

RIGHTS-OF-WAY ON INDIAN LANDS HANDBOOK

52 IAM 9-H




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#22-01, Issued: 1/10/22
New

FOREWORD

This handbook provides guidance to Bureau of Indian Affairs (BIA) Division of Real Estate Services (DRES) personnel (Realty staff) in preparing, reviewing, and processing a grant of right-of-way (ROW) across land(s) held in trust or restricted status by the United States of America for the beneficial use of an individual Indian trust landowner(s) and/or a federally recognized Tribe(s). Trust lands are administered under the jurisdiction of the BIA. The corresponding Indian Affairs Manual (IAM) chapter, 52 IAM 9: Processing Rights-of-Way, provides the general authorities and responsibilities, and is the official policy for processing ROWs on Indian land.

This handbook does not cover all scenarios that may happen in the field, and is not intended to create additional requirements above what is required by the regulations governing ROW under 25 CFR 169.

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Chapter 1: Purpose

The purpose of this handbook is to provide guidance to BIA staff on processing ROWs on trust or restricted land; specifically, how to review and analyze a ROW application request from an applicant using a streamlined and standardized process.

To assist staff throughout this process, this handbook includes additional definitions that are not found in the applicable Code of Federal Regulations (CFR). All references to “days” within this handbook are to business days, unless otherwise specified. Additionally, all references to “agency” and “region” within this handbook are to the applicable BIA agency and/or region. Finally, for the purposes of this handbook, all references throughout to a “grant of easement” are considered to be the same as a “grant of ROW easement”.

The following items will be addressed in more detail in the following pages:

- ROW documents required from the applicant
- Requesting a certified Title Status Report (TSR)
- Process for reviewing a ROW application
- Completion of the BIA ROW checklist for the required documents
- Review of the applicant’s appraisal
- Reviewing certified TSRs for land status and encumbrances
- Preparing the Regional Director’s or Agency Superintendent’s Decision Letter
- Recording process in the Land Titles and Records Office (LTRO)
- Actions taken in the event of amendments, assignments, and mortgages

A list of all forms, templates, and checklists referenced throughout this handbook is found in Attachment 2. The forms, templates, and checklists themselves are posted on the IA Online Forms webpage here: <https://www.bia.gov/policy-forms/online-forms> (select the “Indian Affairs Specific Forms and Guidance” tab, and scroll down). Certain forms/templates may be modified to address special circumstances in a region. However, any changes to any form/template should be reviewed by a local Solicitor’s Office for regulatory compliance.

Applicants are required to use BIA’s Right-of-Way Application form (Office of Management and Budget (OMB) Control Number: 1076-0181). This application is also found online on the IA Online Forms webpage here: <https://www.bia.gov/policy-forms/online-forms> (select the “IA Paperwork Reduction Act (PRA) Forms” tab, and scroll down by OMB Number). The ROW application itself **may not** be modified.

Chapter 2: Overview

The Federal Government's fiduciary responsibility on behalf of Indian landowners is to protect and conserve the resources on trust and restricted land, including the land itself. Through compliance with the trust duties in statutes and regulations in the best interest of the Indian beneficiaries, the Federal Government uses conservation and best management practices to regulate appropriate use and development of Indian trust lands, ensure the highest and best use of the resources whenever possible, and protect against misuse of property for illegal purposes. Grants of ROW assist in the protection of trust and restricted fee lands (together, "Indian lands") from inappropriate development and unregulated use.

An easement for ROW creates a non-possessory interest in land owned by another person, consisting of the right to use or control the land, on an area above or below it, for a specific limited use or enjoyment; can be protected against third parties; and is not terminable at will by the Indian landowner(s). However, title to the property remains with the landowner(s) regardless of how a ROW encumbers the title. Easements can be created by a grant, reservation, agreement, Tribal Authorization, or an Act of Congress.

Easements granted by the BIA over trust lands, or by the Tribe (not requiring a grant by BIA) over Tribal trust lands, will be submitted to the BIA for its records and for recordation by the LTRO. However, most ROWs are granted as an easement by the Secretary of the Department of the Interior (DOI) (as redelegated down to the appropriate Indian Affairs (IA) approving official) pursuant to the Act of February 5, 1948 (25 U.S.C. 323-328), with consent of the Indian landowner(s) (or consent supplied by the Secretary in certain cases).

A ROW request must be in writing and this process starts with an applicant submitting the approved BIA Right-of-Way Application form (OMB Control Number: 1076-0181). The process and preparation of a grant of ROW easement involves a thorough investigation of all aspects of the property, ownership, boundaries, and potential conflicts with statutes, laws, and regulations. 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 the Findings and Recommendation for Decision, which provides the necessary background required for the delegated authority to make an informed decision in approving or disapproving a grant of ROW easement. There is no specific form or template required for documenting this recommendation; a memo from Realty staff to the approving official will suffice. The investigation and recommendation become 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 an application request.

2.1 Title to the Land

Title to trust land(s) 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 of America in trust for *name of Tribe (from Federal Register published list of Tribal Entities Eligible to Receive Services)* or *individual*."

Restricted fee title held by a Tribe(s) or an individual Indian(s) means that the land is subject to restrictions against sale without BIA approval. The land can only be alienated or encumbered by the owner with the approval of the Secretary of the Interior because of limitations contained in the conveyance instrument pursuant to federal law.

The Federal Government's fiduciary responsibility, under 25 U.S.C. 5, 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 LTRO in accordance with 25 CFR 150. LTRO is also responsible for issuing a certified TSR verifying ownership and any or all restrictions, encumbrances, and/or limitations.

2.2 Types of ROWs/Easements

BIA will act on requests for a ROW using the authority in 25 U.S.C. 323-328, and rely on supplementary authority such as 25 U.S.C. 2218, where appropriate.

This section covers ROWs under the current 25 CFR 169 regulations, including those over and across Indian or BIA lands, as well as ROWs authorized under different regulations for specific programs and other types of ROWs including, but not limited to, the following scenarios (note that not every entry has additional explanation after it):

1) Railroads (authorized under 25 U.S.C. 312-318)

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.

This statute is only discussed here for pre-1948 ROWs or ROWs that are specifically under this statute. This statute is not to be used for new ROWs under the current regulations.

2) Public roads and highways

- Transportation Projects on Tribal Lands

While the ROW regulations do not affect a Tribe's ability to dedicate Tribal land for certain uses, including transportation, the grant of an interest to use trust or restricted fee land to third parties for such uses does require a ROW. The regulations support Tribal self-determination and

self-governance by acknowledging and incorporating Tribal law and policies in processing a request for a ROW across Tribal lands, and defer to the maximum extent possible to Indian landowner decisions regarding their land.

The regulations do not apply if the Tribe grants a ROW to a wholly owned Tribal entity over Tribal land; however, such right should be recorded with the LTRO for the Tribe's record. The Tribal ROW should meet the recording standards of LTRO.

- Tribal Transportation Program (TTP) under 25 CFR 170

The TTP (formerly the Indian Reservation Roads Program) is authorized under Chapter 2 of Title 23 and governed by regulations published at 25 CFR 170. The TTP's foundation is the National Tribal Transportation Facility Inventory (NTTFI) that includes public roads and other public transportation facilities within or providing access to Tribal lands that are "eligible for assistance under the [TTP]" (25 CFR 170.114(a)).

In part, NTTFI data identifies the public authority that is responsible for maintaining a public road or transportation facility. A "public authority" is a "Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free [public roads and transportation facilities]" (25 CFR 170.5). A "public road" is "any road or street under the jurisdiction of and maintained by a public authority and open to public travel" (25 CFR 170.5).

Transportation and other officials generally use the term "owner" or "road owner" when referencing the public authority that is responsible for operating and maintaining a particular road or transportation facility. While the NTTFI identifies an owner that is responsible for maintaining each listed road or transportation facility, its purpose is limited to establishing eligibility for assistance using TTP funds. NTTFI data should not be used for determining real property ownership, nor whether a ROW is needed or if it exists. In all instances, the Trust Asset and Accounting Management System (TAAMS) should be used to verify realty data, including real property ownership and the existence of a ROW.

Accordingly, the TTP regulations defer to 25 CFR 169 to determine whether a ROW is needed for a construction project (25 CFR 170.460). If a ROW is needed, the TTP regulations require that it be in place before commencement of construction activities (25 CFR 170.460).

3) Access roads

An access road provides an ingress and egress to an applicant's valid easement. The term "access roads" under 25 CFR 169 is separate and apart from how the term "access road" is defined and used in the TTP regulations at 25 CFR 107.5.

The appropriate state or local authority may have applied under the Public Highways Authority (25 U.S.C. 311) to open public highways across Tribal and individually owned lands in accordance with the laws of the state or territory prior to the passing of 25 U.S.C. 323-328. This

statute is only discussed here for pre-1948 ROWs or ROWs that are specifically under this statute. This statute is not to be used for new ROWs under the current regulations.

- 4) Services roads and trails, even where they are appurtenant to any other ROW purpose**
- 5) Public and community water lines (including pumping stations and appurtenant facilities)**
- 6) Public sanitary and storm sewer lines (including sewage disposal and treatment plant lines)**
- 7) Water control and use projects (including but not limited to, flowage easements, irrigation ditches and canals, and water treatment plant lines)**
- 8) Oil and gas pipelines (authorized under 25 U.S.C. 321) (including pump stations, meter stations, and other appurtenant facilities)**

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 52 IAM X-H: Fluid Mineral Estate Procedural Handbook. This statute is only discussed here for pre-1948 ROWs or ROWs that are specifically under this statute. This statute is not to be used for new ROWs under the current regulations.

- 9) Electric transmission and distribution systems (including lines, poles, towers, telecommunication, protection, measurement and data acquisition equipment, other items necessary to operate and maintain the system and appurtenant facilities)**

- 10) Telecommunications, broadband, fiber optic lines (authorized under 25 U.S.C. 319)**

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. This statute is only discussed here for pre-1948 ROWs or ROWs that are specifically under this statute. This statute is not to be used for new ROWs under the current regulations.

11) Avigation hazard and air rights easements

Avigation hazard easement is an easement or right of overflight in the vicinity of a particular property, acquired by government through easement, purchase, or condemnation from the owner of land adjacent to an airport, to the use of the air space above a specific height for the flight of aircraft. Federal, state, and local governments are required by the Federal Aviation Administration (FAA) to obtain these easements for aircraft safety approach zones.

Avigation hazard easements are obtained using the same means associated with most ROW processes. The legal land descriptions for avigation hazard easements define a “zone” of activities that allow the unobstructed ingress and egress through a landowner’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 their 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 hazard easements are a good example of the flexibility of ROW easements under 25 CFR 169, and are granted on a case-by-case basis. Realty Specialists may need to consult with senior Realty staff or the regional or field Solicitor’s Office for assistance.

Air rights easements are more commonly used in Alaska on native allotments due to the number of small rural airports that are located within or on native allotments because of roadless access to most Alaska allotments. Air rights easements are unique in Alaska, utilizing a Memorandum of Agreement (MOA) between agencies instead of a traditional ROW easement. The MOA is tailored to meet the needs and approval from the state of Alaska and the FAA. The MOA is executed in the same manner as a grant of easement for ROW.

12) Conservation easements not covered by 25 CFR 84, Encumbrances of Tribal Land – Contract Approvals, or 25 CFR 162, Lease and Permits

A conservation easement is an agreement between a landowner(s) and another party which either restricts the development of a tract of land or a portion of it. In the agreement, the landowner gives up certain rights associated with the tract of land, such as development rights or timber rights, either for a specific period of time or on a permanent basis. A conservation easement can be used to retain or protect natural, scenic, or open space values of real property; to assure its availability for agricultural, forest, recreational, or open space use; to protect natural resources; or to maintain or enhance air or water quality of real property. The conservation easement should be held by a federal, Tribal, state, or local government agency or a land trust.

A conservation easement may also be authorized by 25 CFR 84 or 25 CFR 162 (in addition to 25 CFR 169), depending on the terms and conditions of the agreement between the parties.

13) Temporary Construction Easements (TCE)

A person or legal entity who is not an Indian landowner must obtain an approved ROW grant to cross Indian land for any temporary use, such as a TCE.

TCEs are for areas outside of the permanent easement for a specific temporary purpose, such as staging an area for equipment and/or materials required for construction, not to exceed a specific period of time. It is recommended that a TCE be issued by a separate grant of ROW easement document and should not be included as part of the permanent grant of easement document.

14) Any other new use for which a ROW is appropriate but is unforeseeable as of the date of the regulations

The approval of a grant of ROW easement includes the right for the grantee to access the ROW to manage vegetation; inspect, maintain, and repair equipment; and conduct other activities that are necessary to maintain that ROW use.

