHTS DATA	() PURCHASE	CONTRACT	() PURCHASE
C () PURCHASE AGREEMENT/ CONTRACT	AGREEMENT/	() PHYSICAL DATA OF	AGREEMENT/
K () CARRYING CAPACITY (AUM'S)	CONTRACT	STRUCTURE, E.G., AGE,	CONTRACT
L () WATER SOURCE: SPRING, PUMPS,	() STUMPAGE VALUE	FLOOR PLAN, ETC.	() FLOOR PLAN
I 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

FOR 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



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

88
Copy - RES Staff

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) 208-5831.

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 :

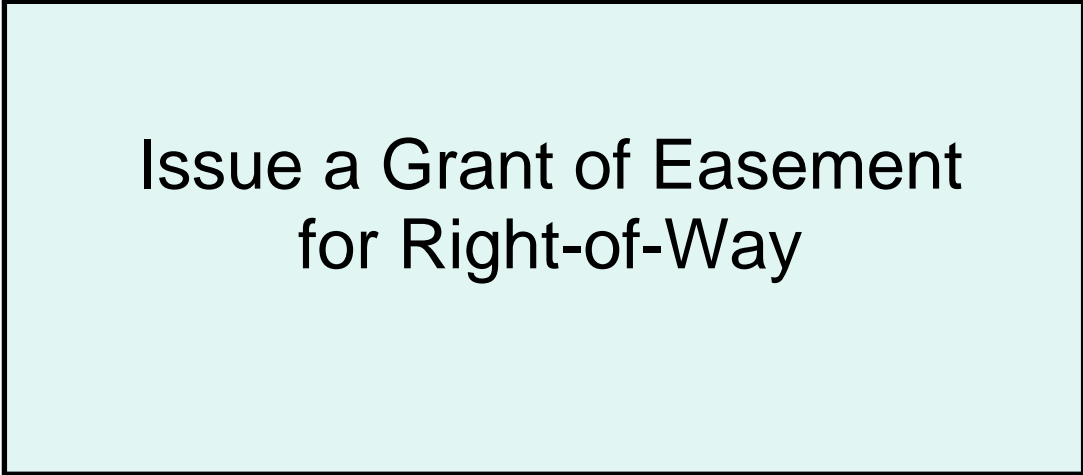
: ss.

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

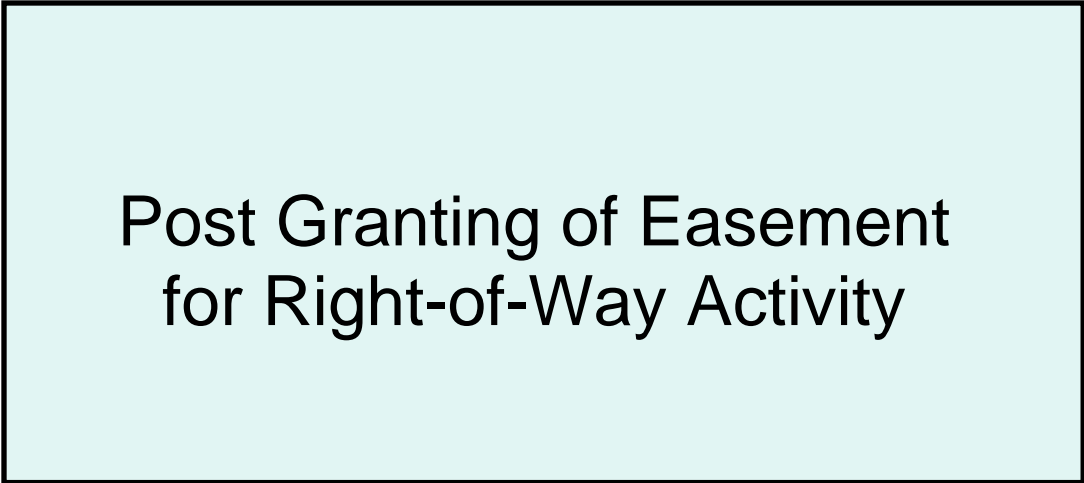
Certificate of Completion

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.

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 Redelelegation 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.

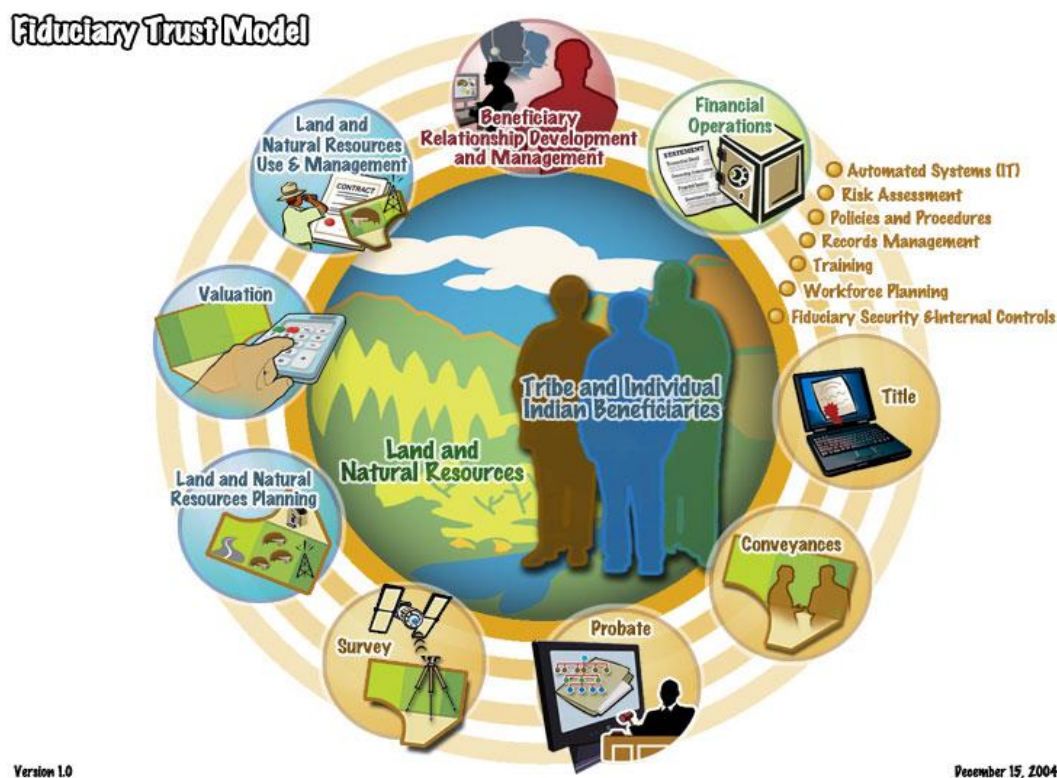


Exhibit 2

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

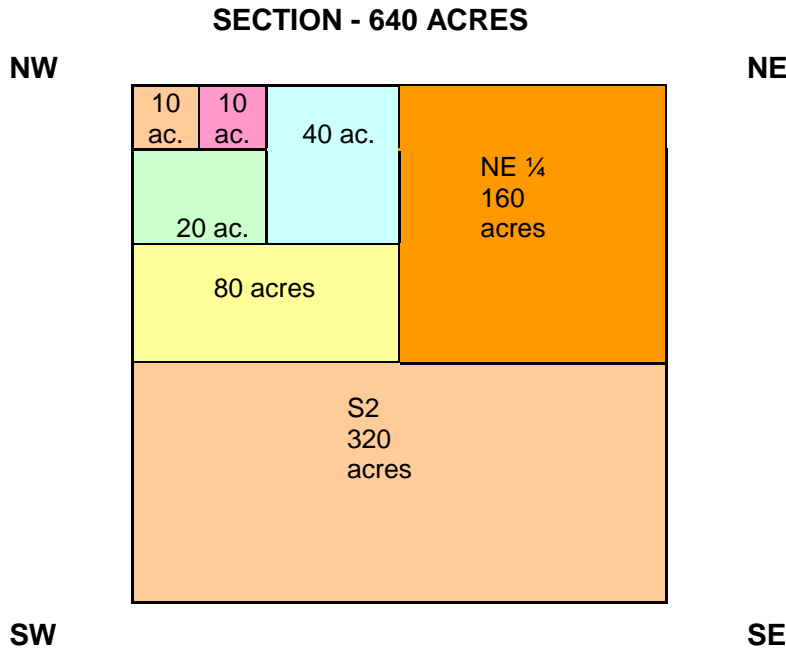
Within the rectangular survey system, Township lines are established at intervals of six miles to the north and south of the Base Line. Accordingly, Range lines are established at intervals of six miles to the east and west of the Principal Meridian creating a six mile square also called a Township. 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:



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

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

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

101

_____ 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.

ALIQUOT 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