2.3 Other Types of Easements under other Statutes and Authorities

1) Indian irrigation project easements

Part 50 of the IAM discusses the purpose, policy, authority, and guidance associated with BIA irrigation projects. For a complete list of the statutes, judicial decrees, and regulations related to BIA irrigation projects, please refer to these IAMs. If an easement is required over trust lands for an Indian irrigation project, the congressional authority authorizing acquisitions of easements for the project should be reviewed. Any additional taking of land after 1964 for irrigation purposes requires compensation to the underlying landowners in accordance with 25 CFR 169.

2) Utility corridors

Utility corridors are broad utility-specific land use designations that are given to construct and maintain utility facilities in, upon, along, across, and under the lands in which they are authorized to operate. The utility corridor typically includes public utilities such as electric transmission lines, fiber optic lines, water lines, sewer lines, gas lines, and associated appurtenances and facilities. A Tribe may designate a utility corridor under Tribal law. The specific lines within the corridor would require the grant of a ROW.

3) Power projects

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 under the Federal Power Act (FPA). The FPA requires that these licenses be 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 Energy Regulatory Commission (FERC), who in turn will request Secretarial participation for the necessary

protective conditions as described in 25 CFR 169.1(c), which state:

“(c) This part does not cover right-of-way over or across tribal lands within a reservation for the purpose of Federal Power Act projects, such as constructing, operating, or maintaining dams, water conduits, reservoirs, powerhouses, transmission lines, or other works which must constitute a part of any project for which a license is required by the Federal Power Act.

(1) The Federal Power Act provides that any license that must be issued to use tribal lands within a reservation must be subject to and contain such conditions as the Secretary deems necessary for the adequate protection and utilization of such lands (16 U.S.C. 797(e)).

(2) In the case of tribal lands belonging to a tribe organized under the Indian Reorganization Act of 1934 (25 U.S.C. 476), the Federal Power Act requires that annual charges for the use of such tribal lands under any license issued by the FERC must be subject to the approval of the tribe (16 U.S.C. 803(e)).”

4) Fee easements

The regulations at 25 CFR 169 are not applicable to fee easements over fee lands. BIA will not take any action to grant a ROW across fee land or fee interests in trust or restricted land under 25 CFR 169.

However, if an easement over fee lands is acquired for the benefit of the United States or BIA (i.e., for BIA roads or an Indian irrigation project), the easement acquisition will be in accordance with Department of Justice (DOJ) Title Standards and with 303 Department Manual (DM) 7, Standards for Indian Trust Lands Boundary Evidence.

5) Appurtenant easements (non-exclusive)

Ownership of the granted 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.

6) Easements in gross (exclusive)

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

1. Personal Easement in Gross - The easement is the personal right of a person(s) 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 if the use is for the same purpose. The easement may also be divided into fractional interests.

7) FERC licensing

The FERC is authorized to issue licenses for hydropower projects upon any part of the public lands and reservations of the United States, as long as it's determined that the license would not interfere or be inconsistent with the purpose for which such reservation was created or acquired. The FERC license is exempt from BIA's ROW regulations.

In order to assist FERC, the federal agency with jurisdiction over the reservation (i.e., BIA) can submit the conditions deemed necessary for the protection and utilization of the reservation to be included as a condition to the license. Any concerns should be addressed by the Tribe. The filing of a map of definite location of the license will be recorded at BIA's LTRO.

FERC is required to identify a reasonable annual charge for the use of Tribal lands within the Indian reservation and requires the approval of the Tribe.

The Realty staff should request a copy of the FERC license, with an associated map of definite location, so it can be recorded with the LTRO.

8) Irrigation

The Realty staff should work in cooperation with the applicable Indian irrigation project, regional Realty Officer, and Solicitor's Office to obtain any necessary easements over fee lands for the BIA by following the DOJ's Title Standards for the acquisition of land or interests in lands for terms of more than 30 years. The 25 CFR 169 regulations are not applicable to fee easements.

Any new easement for an irrigation project on Indian or BIA land, which includes, but is not limited to, canals, ditches, access roads, bridges, electric lines, pump stations, wells, etc. will follow the procedures outlined for any new ROW under 25 CFR 169. The Realty staff should familiarize themselves with any congressional authorizations for the Indian irrigation project and

applicability of the Canal Act of 1890 (ditch and canal reservation in patent) listed on allotments located within the agency's jurisdiction.

If the ditch and canal reservation in patent is found to be applicable, any additional ROW required by the irrigation project will still need to meet the requirements of 25 CFR 169.

Chapter 3: Pre-application Procedures

The procedures, documents, and timeframes in this section should be discussed with the proposed applicant *prior* to the submission of a ROW application (see also Attachment 1: General Flowchart to Obtain ROW). Whether it be temporary (e.g., TCE), limited in duration, or permanent in nature, the documentation for any grant of ROW easement approved by the BIA is the same.

3.1 Pre-Application Process

The following documents, including the review and approval timeframes required, should be discussed with the applicant. These documents may require a separate review and approval as well:

- Survey plat and legal description - Bureau of Land Management (BLM) Indian Land Surveyor (BILS)
- Appraisal - Appraisal and Valuation Services Office (AVSO)
- Environmental documentation - BIA National Environmental Policy Act (NEPA) Coordinator
- Cultural resources documentation – BIA Regional Archaeologist

Note: Some of the steps provided within this section may occur at the same time.

3.1.1 Step 1 – Applicant Initiates Contact

The applicant is responsible for initiating a request to obtain a grant of ROW easement to the BIA agency that has jurisdiction over lands held in trust or restricted status. The applicant will notify the BIA in writing (by letter, email, or fax) that he/she is requesting information to obtain a ROW. The written request should include the following:

1. purpose of the proposed ROW;
2. duration (term and renewal, if necessary) of the proposed ROW;
3. legal description (township, range, section(s) affected by the proposed ROW);
4. applicant’s contact information (phone(s), address, and email);
5. request for a public TSR and owner(s) name and address(es); and
6. if needed, may request BIA to correspond by email.

3.1.2 Step 2 – BIA Responds to Applicant

BIA will reply in writing (i.e., via letter or email) to a ROW application inquiry within five days. The response will include the following documents to assist the applicant in submitting an application for ROW:

- Application for Grant of ROW*;
- Applicant's Notice of Letter of Intent (LOI) Template that may be used by the applicant to notify landowners and the Tribe of their intent to apply for a ROW, and to obtain the landowner's consent to access Indian land to prepare additional information required by the application process;
- TSR (Public Version) from TAAMS;
- Landowners' name(s), address(es), and percent of interest from the TAAMS Tract Owners Address Interest Report; and
- Tribe's contact information to obtain Tribe's consent and applicable requirements.

* As mentioned in Chapter 1, all applicants must use BIA's Right-of-Way Application form (OMB Control Number: 1076-0181).

The following information should also be provided, if necessary:

- AVSO contact information to discuss appraisal requirements;
- BIA agency and/or Tribe's Environmental and Cultural Services contact information to initiate NEPA and section 106 processes; and/or
- An example of the survey plat requirements.

3.1.3 Step 3 - Pre-Application Meeting/Discussion with the Applicant

A meeting or discussion with the applicant, by phone, email, or in-person meeting should be conducted if needed. Preliminary discussions with the applicant may be necessary depending on the type of ROW and circumstances. The Tribe and individual Indian landowner(s) may be included in the pre-application process discussion, if requested. If not, the BIA staff will provide the ROW requirements and process to the applicant for completion.

The following pre-application topics should be discussed with the applicant. Information provided during the preliminary discussion will assist the applicant in preparing the necessary supporting background documentation to submit a complete ROW application package.

A. Application and/or LOI

The applicant will need to notify *all* landowners using a LOI of his/her intent to apply for a ROW and request the landowners' consent to access Indian land to prepare information (i.e., land survey, biological/cultural/environmental survey, etc.) required by the application.

The LOI can also serve as the record of notice requirement as required by 25 CFR 169.102(b)(4). The record of notice requirement may be fulfilled by the applicant providing a copy of the LOI(s), or self-certify that notice was sent to all landowner(s), which should include a copy of the LOI, the date it was sent, and a list of owners that were given notice.

The applicant should provide documentation of consent to access the property granted by the Indian landowner(s)/Tribe. This could be in the form of a Tribal Resolution, Tribal letter, Tribal permit, landowner consent form, signed LOI form, etc.

The applicant may provide a courtesy written notice at least two weeks in advance to the local agency and/or Tribe when accessing Indian trust lands. When the two week notice is received, the BIA Realty Specialist will notify appropriate contacts (i.e., Realty Officer, Superintendent, Natural Resources, rangers, police, Compliance Officers, BILS, and Tribal contacts, etc., if needed).

B. Land ownership reports

The Realty staff will use TAAMS to provide the applicant with a public TSR for each tract proposed to be encumbered by the ROW, and a TAAMS Tract Owners Address Interest Report. In addition, the Realty staff will explain to the applicant the different types of ownership interest:

1. Life Estate (LE) and remainderman (“Title” and “Beneficial”) interests – The applicant must obtain both the life tenant (beneficial interest) and a majority of the remainder interest known. The Realty staff should identify and highlight the life tenant and associated remainder interest(s) for each tract (25 CFR 169.107-109) in order for the applicant to be aware of obtaining the requisite consent of remainder for each LE.
2. Fee interest – The fee interest holders will not be considered as part of the consent and compensation requirements. It is the applicant’s responsibility to contact and compensate any fee interest owners directly.
3. Estate – The Realty staff should identify the estate’s heir(s) who are undetermined. The applicant should be informed that if any new owners are determined by probate, those new owners will need to be notified of the proposed ROW application.
4. Other – Whereabouts unknown (WAU), orphaned minors, non-compos mentis, and/or power of attorney should be identified for each tract, if applicable. The applicant and Realty staff should conduct additional research for those owners listed as WAU.

Note: If an uncertified TSR report is provided, it should be reviewed to identify if any privacy information (i.e., account numbers, loan amounts) exists on Appendix C: Encumbrances. If any are listed, this page **should not be given** to the applicant. Any questions regarding privacy or personally identifiable information should be directed to the IA Privacy Officer.

3.2 Regulatory Timeline Table

Below is a table that provides the regulatory timeline for ROW applications and assignments, amendments, and mortgage requests:

Application Type	Application Package Status	Responsible Party	Action
ROW	Receipt	Applicant	Applicant submits a ROW application (form) with supporting documents to BIA.
ROW	Pending	BIA	BIA will notify the applicant via a written acknowledgement letter within 10 days of receipt of the application by USPS and/or email.
ROW	Pending-Review	BIA	BIA will determine if the application is complete or incomplete. The date of receipt is the day the BIA receives a completed application package.
ROW	Pending-Review	BIA	BIA will notify the applicant within 10 days if the application package is incomplete, and identify the missing information/supporting documents that are required for a complete application package.
ROW	Extension for Additional Time to Review	BIA	BIA will notify the applicant if additional time to review is needed. The notice should list concerns and invite the applicant to respond within 15 days.
ROW	Approval/Denial	BIA	BIA will review the application and notify the applicant of the decision to grant or deny the grant of ROW easement (within 60 days) from date of receipt of complete application.

Application Type	Application Package Status	Responsible Party	Action
Amendment	Receipt	Applicant	Applicant submits amendment request to BIA for approval/denial.
Amendment	Pending	BIA	BIA will notify the applicant of the date it received the amendment within five days of receipt.
Amendment	Pending	BIA	BIA will notify the applicant within 10 days of receipt if there is missing information and/or supporting documents required for the executed amendment.
Amendment	Complete	BIA	BIA will notify the applicant of BIA's decision to approve or deny the amendment within 30 days of receipt of executed amendment and supporting documents.
Amendment	Request Additional Time for Review	BIA	BIA will notify the parties if BIA needs additional time to review. The notice should list concerns and invite the parties to respond within 15 days. BIA's decision to approve or deny the amendment will be provided within 30 days of notice.

Application Type	Application Package Status	Responsible Party	Action
Assignment	Received	Applicant	Applicant submits an assignment request for review.
Assignment	Pending	BIA	BIA will notify applicant of the date it received the assignment within five days of receipt.
Assignment	Incomplete	BIA	BIA will notify the applicant within 10 days of receipt if there is missing information and/or supporting documents required for the executed assignment.
Assignment	Complete	BIA	BIA will notify the applicant of BIA's decision to approve or deny within 30 days of receipt of the executed assignment and supporting documents.
Mortgage	Received	BIA	BIA will notify the applicant of the date it received the mortgage within five days of receipt.
Mortgage	Incomplete	BIA	BIA will notify the applicant within 10 days of receipt if there is missing information and/or supporting documents required for the executed mortgage.
Mortgage	Complete	BIA	BIA will notify the applicant of BIA's decision to approve or deny within 30 days of receipt of executed mortgage and supporting documents.

Chapter 4: Review Process of a ROW Application

The Indian landowner has the right to use their trust or restricted property as well as allow for a ROW across that property. However, the proposed ROW 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. Additionally, 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. 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.

This chapter documents the tasks required by Realty staff to review a ROW application, provide a recommendation to approve/disapprove, and record a grant of ROW easement (if the application is approved).

4.1 Tracking the ROW Application and Regulatory Timeframes

To meet the regulatory and other required timeframes, the BIA must track the ROW application from initial contact all the way through the process to the approving official granting the easement for ROW or denying it. This tracking is done by:

1. encoding the proposed ROW application into the TAAMS Realty Proposal Module; and
2. documenting all pre-activities within the TAAMS Realty Proposal record.

Note: Pending ROW applications submitted **prior to** April 21, 2016, will be reviewed under the new regulatory framework, unless the applicant provided a written request that the ROW application be reviewed under the existing rule of the date of submittal.

4.2 ROW Application and Package Review

Detailed guidance on the supporting documentation that must be submitted with the ROW application is in section 4.3. Realty staff will review the ROW application and supporting documents for completeness, including performing the following steps:

1. Complete the Rights-of-Way (ROW) Checklist template.
2. On the day the application is submitted, print the TSR for all tracts to determine current land ownership (25 CFR 169.107(c)).
3. Review and verify that the applicant's name, address, and contact information is current.
 - Corporate documents and licenses submitted should match.

- If the application states it meets the definition of a Utility Cooperative or Tribal utility, ensure business documents are included to support this.
4. Review and verify tracts/parcels are listed and held in trust in TAAMS.
 - Verify the general location (easement description) is within the tract/parcel given.
 - A TAAMS Land Index Report may assist in identifying trust and surface ownership type.
 5. Confirm the purpose of the ROW is described.
 - It is recommended that the ROW application Purpose section be specific in the size of any improvements, such as size and number of pipelines, voltage, number of electric lines, etc.
 - The ROW Purpose should match the Purposes provided for in the appraisal, consent form, and NEPA document(s).
 6. Identify the duration (term) of the ROW and renewal term, if any.
 - Confirm the duration of the ROW, including the renewal, is consistent with the landowner(s) consent form (i.e., Consent of Owner to Grant a Right-of-Way Template), appraisal, and NEPA document(s).
 - For Tribal land, BIA will defer to the Tribe's determination that the ROW term is reasonable.
 - For individually owned land, BIA will review the ROW duration to ensure that it is reasonable given the purpose of the ROW. BIA will generally consider a maximum duration of 20 years to be reasonable for the initial term for oil and gas purposes, and a maximum of 50 years, inclusive of the initial term and any renewals, to be reasonable for all other purposes. See 25 CFR 169.20(c) for exceptions.
 7. Verify that ownership and construction of permanent improvements is identified.

In sum, Realty staff should review and ensure all data in the application package is consistent. Acreage, township, range, section, and meridian stated on survey plats, the appraisal, NEPA documents, consent forms, and Tribal Resolution must all agree. Acreage in NEPA documents may be more than what is shown on the survey.

4.3 Supporting Documents to be included with the ROW Application

A complete ROW application will have the following documents included as appropriate. Many of these document requirements entail additional discussions between Realty staff and the applicant.

A. Consent requirements and forms

The Realty staff will explain to the applicant the regulatory consent requirements for a ROW on Tribal land and individually owned Indian land, and drafting of the proposed negotiated terms on the consent form (i.e., consent, terms (renewal), compensation, payment frequency, bonding, assignments, amendments, and mortgage). Additional specific details on Tribal and individual consent are provided below in steps 1. and 2. of this section.

The Realty staff will also provide the landowner's contact information and a TSR to the applicant that details the number of owners and undivided interest(s) for the purposes of calculating the requisite trust consent. The consent document may impose restrictions, or there may be specific situations that automatically lend themselves to becoming conditions and/or restrictions in the grant.

Additionally, Realty staff should explain the following to the applicant:

- Fee interest holders will not be considered as part of the consent calculation. The applicant is responsible for contacting and compensating any fee interest owners directly.
- If the landowner(s) requests any other consideration (monetary or non-monetary) on their consent form, the applicant should identify if those considerations are acceptable.

For example: A landowner with a 45% ownership interest consents to the terms listed on the consent form and includes a request for a cattle guard to be constructed on their property. The applicant should agree and accept the condition of the consent in order to include the landowner's 45% ownership interest. The additional non-monetary consideration requested by the landowner will become a condition written into the grant of easement.

- Ownership will be verified and reviewed again at the time the application is submitted to the BIA. The Realty staff must inform the applicant if any new landowners have been determined by the Office of Hearings and Appeals (OHA) during probate or otherwise. Ownership is fixed on the date of the submission of a complete application; the applicant will not be required to send the new owner(s) a consent form if a completed application has been submitted.
- For ROW applications submitted after April 21, 2016, the applicant must notify all individual Indian landowners for each tract and obtain written consent from the owners of the majority interest in each tract affected by the grant of ROW.
- The consent form requires that the landowner's consent is witnessed and signed by one witness or by a notary. Generally, a witness must:
 - be over 18 years of age;
 - be of sound mind;
 - not be under the influence of drugs or any other substance;

- not be a party to the document or have any financial interests in the document; and
 - have known the landowner for at least one year, OR taken reasonable steps to verify the landowner's identity.
- The applicant should submit a written request to the approving official to utilize his/her authority to consent on behalf of the landowners if special circumstances apply, such as estates (deceased), WAU, non-compos mentis, orphaned minor, and power of attorney pursuant to 25 CFR 169.108(c), if needed. There is no specific form or template required for documenting this written request. In this situation, Realty staff would prepare for the review and approval portion of the process using one of the "BIA's Consent on Behalf of" forms.
 - If there is a life estate on the tract that would be subject to the ROW, the Realty staff should further explain the consent requirement for life estates and its associated remainderman. The Realty staff must verify that the consent of both the life tenant and the owners of the majority of the remainder interest known at the time of the application have been obtained (25 CFR 169.109).
 - If **both** the life tenant and majority of its remaindermen have consented, the total title interest encumbered by the life estate's remaindermen can be included in the majority consent calculation.

For example: 60% beneficial interest is encumbered by a life estate. The 60% beneficial life estate is held by a life tenant. Three remaindermen title owners own 20% title interest each, to equal the total life tenant's 60% interest. The life tenant signs the consent form for its 60% life estate, and two of the remaindermen consent for their combined 20% title interest, therefore, 66 2/3% of the interest can be used to calculate towards the majority calculation. If all three remaindermen consented, 60% interest would still be used towards the majority calculation. However, if only one of the remaindermen title owners consents or if the life tenant does not consent, 0% of the interest can be used to calculate towards the majority calculation.

- Additional consents from the landowners may be required if the original grant of easement (approved prior to April 21, 2016) does not expressly state that the Secretary may approve renewals, amendments, assignments, or mortgages without landowner consent.

Additional specific information on the types of consent are as follows:

1. Tribal Consent

Tribal consent may come in varying forms, such as a Tribal Authorization by Tribal Resolution, letter, or agreement. The type of Tribal Authorization consenting to a ROW application must include, but is not limited to:

- The Tribal governing authority, ROW Purpose, duration, renewals, waiver(s), valuation, compensation, direct pay, and a statement that any waivers and negotiations (25 CFR 169.118(b)) are in the Tribe's best interest.
- The Tribal Authorization may include the legal description, acreage, Tribal fractional ownership interest, or any other conditions imposed.
- The Tribal Authorization may also include other negotiated conditions that will be incorporated into the grant of easement (25 CFR 169.125(a)).
- The Tribal Authorization information must be consistent with the application and supporting documents.

2. Individual Indian Landowner Consent

BIA will determine the number of owners of, and undivided interests in, a fractionated tract of Indian land for the purposes of calculating the requisite consent based on its records as of the date the application was submitted. The date of submission is evidenced by the TSR that is generated on the date of receipt of the application.

The applicant is responsible for obtaining written consent from the landowner(s) with majority interest in each tract affected by the proposed ROW. The BIA defines majority interest as 50% or greater interest per tract. If there is a Tribal interest in the tract, that interest must be included in the majority. BIA will no longer utilize a sliding scale to calculate consents received.

The applicant must provide BIA the original or certified copy of the signed consent form(s). The applicant must provide the document(s) per allotment, outlining the trust owners who have consented and identifying the requisite majority ownership interest received. Each ownership type should be identified (e.g., trust, fee, life estate, remainderman, estate, minor, WAU, power of attorney, etc.). The Realty staff will need to review the documents submitted to certify the consents of the requisite majority interest received.

Realty staff should also identify any negotiated terms on the consent form. If there are any additional negotiated terms, the applicant will need to agree to those negotiated terms on the consent form in order for the consent to be included in the majority calculation.

3. Additional Guidance for Realty Staff

A consent spreadsheet, if provided by the applicant, should identify the following:

- the landowner(s) name, ownership, and interest type;
- displays the landowner(s) who consented, are non-consenting, are non-responsive and have a special ownership interest; and

- displays the consent percentage calculations to ensure majority consent has been obtained for each tract.

Consent forms received will be used to encode into the TAAMs ROW record. The consent and consent to waive bond, compensation, and/or appraisal of each owner can be encoded into the TAAMS Ownership tab. Realty staff should print a TAAMS Owner's Consent Report to identify the consent percentage received for each tract.

4. Applicant Request for ROW **without** Consent (25 CFR 169.107(b)(1))

The applicant must provide a written request to the BIA to consent on behalf of the landowner(s) when submitting his/her ROW application package. The applicant is still required to submit all documents, including the applicant's LOI to obtain a ROW and any consent forms received. The request should include a reference to 25 CFR 169.107(b)(1) and evidence that indicates all requirements have been met.

BIA will review the written request from the applicant and determine whether it is appropriate to issue a grant of ROW without consent. BIA may grant a ROW easement without consent of the landowner(s) if **all** of the following conditions have been met, and must document that all of the conditions have been met:

- 50 or more co-owners per tract;
- No substantial injury to land or any landowner(s) based on the following factors, including but not limited to:
 - reasonableness of the term;
 - amount of acreage involved;
 - disturbance to the land;
 - type of activity to be conducted;
 - potential for environmental or safety impacts; and
 - objections raised by landowner(s).
- All landowners are adequately compensated.
- BIA must provide a 60-day Notice of Intent letter (i.e., 60-day Notice of Intent for BIA Approval without Consent of Landowner(s) Template) to all owners that provides the landowner(s) with 30 days to object.
 - The 30 days is calculated from the receipt date of the 60-day Notice of Intent letter. If the landowner(s) responds after the 30 days but prior to 60 days, the objections will be recorded and taken into consideration.

If the landowner(s) objects, the applicant will be informed of the landowner's objections raised to BIA. BIA will take into consideration the landowner objections and conditions prior to making a final determination on the ROW application.

All objections must be documented in the file. After the first 30 day period expires, Realty staff have an additional 30 days to review and, if necessary, respond to objections. After the second 30 day period expires, if the requirements of 25 CFR 169.107(b)(1) are met, the Notice of Decision to Landowners will be sent, as well as a Notice of Decision to Applicant.

B. Surveying/mapping requirements (25 CFR 169.102)

The Realty staff must conduct a review of the legal description for the ROW in order to ensure its accuracy and that all the requirements of the legal description have been met.

Realty staff ensures that the applicant submits the map of definite location (survey plat) and legal land description requirements. The Realty staff should recommend that the applicant submit the survey plat and legal land description *prior* to submission of the ROW application so the legal description can be reviewed by the BILS, if necessary. This request will be submitted by the Realty staff to the BILS. Due to a possible backlog of pending legal land description reviews by the BILS, the Realty staff should also discuss with the applicant the timeframe needed for a review by BILS.

The following items must be addressed regarding the surveying/mapping requirements:

1. The survey plat will need to be signed and stamped by a professional surveyor or engineer registered to practice land surveying in the state where the subject land is located.
2. If a separate written legal description is given, it is recommended that the page be stamped by a Registered Land Surveyor (RLS) or Professional Engineer (PE).
3. Survey plats should agree with the written legal description (i.e., Section-Township-Range-Meridian (STRM) and acreage).
4. The survey plat should include the written legal land description and show the existing facilities adjacent to the proposed ROW. Examples of facilities are electric transmission line(s), canal/ditch, road, house, fence, substation, or any permanent improvements. If such facilities are outside the ROW boundary, the adjacent land ownership should be shown.
5. The applicant is responsible for the location, marking, and protection of survey corner and boundary line markers. Any disturbed markers will be the responsibility of the applicant to replace according to federal survey standards.
6. The written legal land description should describe the ROW and include, at a minimum, the commencement point; point of beginning; point of termination (which should be tied to the nearest Public Land Survey System (PLSS) corner or known monument); location: size of

the ROW width (e.g., 15' from either side of the centerline); acreage; and land ownership (Tribal, allotment, BIA). Each tract or parcel will need to have a separate written legal land description plat/survey provided by a surveyor. In addition, if the ROW crosses over several tracts or parcels, the acreage should be identified for each tract or parcel.

7. The survey plat and/or legal land description should also include access to the ROW corridor to manage vegetation; inspect, maintain, and repair equipment; and conduct other activities that are necessary to maintain the ROW.

If any discrepancies are identified during the review by the BILS, the Realty staff will return the survey to the applicant for correction.

There may be additional survey recommendations that Realty staff should discuss with the applicant (even though these are not considered to be regulatory requirements). Specifically, Realty staff may discuss with the applicant whether the applicant should provide the following:

- An electronic copy (preferably in Microsoft Word) of the written legal land description to assist encoding into TAAMS, and a table of acreage for each aliquot part in the section the ROW may encumber.
- A proprietary binary file format (i.e., a .DWG file) for any map(s) to be submitted, allowing for a quicker review.
- Field photos of the proposed ROW area (in its entirety) and photos of the completed ROW area (in its entirety) for documentation purposes.
- Any concerns or questions with the legal land description and/or survey plat, as early in the process as practicable, with the regional BILS.

C. NEPA requirements

Any federal action, such as granting, amending, renewing, assigning, and mortgaging a ROW requires NEPA compliance. The NEPA analysis will need to be completed and submitted with the ROW application package.

Realty staff reviews and ensures the environmental document (i.e., Environmental Assessment (EA), Environmental Impact Statement (EIS)) addresses the federal action (i.e., approval of ROW) and its potential environmental and adverse impacts, and that the document follows all applicable federal environmental, land use, historic preservation, and cultural resource laws and ordinances. Additionally, staff should verify that the environmental document has been signed by the appropriate authorizing officials, and that the document is not older than five years.

If there are any mitigation measures stated in the environmental documents (i.e., Finding of No Significant Impact (FONSI), Record of Decision (ROD)), these should be referenced in the grant of easement.

In order to expedite the process, the Realty staff should encourage applicants to provide any required NEPA documents for review and approval *prior* to submitting the ROW application package in order to allow time for reviewing the analysis. NEPA documents require approval by the agency/Tribal Environmental/Cultural Coordinator and approving official.

Expertise in NEPA compliance can usually be found at the local agency and/or regional office. Realty staff are encouraged to check with the Tribe for additional requirements from the Tribal Environmental and Historic Preservation Office.

The list of documents below should serve as guidance to Realty staff to facilitate compliance with NEPA, the Council on Environmental Quality's (CEQ) NEPA regulations (40 CFR 1500–1508), and the DOI's NEPA regulations (43 CFR 46):

- NEPA of 1969 (42 U.S.C. 4321-4347)
- CEQ regulations (40 CFR 1500-1508)
- DOI regulations (43 CFR 46)
- 516 Departmental Manual (DM) 10, which specifies BIA's management of the NEPA process. The DOI, through its Office of Environmental Policy and Compliance (OEPC), also continuously updates a series of environmental statement, review, and compliance memoranda.
- 59 IAM 3: National Environmental Policy Act
- 59 IAM 3-H: National Environmental Policy Act Guidebook

D. Appraisal requirements (25 CFR 169.114)

The Realty staff must conduct a review of the Appraisal Report for the ROW in order to ensure its accuracy and that all the requirements of the valuation have been met. Appraisal Reports conducted by other federal agencies do not require BIA review or approval.

Realty staff reviews the Appraisal Report and whether it provides a fair market value (FMV) and/or market rent for each tract. Additionally, staff:

- Confirms that the date of the Appraisal Report or AVSO Appraisal Review is within a six months to one year period, except Alaska Valuation Reports may be utilized for up to five years. If the Appraisal Report is greater than one year from the Date of Valuation, consults with the AVSO to determine if an update to the report is needed.
- Verifies the BIA provided and informed the landowners by letter of the FMV or fair market rent of the proposed ROW.

The Realty staff will inform the applicant that an appraisal is typically required unless:

- 100% of the individually owned Indian landowners submit to the BIA in writing a request to waive the valuation requirement (25 CFR 169.112(c)(1)); or

- BIA waives the requirement because the applicant:
 - is a utility cooperative and is providing a direct benefit to the Indian land that is encumbered by the ROW (e.g., is delivering electrical service to it);
 - is a Tribal utility; or
 - will construct infrastructure improvements benefitting the individual Indian landowner(s), and BIA determined in writing that the waiver is in the best interest of the landowner(s) (25 CFR 169.112(d)).

If an appraisal waiver is requested, Realty staff reviews the request and ensures all requirements have been met:

- Verify 100% of individual Indians provided a written request to waive.
- Verify if the Tribe submitted a Tribal Resolution/Authorization expressly stating under 25 CFR 169.110(a) they have determined that the compensation is satisfactory, waived valuation, and it is in the Tribe's best interests.
- BIA may waive in compliance with 25 CFR 169.112(c).

The applicant, Realty staff, and the AVSO must closely coordinate the information for the appraisal report in order to ensure that the valuation process is completed in a timely manner. If the applicant, Tribe, or landowner seeks a waiver for BIA to review appraisals, the application form has a box to check for waiving appraisals under the 43 CFR 100 regulations.

When the applicant is a non-federal party, the Realty staff will inform the applicant to contact the AVSO to obtain direction in conducting an appraisal for a ROW.

A review and approval by the AVSO must be requested when the applicant submits an appraisal report from his/her own qualified appraiser (meeting the requirements under 43 CFR 100.31(a)) that acknowledges the intent by the Tribe or individual Indians to waive the Department's review and approval, and no owner objects to use of the appraisal report without a DOI review. This review is only for the purpose of making sure that the appraiser meets the requirements of Section 100.31(a).

AVSO must conduct a full review and approval of the appraisal report if:

- any of the Part 100 criteria are not met; or
- the appraisal or valuation was submitted for:
 - purchase at probate under 43 CFR 30 (AIPRA);
 - the Land Buy-Back Program for Tribal Nations;

- an acquisition by the United States to which the Uniform Appraisal Standards for Federal Land Acquisition applies; or
- specific legislation requiring the DOI to review and approve an appraisal or valuation.

The FMV is determined by acquiring a market analysis or an appraisal report prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP), or by the valuation methodology developed by the DOI Secretary under 25 U.S.C. 2214 and which complies with Departmental policies regarding appraisals, including third party appraisals or appraisals prepared by another federal agency.

If the applicant is a Federal Government agency (e.g., BLM, Bureau of Reclamation (BOR), US Fish and Wildlife Service (USFWS), or National Park Service (NPS)), the federal agency may submit an appraisal without any further review from the AVSO.

If the BIA is requesting an appraisal report for a proposed ROW on behalf of Indian landowner(s), BIA Roads, or BIA Irrigation, the Realty staff will enter the request in the Appraisal and Valuation Information System (AVIS) or a successor system with applicable supporting documents.

Realty staff will inform the applicant and landowner(s) of the estimated timeframe for the appraisal report to be completed. Once the AVSO provides BIA with the appraisal report, the BIA will send a notice of FMV to all the landowners.

The appraisal report by the AVSO was written for the BIA and landowner(s) and is considered confidential; BIA may not give the report to the applicant. Realty staff will confirm if the proposed compensation value meets or exceeds the FMV provided by the AVSO. If obtaining the necessary consents takes longer than one year from the effective date of the appraisal report, the Realty staff will consult with the AVSO on the FMV.

E. Compensation requirements (25 CFR 169.110-.113)

The Realty staff will explain to the applicant the compensation requirements for Tribal land and individually owned Indian land as listed below. The applicant must also identify when payments will be made (one-time, annual, monthly, etc.) and where payment will be made (e.g., direct pay, lockbox). The consent form should include the compensation value the applicant is proposing to pay.

1. Tribal land

A ROW over or across Tribal land may allow for any payment amount negotiated by the Tribe. BIA will defer to the Tribe and not require a valuation if the Tribe submits a Tribal Authorization expressly stating that they:

- agree with the compensation;

- waive the valuation;
- determined that accepting the agreed-upon compensation and waiving valuation is in their best interest; and
- whether any compensation reviews or adjustments will occur during the term of the ROW.

If the Tribe determines that a negotiated compensation is in their best interest and elects to have compensation waived, payment will be provided directly to the Tribe instead of being provided to the BIA lockbox. Proof of payment must be provided to BIA.

The Realty staff will inform the applicant that any direct payments made requires proof of payment that must be submitted to the BIA. If the grant of easement is approved for the grantee to make payments directly to the landowner(s), any payments made must be verified by returning to the BIA the TAAMS lockbox invoice, signed by the grantee, which identifies the tract number(s) subject to the ROW.

2. Individually owned Indian land

A ROW over or across individually owned Indian land must require compensation of not less than FMV, unless a criterion specified in 25 CFR 169.112(b) is met to authorize a lesser amount. Realty staff will inform the applicant that compensation of the ROW can be negotiated directly with the landowner. BIA does not establish compensation limits and will defer to the landowner's best interest.

F. Compensation reviews or adjustments

Realty staff should confirm payment information is specified in the approved grant of easement, whether it be one-time payment, annual payments, direct or agency pay, etc., and should advise the applicant that a review and/or adjustment of compensation will be provided in the grant of easement. If there are any change(s) in the use of the ROW resulting in an increase in value, a review or adjustment of the compensation may be considered.

A review of the adequacy of compensation must occur at least every five years in the manner specified in the approved grant (in accordance with 25 CFR 169.113), unless the:

- payment is a one-time lump sum;
- term of the ROW grant is five years or less;
- grant provides automatic adjustments; or
- BIA determines the best interest of the Indian landowner(s) does not require a review or automatic adjustment based on the following circumstances:

- ROW grant provides for payment of less than FMV;
- ROW grant provides for most or all compensation to be paid during the first five years or before the date the review will be conducted; or
- ROW grant provides for graduated rent or non-monetary or varying types of compensation.

If the landowner(s) meets the requirements of direct pay (25 CFR 169.116(b)), the Realty staff will inform the applicant that a proof of payment must be submitted to the BIA (i.e., signed invoice). The applicant must mail the signed BIA invoice to the BIA lockbox, (see a copy of an invoice coupon below).

Invoice No:	000912245	GRANTEE NAME	
Due Date:	09/01/2018	111 RIGHT OF WAY LANE	
Lease Number:	520 2005159949 HW	CORRIDOR, WA 123456	

[] Check here if your Mailing Address has changed, and provide the new address on the back of this coupon.

520C250000 JJ515202005159949 RS0009122456803000000000060390000000000 ?

<p>Mail To:</p> <p>AGENCY LOCKBOX ADDRESS Dept 0000 P.O. Box 00000 TOWN, STATE 000000-0000</p>	<p>Amount Due: \$ 0.00 Amount Enclosed: _____</p> <p><small>Your signature below certifies that you made direct payment(s) of the difference between the total amount due and the amount enclosed. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment. (Title 18, USC)</small></p>
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Please write the Invoice Number on your check Signature _____

G. Corporate document requirements (25 CFR 169.102(b)(7))

Realty staff ensures all corporate documents included are current and demonstrate the ROW will be enforceable against the applicant.

If the applicant is a corporation (Corp.), limited liability company (LLC), partnership, joint venture, or other legal entity (except a Tribal entity), they must provide organizational documents (e.g., articles of partnership/association, certified corporate charters, licenses, etc.) demonstrating that:

- the representative has the authority to execute to the application;
- the ROW will be enforceable against the applicant; and
- the legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located (e.g., state-certified corporate charter, state and/or Tribal license).

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.

The Realty staff should inform the applicant that if there will be an assignment of the ROW, the assignee will need to provide the appropriate corporate documents, if not already filed with the BIA.

H. Permission to overlap ROW requirements (25 CFR 169.128)

Realty staff should inform the applicant that a new ROW must not interfere with the rights (purpose and use) granted by an existing ROW. If the proposed ROW crosses over, under, or above an existing approved ROW, the applicant should obtain consent from the grantee of the existing ROW. An applicant may use the Permission to Overlap on ROW Template or an alternative method (overlap permit, encroachment permit, or letter from grantee) to document consent. The applicant must include grantee consent documents in his/her application package. Grantee consent documents do not require BIA approval.

The grantee of the existing ROW may not unreasonably withhold consent. Failure to obtain grantee consent should not delay or prevent the processing of the new ROW application. If the applicant is unable to obtain consent from the grantee, they should show their due diligence by providing a copy of the notice and request for permission.

Permission to overlap within an existing ROW does not authorize additional use by the applicant. The applicant will need to obtain their own easement by submitting a new application or an amendment to an existing ROW in accordance with 25 CFR 169.127.

There are some instances in which an original grant of easement for a public highway allowed utilities to be constructed without further consent of the landowner under older ROW statutes, such as the 1901 Public Highways Act, which referenced state law. The regional Realty Officer can help determine if an existing ROW was authorized by an early statute and if state law is applicable.

If the utility is authorized under the older 1901 Act, Realty staff should request the utility to provide the following:

1. documentation it has received permission from grantee;
2. a map of definite location to be recorded with the LTRO; and
3. corporate documentation.

I. Grant of easement terms (25 CFR 169.125)

There is no standard BIA grant of easement document. Realty staff can provide a Grant of Easement Template as a guide in drafting a grant of easement, if needed.

The grant of easement document may be written by the Tribe or by BIA. It may include all tracts encumbered by the ROW, or a separate grant of easement document can be written for each tract (25 CFR 169.124(d)).

The Realty staff will inform the applicant of the regulatory requirements that will need to be included in the grant of easement document. If the Tribe provides a separate easement agreement for Tribal lands with a non-Tribal entity, the Tribal easement agreement can be incorporated by reference within the BIA grant of easement. The Tribe can also elect to incorporate by reference any part of 25 CFR 169 into its own document with an appropriate page stating the delegation of authority to approve a ROW.

Realty staff should discuss with the applicant the specific sections and conditions that must be incorporated into the grant of easement form, such as:

- Purpose – Provide the specific purpose for the proposed ROW, including the use, size, length, width, number of facilities, etc. The applicant must ensure the purpose and description of the ROW is consistent with the valuation report, environmental documents, Tribal Resolution, and the consent forms.
- Compensation (169.112-118) – The applicant and landowner(s) can negotiate for monetary or non-monetary compensation (e.g., building a fence, private road improvement, or throughput fee). The applicant must meet certain conditions to negotiate compensation less than the FMV for the proposed ROW.
- Method of payment (169.115-117) – The applicant must include how, when, and how often (e.g., monthly, quarterly, annually, one-time lump sum, etc.) compensation will be made, to whom, and when adjustments will occur, or as negotiated by the Tribe or landowner(s), if applicable, and also be included on the consent form.

Note: If the applicant proposes a payment type (e.g., one-time payment, annual, etc.) to the landowner(s), the payment type must be included on the consent form. Also:

- If payment is made directly to the landowner(s), a provision must be included in the grant of easement to require that the grantee will provide proof of payment upon BIA's request.
- If payment is made directly to the Tribe, the Realty staff will inform the applicant to provide BIA proof of payment by providing a signed BIA invoice to the BIA lockbox.
- Payment to individual Indian landowner(s) will be paid to the BIA lockbox, unless the Indian landowner(s) meets certain conditions under 25 CFR 169.116.

- Term and/or renewals (169.201-.203) – The duration or any renewals of the ROW will need to adhere to the terms consented to by the landowner(s). The grant of ROW easement duration, including any renewal(s) of the ROW, should be reasonable, given the purpose of the ROW identified.
- Conditions of the grant of easement – Negotiated conditions and restrictions listed on the consent form and/or Tribal Resolution must be included in the grant of easement document (25 CFR 169.107(a)).

Note: A separate grant of easement document may have to be drafted for each tract if landowners have differing negotiated conditions. Realty staff should discuss with the applicant that if the landowner consents to other negotiated terms, the applicant may refuse or accept. If the applicant agrees to other negotiated terms on the consent form, the applicant will need to provide an acceptance signature on the consent form for the other negotiated terms to be valid.

- Tribal jurisdiction (25 CFR 169.9-10) – To the extent applicable, BIA will defer to Tribal law if it does not conflict with federal laws and regulations. Realty staff should recommend to the applicant to have additional discussions with the Tribe regarding questions specific to Tribal jurisdictional matters. The Secretary’s grant of a ROW will clarify that it does not diminish to any extent the Tribe’s jurisdiction.
- Permanent improvements (25 CFR 169.102(a)(6), .105, and .130) – The applicant must address and/or provide:
 - the ownership and responsibility for construction, operation, maintenance, and management of permanent improvements on the ROW application;
 - identify the designated operator in the grant if the applicant will not be operating and maintaining the permanent improvements;
 - permanent improvements at the end of the term of the ROW in the grant of easement document will:
 - remain on the premises upon expiration, cancellation, or termination of the grant. If the applicant proposes to not remove the permanent improvement at the end of the ROW term, it is recommended that the BIA analyze the impact to the land, landowner’s best interest, and obtain the landowner’s initial consent to allow the improvements to remain;
 - be removed within a time period specified in the grant, at the grantee’s expense;
 - be disposed of by other specified means, or an option provided to the landowner to take possession of and title to the permanent improvements; and
 - a construction schedule to complete construction (due diligence) of the permanent improvements.

- Negotiated remedy (25 CFR 169.403) – The landowner(s) and the grantee may negotiate certain remedies for a violation, abandonment, or non-use with the applicant. The negotiated remedies must be included or referenced in the grant of easement. Examples of negotiated remedies may include notice requirements, arbitration, mediation, or termination.
- Cancellation (25 CFR 169.409) – Realty staff should discuss with the applicant the difference between cancellation and termination of the grant of easement.

Additionally, Realty staff should also discuss with the applicant:

- If there are any conditions to renewing the grant of easement requested by the Tribe or landowner(s), these conditions will need to be incorporated into the grant.
- The consent to renew will be required unless the landowner(s)/Tribe originally consented to allow the renewal without obtaining additional consent and identifies any compensation for said renewal.
- The initial term and renewal term(s), together, do not exceed the maximum term determined to be reasonable.

Note: The actual tenure, or term, of any ROW is limited to the time period(s) stated in the grant of easement (25 CFR 169.201). However, in determining the tenure of a specific ROW during the negotiation process, the consenting and granting parties should examine the effect and purpose served by the ROW and consider the following:

- For ROWs granted for certain purposes *prior to 1948* (or after that date, if specifically relying on earlier statutes as authority), the terms are limited as follows:
 - Pipelines for oil and gas: 20-year term, with a 20-year extension option (25 U.S.C. 321).
 - Power and communications lines: 50-year term (43 U.S.C. 961).
- For *Tribal land*, BIA will defer to the Tribe's best interest determination (25 CFR 169.201(b)).
- If the Tribe determines a ROW in perpetuity is reasonable on Tribal land, BIA will defer to that determination.
- For *individually owned Indian land*, BIA will review whether the duration of the term is reasonable and will benefit the landowners given the purpose of the ROW, such as:
 - Initial term for oil and gas: maximum 20 years to be reasonable (25 CFR 169.201(c)).
 - All other ROWs: maximum of 50 years inclusive of the initial term and any renewals to be reasonable (25 CFR 169.201(c)).
 - Conservation easement duration consistent to be reasonable.
 - Duration terms required outside of these guidelines by another federal agency or Tribe has negotiated for a different term.

- At the end of the tenure of an approved grant of easement, the grant may be extended for an additional period or “like term” if expressly written within the grant of easement document. There is no prohibition on renewing a ROW multiple times, unless the grant expressly prohibits multiple renewals; and the initial term and renewal term together do not exceed the maximum term determined to be reasonable and meets the requirements of 25 CFR 169.202.
- Access to ROW across land not included within ROW. Negotiations to access may need to be included as part of the ROW package.
- Use of trust assets.

J. Bond/insurance/alternative security

This section documents the tasks required of Realty staff to review and determine appropriate bonding documentation to be submitted at the time of application, revocation, and collection (25 CFR 169.103-.104, 169.206, and 169.209). Unless waived by the majority of the individual landowners, or by the Tribe (by Tribal Resolution), or by the authority of the Superintendent, a bond is required in the best interest of the owner(s).

Realty staff must describe and discuss with the applicant the bonding requirements and waivers (25 CFR 169.103). The applicant must include payment of bonds, insurance, or alternative forms of security with their ROW application.

BIA will review and identify the type and amount of bond submitted with the application:

- Verify that the type of bond is an acceptable form as required by 25 CFR 169.103(g). The following are acceptable forms of security: Certificate of Deposit (CD), irrevocable letter of credit, U.S. Treasury Securities, surety bonds, insurance, and/or other security examples (i.e., assigned savings account).
 - Performance bonds - An acceptable performance bond can be a CD issued by a federally insured financial institution authorized to do business in the United States, an irrevocable letter of credit by a federally insured financial institution, negotiable Treasury securities, or surety bonds issued by a company approved by the Treasury (25 CFR 169.103(g)). The Treasury Department’s website can be checked to verify the surety is listed on the approved list: <https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm>
 - Insurance - Any insurance must identify both the Indian landowners and the United States as additional insured parties.
 - Alternative form of security - BIA may accept an alternative form of security that is approved by the BIA and that will provide adequate protection for the Indian landowners and BIA, including but not limited to: a certified check, cashier’s check, escrow agreement, and assigned savings account. BIA will not accept cash bonds.

- In the case of bond coverage, the bond amount must cover (for the duration of the ROW grant) the following:
 - Highest annual rent (unless a one-time payment).
 - Estimated damages from construction of permanent improvements.
 - Estimated damages and remediation costs from any potential release of contaminants, explosives, hazardous material or waste, herbicide, petroleum-based fluids, and dust control or soil stabilization materials.
 - Operation & Maintenance (O&M) charges (if land is located in a BIA irrigation project). Refer to the applicable irrigation project to determine the costs and responsibility of the payment of the charge in which the ROW crosses.
 - Interim and final restoration, reclamation revegetation, recontouring, and soil stabilization of premises to their condition at the start of the ROW or reclamation to some other specified condition agreed to by the landowners. This includes the potential for flood events and downstream sedimentation from the ROW that may result in offsite impacts; the area and acreage of disturbance; and the resources affected by the ROW; and includes rent, and O&M charges.
- If the Tribe and/or majority of the Indian landowner(s) request the BIA to waive the bond requirement, the Realty staff must determine, in writing, that the waiver request is in the best interest considering the purpose of and risks associated with the ROW or, if:
 - the applicant is a Utility Cooperative or Tribal utility, as defined in 25 CFR 169.2;
 - the applicant may request to waive the bonding requirement (25 CFR 169.103(f)); or,
 - the landowner(s) of majority interest may request to waive the bonding requirement.
- If the applicant is a federal, state, Tribal, or local government, they may be exempt from providing a bond if their application includes a certification, a citation to applicable law that prohibits them from providing security, and a copy of the notice to the Indian landowner(s) of their application under 25 CFR 169.107.

Each form of bond must be deposited with the BIA and include the following:

- Be payable only to the BIA, unless the ROW is completely on Tribal land, in which case it should be payable to the BIA and the Tribe.
- Cannot be modified, redeemed, revoked, or cancelled without BIA approval, if applicable, except for Tribal land, which the bond or security may be deposited with the Tribe and made payable to the Tribe and may not be modified without the approval of the Tribe.
 - The cancellation notice must be at least 60 days in advance before any cancellation of the bond, insurance, or alternative form of security. The grantee will be required to file a new bond, insurance, or alternative form of security as required by the conditions of the grant and regulations.

- The bond must include a statement that the United States has the authority to make a claim or sell upon the grantee’s violation of the grant of easement.
- Must be valid for the entire term of the grant of easement and irrevocable during the bond or security term.

If the filing of the bond is negotiated to be filed with the BIA later than at the time of ROW application, a condition to the grant of easement should be added. For example:

“A performance bond is required for this right-of-way. Surface disturbing activities shall not commence until the BIA authorized officer has accepted the bond. The amount of the bond shall be determined as follows: The Grantee shall furnish a report within 90 days estimating all costs for the Grantee to fulfill the terms and conditions of the grant in the event that the Grantee was not able to do so. This estimate shall be prepared by an independent State certified engineer who is approved in advance by the BIA’s authorized officer. The report shall detail the estimated costs and shall be accompanied by the engineer’s seal. All costs of preparing and submitting this report shall be borne solely by the Grantee. This report along with inflationary estimates shall be the basis of the bond and shall remain in effect until such time that the BIA authorized officer determines that conditions warrant a review of the bond. This bond may be periodically adjusted by the BIA authorized officer in the method described above when, in his/her sole determination, conditions warrant a review of the bond.”

The BIA may require the surety to provide additional documents that show the surety can perform the guaranteed obligations and the enforceability of the bond, insurance, or alternative form of security. The Treasury Department’s Listing of Certified Companies should be checked to verify that it’s on the approved list.

When the grantee requests an amendment, assignment, or mortgage to the grant, the Realty staff will need to review the posted bond and confirm the following:

- The grant of easement’s conditions negotiated to adjust the bond, insurance, or security requirements to reflect changing conditions, including consultation with the Tribe. Depending on the amendment to the grant of easement, the existing filed bond may need to be adjusted to correlate to the amendment.
- Consent(s) received from the grantee’s sureties for the mortgage, amendment, or assignment.

When the grantee requests a bond to be released, the Realty staff will need to do the following:

- Identify if the request was made in writing to the BIA, and if the request was to partially or fully release the grantee from maintaining the bond, insurance, or alternative form of security.

- The request should include a determination demonstrating the reduction or removal of the bond is no longer valid for reasons (i.e., reduction in acreage) other than performance of the reclamation work.
- Review the grant of easement for obligations guaranteed by the bond.
 - Discuss with the Tribe and Indian landowners, if feasible, and confirm the grantee has met all the obligations guaranteed by bond, insurance, or alternative form of security.

If the request is approved, all or part of the bond, insurance, or alternative form of security to the grantee can be released by letter signed by the approving authority.

The request can be denied because the BIA identifies that the bond or security must be maintained to fulfill the obligations of the grant of easement.

K. Waiver requirements

The regulations expressly allow the landowner(s) and Tribe to waive certain regulatory requirements. If the applicant requests the landowner(s) and/or Tribe to waive certain regulatory requirements (as listed below), applicable consent by the Tribe and landowner(s) must be provided.

The Realty staff will inform the applicant that if they choose to request a waiver, it must be included on the consent form. If a Tribe is requesting a waiver, the request must be included in their Tribal Authorization.

The following regulatory requirements can be waived under certain conditions:

- Valuation (25 CFR 169.110, 169.112(b))
- Compensation (25 CFR 169.110, 169.112)
- Bond, Insurance, and/or alternative form of security (25 CFR 169.103(f))
- Due Diligence (25 CFR 169.105(c))

Any other requests for a waiver of regulatory requirements not included in the list above will require Secretarial review and approval. Pursuant to 25 CFR 1.2, the Secretary has the authority to waive a regulatory requirement in the best interest of the Indian; however, a statutory requirement cannot be waived. This waiver authority is not delegated below the Assistant Secretary – Indian Affairs (AS-IA). All requests for a waiver that are not authorized by 25 CFR 169, should be submitted to the Regional Director for approval to forward to BIA Central Office in order to submit to the AS-IA. The appropriate BIA regional office should be contacted for further guidance regarding waivers.

A Tribe may waive valuation if they submit an authorization stating they have negotiated compensation waiver valuation and have determined that the compensation and waiver of valuation is in their best interest.

4.4 ROW Application Package Review Extension (if needed)

If additional review time is needed within the 60 days, the applicant will be informed of the concerns and be invited to respond within 15 days from the date of the letter (25 CFR 169.123(2)(ii)).

Note: this additional time request should be made as close as possible to the end of the initial 60 day review period to allow for additional review time.

A written determination to grant or deny the ROW, also referred to as the Notice of Decision to Applicant, will be issued within 30 days of the date of the letter informing the applicant that BIA needs additional time.

4.5 Prepare ROW Application Decision Memorandum

Realty staff will prepare a Findings and Recommendation for Decision memorandum for the approving official. The memorandum will be used to document that the ROW is in the best interest of the landowner(s), and will summarize all the criteria and background that was used to formulate the decision. The criteria may include: the size, duration, and extent of the ROW, TSR, environmental documents, surveys, Small Business Enterprise (SBE) Certificate(s), appraisals, consents, unique provisions, and negotiated terms. The memorandum outline should follow this sequence of information:

- “Best interest” certification
- Authority
- Purpose
- Background
- Findings
- Recommendation

In all cases, the Findings should refer to the attached documents as the basis for the decision. The attachments may consist of the supporting documentation, such as survey plats, legal description, SBE Certificate(s), if prepared, Tribal Resolution, landowner consents (spreadsheet), NEPA compliance documents, etc.

If the review of all application documents is favorable for the ROW to be approved, the memorandum must indicate that a review was performed, and that the recommendation is made pursuant to that review. Realty staff should sign and date the memorandum and submit it for final approval.

4.6 Finalize the ROW package for Notice of Decision

The package must include the following:

1. Notice of Decision to Applicant to issue a grant of easement (25 CFR 169.12)
 - Decision to Deny - Prepare letter to notify the applicant and interested parties of reasons for denial with appeal rights.
 - Decision to Approve - Prepare letter to notify the applicant and interested parties of the approval with appeal rights.
2. Prepare the grant of easement document. The grant document should include, at a minimum, the following provisions:
 - Statutory authority
 - Grantee's name and address
 - Specific purpose/use of ROW
 - Legal description and acres
 - Consideration and payment terms – frequency, lump sum or multiple, adjustments, direct or agency pay including proof of payment provision
 - Term of ROW (if needed, include renewal terms) (25 CFR 169.201-.202)
 - Mitigation measures (25 CFR 169.123)
 - Reservation of jurisdiction (25 CFR 169.10, 169.125)
 - Laws (25 CFR 169.9)
 - Regulatory provisions (25 CFR 169.125)
 - Due diligence requirements (25 CFR 169.105)
 - Permission to overlap (25 CFR 169.128)
 - Ownership of permanent improvements (25 CFR 169.130)
 - Determine if amendments, assignments, and mortgages are permitted per the landowner consents, Tribal Resolution, or negotiations with the landowner; if so, determine whether additional consent is required, and any additional compensation is owed the landowners.
 - Effective date (25 CFR 169.301)
 - Negotiated remedies, if any (25 CFR 169.403)
 - Binding effect
 - Bond, insurance, or other security (25 CFR 169.103)
 - Additional conditions or restrictions set out in the landowner consents, Tribal Resolution, or negotiations with the landowner (25 CFR 169.107)

- Signature and date blocks for the Superintendent/Regional Director to approve

4.7 Transmit ROW Package for Decision to the Approving Official

The following documents must be submitted by Realty staff to the approving official:

1. Recommendation memo;
2. ROW with referenced exhibits;
3. Special interest, waivers, or BIA “consents on behalf of” forms to be signed by authorizing official; and
4. Decision with appeal rights letter.

4.8 Approval of the Grant of ROW Easement

Once the decision to grant a ROW has been made, the applicant and interested parties will be notified in writing. Notifications will be provided using first class U.S. mail or, upon request, email. The approved grant will then be distributed to the applicant, Tribe, and if requested, a copy to the individual Indian landowner(s).

A grant will be effective on the date BIA approves the ROW, even if an appeal is filed under 25 CFR Part 2. Or, the grant may specify a date on which the grantee’s obligations are triggered (e.g., payment of compensation). This date may be before or after the approval date. The grantee cannot take possession of the land until BIA approves the grant.

4.9 BIA Inaction on a ROW

If the Agency Superintendent does not meet the decision regulatory timeframe for a ROW application, renewal, amendment, assignment, or mortgage, the parties can file a notice to compel action with the Regional Director. The Regional Director will have 15 days to decide on the ROW or instruct the Superintendent to decide.

If the Regional Director also does not meet the regulatory timeframe for a ROW application, renewal, amendment, assignment, or mortgage, the parties can file a notice to compel action with the BIA Director. The BIA Director will have 15 days to act on the ROW or instruct the Regional Director or Superintendent to act.

If the BIA Director does not meet the regulatory timeframe for granting or denying a ROW application, renewal, amendment, assignment, or mortgage, the parties can file an appeal with the Interior Board of Indian Appeals (IBIA).

Provisions of 25 CFR 2.8 **do not apply** to the inaction of BIA officials with respect to a grant or denial of a ROW, renewal, amendment, assignment, or mortgage under 25 CFR 169.304.

4.10 Mortgage of Grant of ROW Easement

BIA regulations allow a grantee to mortgage a ROW if the grant expressly allows mortgaging (25 CFR 169.210). The grantee must meet the consent requirements in 25 CFR 169.107, unless the grant expressly allows for mortgaging without consent, and must obtain BIA approval for the mortgage.

Refer to 52 IAM 4: Processing Mortgages of Trust Properties, and 52 IAM 4-H: Indian Affairs Mortgage Handbook for additional guidance.

Chapter 5: Post Grant of ROW Easement

The procedures in this section document activities that may be required to ensure compliance with the terms and conditions of a grant of easement.

5.1 Encode into TAAMS

Realty staff will encode the applicant's LOI into the TAAMS Realty Proposal module, and the system will generate a TAAMS ROW module record document on the same day the decision letter is encoded. The TAAMS ROW record should be completed by scanning in the grant of easement with any referenced exhibits and survey plat. The TAAMS ROW record should be approved by the approving official within five days of the record being generated.

Once the TAAMS ROW record is approved, the invoice should be generated. If the invoice due date is within 45 days of the approval date, the invoice should be printed and sent by U.S. mail as well as by email to the applicant.

Notice should also be provided to the grantee with a copy of the recorded ROW, including the first printed page.

5.2 Payments

Once the grantee submits payment to the lockbox or directly to the grantor (if Direct Pay is being used), Realty staff will need to identify and encode or manually process special compensation distribution schedules within two days. Special compensation schedules may include, but are not limited to, varying negotiated payment terms or life estate/remainder payment agreements.

In the case of a life estate, if a will created the life estate and specifies how the compensation will be distributed among the life tenants and owners of the remainder interests, those terms will establish the distribution. Otherwise:

1. The owners of the remainder interests and the life tenant may enter into a ROW or other written agreement approved by the Secretary providing for the distribution of rent monies under the ROW; or
2. If the owners of the remainder interests and life tenant did not enter into an agreement for distribution, the life tenant will receive payment in accordance with the distribution and calculation scheme set forth in 25 CFR 179 r (see also 25 CFR 169.121).

5.3 Due Diligence

Realty staff should ensure the following steps are taken in order to facilitate completion of construction within the ROW in accordance with the provisions of the ROW (25 CFR 169.105).

1. Permanent improvements to be constructed require the grantee to complete construction within the schedule specified in the grant of easement.
2. If construction does not occur, or is not expected to be completed within the time period specified in the grant, the grantee must provide the Indian landowners and BIA with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction.
3. Failure to comply with the due diligence requirements of the grant is a violation of the grant and may lead to cancellation.

5.4 Final Field Inspection

Realty staff may investigate compliance with a ROW. Staff should conduct an investigation in coordination with the appropriate regional staff on a final field inspection of the ROW to ensure project completion.

1. Determine and document if further damages have occurred outside of the authorized ROW and if the grantee is following the stipulations of the ROW.
2. If the inspection reveals further damage, the Realty staff will review the remedies listed in the grant of easement. If applicable, Realty staff will send a request to the AVSO for an appraisal to establish a value for the damages.
3. The approving official may use discretionary authority, in consultation with the Tribe if on Tribal land, to determine if assessing additional damages is in the best interest of the landowner(s).
4. When warranted, the grantee is notified (see 25 CFR 169.402) of the damages, and it is determined who should receive the compensation (i.e., the landowner or a lessee). The grantee may appeal the findings, so the notification letter should include a notice of appeal rights.
5. The estimated damages resulting from the construction of the permanent improvement(s) will be taken from the bond that accompanied the ROW application (25 CFR 169.104).
6. After all identified damages have been remedied by payment of fees or as negotiated, any remaining balance of the bond will be maintained; depending on the purpose of the ROW, the grantee may need to provide a supplemental bond for the remainder of the grant term.

Chapter 6: Grant of ROW Easement Amendments

An amendment is required to change any provisions of a ROW grant. If the change request is a material change to the grant, BIA may require application for a new ROW instead. This section documents the procedures to review, prepare, and submit for approval a ROW Amendment form (i.e., ROW Amendment Template). Realty staff should ensure the request for a ROW amendment follows requirements of 25 CFR 169.204-.206 and NEPA, and is approved within regulatory timeframes.

6.1 ROW Amendment Request Receipt (25 CFR 169.205)

Realty staff should encode the proposed ROW amendment request into the existing TAAMS ROW Realty Proposal tab as an activity within five days of the request. The Realty staff will, within 10 days of receipt, notify the grantee that his/her request was received by preparing an Amendment Acknowledgement Letter or an email. Realty staff will encode and image the acknowledgement letter or email as an activity into the existing TAAMS ROW Record Proposal tab.

6.2 ROW Amendment Request Review

Realty staff should determine if the amendment is a request for a true amendment or a request for an administrative modification (i.e., clerical correction). If it is a true amendment, staff should continue to step A. below. If it is an administrative modification, staff should instead proceed to step B. below.

A. Amendment

The amendment should be prepared by the grantee to amend the grant of easement document and submit it to the approving official for review and decision.

1. Review the type of amendment that is being requested.

- a. If the amendment changes the scope of the original ROW and the new use requires ground disturbance, the grantee will need to submit a new ROW application.

For example: Changing the purpose of the ROW from construction, operation, and maintenance of a water line to a utility corridor will require a new application. Each change should be analyzed to the specific scenario and will be case specific.

- b. If the amendment changes the scope of the original ROW and the new use will not require any ground disturbance, the amendment can be reviewed and processed.

For example: Changing the scope of the original ROW from construction, operation, and maintenance of an electric line to the construction, operation, and maintenance of electric and communications lines (telephone, fiber, broadband, etc.) that would be attached to

existing power poles and no ground disturbance would be required for the construction of the communication line.

2. Send an acknowledgement letter (i.e., Amendment Acknowledgement Letter Template) or email indicating receipt of the amendment request to the applicant. Realty staff will need to present the amendment request to the approving official within 30 days of receipt.
3. Research and review agency records to confirm the original ROW was approved and recorded for which the amendment is being submitted.
4. Review and verify any amendments requiring compliance with consent requirements in 25 CFR 169.107. Any amendments including, but not limited to, changes to the location (section, township, and range), term, payments, provisions, etc., must be supported with the required documentation described below.
 - Consent.
 - Tribal land - A Tribal Resolution and a written agreement (if the Tribe requires it).
 - Individually owned Indian lands - majority consent will be required for each tract unless BIA issues without the consent of the owners (only if ALL the conditions of 25 CFR 169.107 are met). See also the Consent of Owner for Renewal/Amendment/Assignment/Mortgage of an Existing Right-of-Way Template.
 - Sureties - The grantee will need to provide documentation that the surety who holds its bond or alternative security have consented to the amendment. Appropriate documentation is a brief statement agreeing to the amendment on company letterhead. However, if the bond has already been waived for the original ROW, no surety consent is needed.
 - Updated survey/legal description should reflect the amendment. The survey will need to be reviewed to:
 - Ensure closure of the survey, if not a centerline description, and that it meets all survey requirements.
 - Ensure written legal description corresponds with survey plat.
 - If ROW affects more than one section/tract, determine acreage that affects each section/tract. *Note:* This is for encoding purposes and completed by the Realty staff.
 - Review the documentation on file for the original ROW. Discuss with the Environmental Coordinator to determine if the original NEPA document is sufficient to be used for the proposed amendment and/or what type of NEPA documents (i.e., categorical exclusion (CATEX), EA, EIS) may be required.

- Consideration.
 - Depending on negotiations or consents with the landowners, compensation may need to be addressed.
 - Depending on the amendment, additional consideration should be discussed or waived. An appraisal may be required depending on the amendment request.
5. Review the final version of the ROW Amendment Template for the following:
- Format
 - All provisions are accounted for and numbered correctly.
 - All pages are accounted for and numbered correctly.
 - If the amendment does not change the term of the grant, make sure the term remains with the original dates.
 - Approval Signature Line
 - Verify the correct secretarial delegation of authority citation is used.
 - Verify the grantee's signatory is an authorized official (see Authority of Execution document submitted by applicant).
6. Realty staff should notify the applicant by letter of decision to approve or deny the amendment request (i.e., Assignment/Amendment Decision Template).
- If the decision is to deny the amendment, the basis for the denial should be stated and appeal rights provided.
 - If the decision is to approve the amendment, the approval should be stated, and appeal rights provided. A copy of the approved amendment should also be provided to the applicant, Tribe, and if requested, to the individual Indian landowner(s).
7. Encode into the TAAMS Realty Proposal tab all activity conducted to complete the amendment.

B. Administrative modification

Realty staff should review and identify what type of administrative modification is being requested and determine if the request will not significantly change the ROW. Staff should also verify and document that the grantee has provided written notice to the landowner(s)/Tribe of the administrative modification. A copy of the written notice (which can be a letter certifying the letter was sent) and list of contacts the notice was sent to will suffice. Realty staff should then take the following steps:

1. Encode into the TAAMS ROW tab all activity conducted to complete the administrative modification.

2. Prepare an internal Administrative Modification form (i.e., Administrative Modification Template) to show and correct the administrative error(s). The form should be submitted to an approving official for review and approval.
 - Provide the Administrative Modification form to the grantee to make the proposed clerical change; or
 - If Realty staff will be completing the Administrative Modification form, it is recommended a draft copy of the form be provided to the grantee to verify the correct clerical change(s) prior to submitting the form for approval.
3. Provide a copy of the approved Administrative Modification to the grantee and Tribe, or if requested, a copy to the individual Indian landowner.
4. Encode and image the approved Administrative Modification and submit to LTRO for recording.

Chapter 7: Assignment of a ROW

An assignment of ROW is when an assignee acquires all or part of the grantee's right(s) by assuming all or part of the grantee's rights and obligations under the grant of easement. BIA ROW regulations address the assignment of an entire or partial interest in a ROW (25 CFR 169.207-209). If the original grant expressly states BIA approval is not required, the grantee/assignee must provide a copy of the assignment and supporting documents to BIA for recording.

A change of name of the grantee is processed by BIA upon receipt of an assignment, corporate merger, acquisition, or transfer by operation of law as a request from the grantee. It is mandatory that bonding be changed to reflect the new name change.

The procedures in this section includes the preparation of an assignment for ROW, the actions required to issue and approve the assignment, and recordation of the assignment. There is no standard assignment form. BIA can provide an example template (i.e., Assignment of ROW Template) upon request.

7.1 ROW Assignment Package Receipt

Upon receipt of an assignment request, Realty staff will:

1. Encode the proposed ROW assignment request into the existing TAAMS Record Proposal tab as an activity within five days of receipt.
2. Notify the grantee within 10 days of the date the assignment request was received.
3. Prepare an Assignment Acknowledgement Letter or email to send to the grantee (25 CFR 169.208).

7.2 ROW Assignment Application Package Review

Realty staff will perform the following steps when reviewing an assignment application package:

1. Determine if the assignment is a result of a corporate merger, acquisition, or transfer by operation of law.
 - If yes, then the assignee is excluded from these requirements, except that the assignee needs to provide an original copy of the assignment for recording (25 CFR 169.207(c)), and it must be recorded within 30 days.

Note: The grant of easement or Tribal Resolution should be reviewed to identify if the assignment still requires consent even if it meets the corporate merger, acquisition, or transfer by operation of law regulatory criteria.

- If **no**, proceed to the next step (step 2).
2. Review the original ROW for express assignment language and applicability. Identify if the existing ROW language “expressly states” (*direct and distinctly stated*) that the grantee can assign the grant and under what conditions.

For example, if the grant of easement states the following (below) or something similar, then the assignment can be reviewed and approved without further consent:

“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,”

or

“its successors and assigns, hereinafter referred to as GRANTEE, an easement for right-of-way for the following purposes, specifically,”

- If **yes**, the grantee/assignee must submit the original executed (signed) assignment of the grant of easement document to the BIA within 30 days of execution.
 - When an assignment is filed, the Realty staff should review the chain of title (i.e., original grantee is the assignor).
 - The Realty staff should verify that the conditions (i.e., filing affidavit of completion, payments, etc.) of the grant of easement are in compliance, and provide the assignee notice of any violations, if any.
 - BIA will record the assignment within 30 days of filing.
 - If **no**, i.e., the grant does not say anything about, authorize, or address assignments, the grantee/assignee must submit the original executed assignment document to the BIA within 30 days of execution.
3. Verify the grantee/assignee has:
 - complied with the conditions of the grant;
 - provided the BIA with a notice of any violations, if any;
 - submitted a new bond; and
 - obtained landowners’ consent, and possible compensation requirements, prior to BIA approval and recording.
 4. Prepare a recommendation memo to the approving official for a decision.
 5. Notify the applicant by letter of the decision to approve or disapprove the assignment request (i.e., Assignment/Amendment Decision Letter) (25 CFR 169.209).

- If the decision is to deny the assignment, state the basis for denying, and provide appeal rights.
 - If the decision is to approve the assignment, state the approval, and provide appeals rights. Provide a copy of the approved assignment to the grantee and Tribe, and upon request a copy to the individual Indian landowner(s).
6. Encode into the TAAMS Realty Proposal tab all activity conducted to complete the assignment.

7.3 Partial Assignment Review

Realty staff will review the purpose of the partial assignment and/or determine if a ROW application should be submitted. A partial assignment may be used to authorize another third party to utilize an existing, approved grant of easement under certain conditions (25 CFR 169.127(a)).

A partial assignment of ROWs will be reviewed and processed using the same standard assignment procedures discussed above in sections 7.1 and 7.2. In addition, review of a partial assignment should include:

1. Review if the partial assignment's purpose/use is consistent with the original grant of easement's purpose/use. If it is identified that the partial assignment purpose is different and requires any ground disturbance, Realty staff will notify the assignee to obtain a new ROW.
2. Review the grant of easement to identify any conditions and/or obligations that are re-occurring such as payment, and if applicable, ensure the partial assignment addresses if the assignor (grantee) or assignee is the responsible party.
3. Confirm the partial assignment of a ROW identifies the segment of the ROW that is being assigned.

Chapter 8: Compliance and Enforcement of ROWs (25 CFR 169 Subpart F)

This section documents the procedures that may be used to address compliance and enforcement related to ROWs on Indian land, and tasks required of Realty staff to review and issue abandonment, termination, and cancellation of a ROW.

Any abandonment, non-use, or violation of the ROW grant or ROW document, including but not limited to, encroachments beyond the defined boundaries; accidental, willful, and/or incidental trespass; unauthorized new construction; changes in use not permitted in the grant; and late or insufficient payment may result in enforcement actions including, but not limited to, cancellation of the grant.

8.1 Research and Investigation Process for Violations

Realty staff may request and/or conduct an on-site investigation to review compliance with a ROW, and may enter the Indian land subject to a ROW at any reasonable time upon reasonable notice consistent with any notice requirements under applicable Tribal law and applicable grant documents to protect the interests of the Indian landowners to determine if the grantee is following the requirements of the ROW. The ROW area of concern can be located by referencing the public surveys shown on the map of definite location or by GPS (if available), and pictures should be taken as well as a description of existing conditions provided.

If written notification from the Indian landowner or Tribe is received that informs the BIA that a specific abandonment, non-use, or violation has occurred, the Realty staff will promptly initiate an appropriate investigation.

Realty staff will research and review the TSR, tract history report, BLM master title plat, original allotment file, original grant of easement, and supporting documents, if available.

A. Violations on Tribal land

1. If a violation occurs on Tribal land, the Tribe and the grantee may negotiate remedies for a violation, abandonment, or non-use. The negotiated remedies must be stated in the Tribe's consent or be included in the grant.
2. If the negotiated remedies on Tribal land include termination, BIA approval of the termination is not required; the termination is effective without BIA cancellation. The Tribe must provide the BIA with written notice of the termination so that it can be recorded with the LTRO.

B. Violations on individually owned Indian land

1. The Indian landowners and the grantee to a ROW grant on individually owned Indian land may negotiate remedies, so long as the consent also specifies the way those remedies may be

exercised by, or on behalf of, the Indian landowners of the majority interest. The negotiated remedies must be stated in the grant.

2. If the negotiated remedies on individually owned Indian land include termination, BIA concurrence with the termination is required to ensure that the Indian landowners of the applicable percentage of interests have consented. BIA will record the termination with the LTRO.
3. Realty staff will review the original ROW for any remedy provisions. If there are listed remedy provisions applicable to the United States, the notice of violation and/or cancellation will need to abide by that provision prior to cancellation through regulations.
4. Realty staff will ensure that the remedies established in the grant of easement meet all applicable requirements.

8.2 Notification of Violation Process

Realty staff will mail a written Notice of Violation within 10 business days from the date BIA has determined a violation has occurred. There is no specific form or template required for documenting this violation, but the notice should require the grantee to do one of the following within 10 business days of receipt:

- cure the violation and notify BIA (and the Tribe for Tribal land);
- dispute determination that a violation occurred; or
- request additional time to cure the violation.

If the grantee does not cure a violation of a ROW grant within the required time period, or provide adequate proof of payment as required in the notice of violation, BIA will consult with the Tribe for Tribal land or, where feasible, communicate with Indian landowners for individually owned Indian land, and determine whether:

- BIA should cancel the grant;
- the Indian landowners wish to invoke any remedies available to them under the grant;
- BIA should invoke other remedies available under the grant or applicable law, including collection on any available bond or, for failure to pay compensation, referral of the debt to the Department of the Treasury for collection; or
- the grantee should be granted additional time in which to cure the violation.

If the grantee(s) fails to correct and/or remedy the basis for violation, BIA may issue a cancellation notice by certified mail, return receipt requested, within five business days of BIA's

decision. There is no specific form or template required for documenting this notice, but it should provide notification to the grantee of the grantee's right to appeal under 25 CFR 2, including the possibility that the official to whom the appeal is made will require the grantee to post an appeal bond.

A cancellation involving a ROW grant will not be effective until 31 days after the grantee receives a cancellation letter from BIA, or 41 days from the date the letter is mailed, whichever is earlier. The cancellation decision will not be effective if an appeal is filed unless the cancellation is made immediately effective under 25 CFR 2.

If the cancellation decision is not immediately effective, the grantee must continue to pay compensation and comply with the other terms of the ROW.

The Realty staff will prepare and submit to the approving official a recommendation memo that outlines the findings of the document research and field visit. Realty staff will issue an appropriate instrument that cancels or terminates the ROW, and transmit the appropriate instrument or Tribal termination/cancellation document to the LTRO.

When a grantee has affirmatively relinquished a ROW (as opposed to relinquishing through non-use) either by notifying the BIA of the abandonment, or by performing an act indicating their intent to give up and never regain possession of the ROW, BIA will take the following steps:

1. The original grant of easement and supporting documents will be reviewed to determine if permanent improvements remain with the landowners or will be removed by the grantee.
2. If there are permanent improvements, an on-site investigation will be conducted to determine if any damages have been incurred.
 - If there are no damages, the Realty staff will prepare and submit a recommendation memo and an appropriate instrument cancelling or terminating the ROW to the approving official for a decision.
 - If there are damages, this should be documented with photos and notes. The grantee should be provided with notice to restore the property to its original condition.
3. If there are no permanent improvements, the Realty staff will prepare and submit a recommendation memo and an appropriate instrument cancelling or terminating the ROW (i.e., Cancellation/Termination of Easement) to the approving official for a decision.
4. If a bond is posted, prior to the release of the bond, any reclamation of the lands will need to be completed.

8.3 Redeeming Bonds upon Violation

When the grantee violates the conditions of the grant of easement and the BIA needs to redeem the posted bond, insurance, or alternative form of security, the Realty staff will need to review the grant of easement for remedies listed. If all remedies have been exhausted, then:

- Realty staff will need to submit a written request, with a copy of the bond, first page of the grant of easement, and/or applicable documents to the surety to redeem the bond.
- Inform the surety they should submit the bond amount to the BIA region's/agency's special deposit account or directly to the Tribe, if payable to the Tribe for the ROW on Tribal land.
- The proceeds of the bond will first be applied to unpaid compensation, then to reclamation of the land.

8.4 Possession After a ROW Expires, is Terminated, or Cancelled

If a grantee remains in possession after the expiration, termination, or cancellation of a ROW, and is not accessing the land to perform reclamation or other remaining grant obligations, BIA may treat the unauthorized possession as a trespass under applicable law. BIA will communicate with the Indian landowner(s) in making the determination as to whether to treat the unauthorized possession as a trespass (25 CFR 169.410).

Unless the parties have notified the Realty staff in writing that they are engaged in good faith negotiations to renew or obtain a new ROW, Realty staff may take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law, such a forcible entry and detainer action. The holdover time will be charged against the new term. Any action must be in consultation with the Office of the Solicitor.

Chapter 9: Service Line Agreements (SLAs)

Service lines generally branch off from facilities for which a valid ROW was obtained. A service line is a utility line running from a main line, transmission line, or distribution line that is used only for supplying telephone, water, electricity, gas, internet service, or other utility service to a single house, business, or other structure. In the case of a power line, a service line is limited to a voltage of 14.5 kv or less, or a voltage of 34.5 kv or less if serving irrigation pumps and commercial and industrial uses.

To obtain access to Indian land for service lines, the ROW grantee must file a service line agreement (SLA) with BIA, to include the requirements of Subpart B (25 CFR 169.51-56).

Realty staff will need to inform the utility provider that a service line:

- cannot link to another service line drop;
- is to extend off an approved easement; and
- can only extend to an individual owner, authorized occupant, or user of one tract of Tribal or individually owned Indian land.

Realty staff will recommend that the utility provider provide a “Permission to Cross Existing ROW” if the line is crossing an established ROW. Realty staff will also ensure that the utility provider clearly understands that the SLA:

- cannot be unilaterally amended;
- does not authorize the SLA to be assigned to another entity; and
- can be cancelled at any time.

The SLA may be in any form by the utility provider as long as it meets the requirements of 25 CFR 169.52.

Realty staff will review the SLA document within 10 days of its receipt. Realty staff will verify that the SLA and the plat or diagram meets the following requirements:

- Existing valid main ROW easement
- Only one user and one tract of land
- Date of execution – must be filed with a BIA within 30 days of execution, and before construction begins and improvements are made
- Name and address of utility provider/applicant

- Name of authorized occupant receiving service
- Existing valid lease (if necessary)
- Identifies type of services provided
- Addresses the mitigation of any damages incurred during construction and the restoration (or reclamation, if agreed to by the owners or authorized occupants/users)
- Accuracy of legal land description; review plat or diagram for location, size, and displays connection to main line.

The SLA does not require BIA approval. Realty staff should encode “SLA” in TAAMS and record it with the LTRO.

Chapter 10: Administrative Appeals and File Maintenance

A grantee has the right to appeal most grant-related decisions under 25 CFR 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 is taken, or the ROW file granting process is continued. While the file is in a 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 within the ROW file.

The Regional Director or Interior Board of Indian Appeals (IBIA) must compile an administrative record in order to decide an appeal before IBIA. The DOI Solicitor’s Office issued a memorandum with standardized guidance on compiling an administrative record dated June 27, 2006. This memorandum is found on the DOI.gov website.

The Regional Director will issue a decision on an appeal from a ROW decision within 60 days of receipt of all pleadings. A decision from the IBIA is likely to take longer.

10.1 Administrative Appeals

The preparation of the administrative record requires BIA to assemble and transmit the record within 20 days after receipt of a notice of appeal or upon notice from the IBIA. The requirements, while specifically addressed to appeals before IBIA, should also serve as guidelines for preparing administrative records for appeals within BIA.

The following is key guidance for preparing an administrative record:

1. Assemble the Administrative Record

- Consists of original documentation (not photocopies).
- Documents are to be placed in reverse chronological order by date issued or date received with the most recent document on top.
- All documents should be dated and legible.
- Each document must be individually separated and tabbed with the number corresponding to the index.

3. Prepare an Index

- An index references the contents of the administrative record.
- Each document tab number in the folder must correspond to the number on the index.
- Enter the document date, the subject matter, and the number of pages of each document.
- No document should be added or removed from the administrative record.
- Any additional pre-decisional documents discovered after the administrative record has been submitted should be sent to the Solicitor's Office for possible supplementation to the administrative record.

4. Solicitor's Office Review/Approval

- Send a paper copy (not electronic) of the administrative record with the index to the Solicitor's Office for review/approval.
- After the administrative record is approved, prepare exact duplicates for the office's use as a working file while the matter is under appeal, and for the Solicitor's Office use in handling the appeal.
- If any other office is involved, also prepare a duplicate file for that office.

10.2 Decision Letter and Files

The BIA will maintain the record on its decision to approve or deny a ROW application. Even if a BIA letter is not classified as a decision, it may be considered a decision if it has the effect of denying relief to an appellant or otherwise adversely affecting someone.

Additionally, the following guidance should be followed by Realty staff relative to documentation and files:

- Written contemporary records are preferable to reconstructed statements.
- A Log Sheet should be created for each file to document activities associated with the file/project.
- ***ONLY*** include the records that were before the approving official when he/she made the decision.
- The decision should appear in the first paragraph of the decision letter.

- A decision should be clearly identified as a decision.
- A decision should be distinguished from other forms of communication, such as an informational letter.
- Subject matter of the decision should be clearly described.
- State the ruling briefly in the first paragraph.
- After discussion, explain the ruling in more detail if appropriate.
- The end of the decision must inform the addressee of procedures for appeal under 25 CFR 2.

If BIA cannot find an address for a non-Indian, the person's name and address should be typed as "unknown" on the distribution sheet. If the person is an Indian and their address is unknown or in estate, a copy of the decision letter is sent in "care of" the Superintendent at their home agency.

All known addresses, unknown addresses, and those in care of the Superintendent's address must be typed out and attached to the decision under cc: See Distribution List.

When preparing the Administrative Record, **DO NOT** include the memorandum requesting the Administrative Record.

Chapter 11: Additional Information and Guidance

The installation of utilities within a road ROW granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328; and 25 CFR 169), 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 ROW for a BIA-owned 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 the respective BIA regional Road Engineer/staff until the consent of the Indian owners has been obtained.

Note that with respect to the installation of utilities within a road ROW acquired under the 1901 Public Highways Act, such an action may be taken without the landowner’s consent (and without the payment of further compensation to the owner(s)) 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 Public Highways Act.

Additionally, 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 the uses to be authorized in the grant of easement to follow, and 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.

Condemnation of entirely individually owned Indian land is authorized under 25 U.S.C. § 357. 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 BIA will exercise its fiduciary responsibility and take appropriate measures to ensure the interest of the landowner(s). Condemnation of Tribal lands or a tract of individually owned Indian land in which the Tribe owns an interest is not authorized under Section 357.

Definitions (not including the definitions in 25 CFR 169.2)

Administrative modification is a modification that is clerical in nature and does not change the intent of the grant of easement.

Air rights means property interest in the “space” above the earth’s surface. Owning or renting land or a building includes the right to use and develop the space above the land without interference by others.

Aliquot parts is the term 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.

Applicant is a person or legal entity applying for ROW over Indian land.

Appraisal (valuation or opinion of value) is an opinion or estimate of value based on factual analysis.

Appurtenance means 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.

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

Broadband means high-speed, switched, broadband telecommunications capability that enables users to originate and receive high quality voice, data, graphics, and video telecommunications using any technology such as fiber, digital subscriber line (DSL), cable modem, wireless, satellite, and broadband over powerlines (BPL). Broadband means the technology underlying telecommunications services such as voice, video, and data.

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

Computation of time means in the computation of any period prescribed, business days will be used. Computation should not include the day on which a decision was made, notice was received, or 10 days after date of mailing, date an application was filed, or other event occurred causing time to begin to run. Computation should include the last day of the period, unless it is a Saturday, a Sunday, or a legal holiday, in which case the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

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

Contract is an agreement between two or more persons or parties that creates an obligation to do or not to do something. The agreement essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.

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

Corporate merger is a merger that unites two or more corporations by the transfer of stock and assets of all to one of them, which continues in existence while the other(s) is swallowed up or merged therein.

Deny or Disapprove means to refuse to accept, recognize, or grant.

Environmental Assessment (EA) is a report analyzing the impacts of a proposed action and alternatives on the quality of the human environment for purposes of determining whether the proposed action would have no significant impact or BIA should prepare an environmental impact statement.

Environmental Impact Statement (EIS) is a document required by federal laws to accompany proposals for major Federal Government projects and programs that will likely have a significant impact on the quality of the human environment.

Escrow means money, stock, or other property delivered by one party to a contract into the hands of a third party, to be held by the third party until the happening of a contingency or performance of a condition, and then delivered by the third party to the other party to the contract.

Estate is 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 means to make and sign a contract, or sign and deliver a note.

Expressly means direct, clear, and purposely.

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

Finding of No Significant Impact (FONSI) is a document, usually provided by local BIA environmental staff, that is based upon the findings of an EA, and states that an EIS is not required for a proposed action.

Grant of ROW easement is a ROW grant, renewal, amendment, assignment, or mortgage of a ROW.

Grant of ROW easement mortgage is a mortgage on the grantee's interest in the easement or ROW given to secure the repayment of a loan obtained by the grantee.

Indemnification is security against liability for any loss, damage, injury, or claims from a liability, such as those arising from the use of the ROW, 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.

Ingress/egress is the act of entering on or exiting off the land. The right of ingress and egress may be authorized by the Indian landowner, granted to the grantee and/or permittee.

Interest means an ownership right to the surface estate of Indian land that is unlimited or uncertain in duration (e.g., a life estate).

Life tenant is the holder of a life estate.

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

Majority interest is more than 50% of the trust or restricted interests in a tract of Indian land.

Manual of Surveying Instructions is the federal survey standards (Survey Manual) published by Cadastral Survey of the BLM for the Department.

Metes and bounds is a land description that describes the outside boundary of a parcel of land by a series of measurement courses that includes the bearing and distance (metes) and bounds (physical and legal monuments of record) of each course. The bearing measurement is shown as degrees, minutes, and seconds with an expression of direction (NE, SE, SW, NW quadrants) as measured from true north. The conventional 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 is 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 (or Amendment) is 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 a valid grant of easement for ROW.

Mortgage is 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 grantee's easement interest as security for a debt or other obligation owed by the grantee to a lender or other mortgagee.

Non Compos Mentis means 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.

Non-federal party is a state, local government, Indian Tribe, institution of higher education (IHE), nonprofit organization, or any other entity not part of the Federal Government.

Notary Public/Notary is 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.

Overlap means a ROW that may encroach on, over, under, or within an existing underlying easement.

Power of Attorney is an adult or legal entity who has been given a written Power of Attorney that meets all of the formal requirements of any applicable federal and Tribal law and is not subject to state and local law. See 25 CFR 169.108(b)(5).

Range lines are 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 means measures undertaken to bring about the necessary reconditioning or restoration of land that has been affected by a ROW.

Remainder/remainderman is the person that is to receive possession of the property after the death of a life tenant.

Rental/rent is the consideration paid for use or occupation of property, such as land or buildings.

ROW mortgage is a mortgage on the grantee's interest in the easement or ROW given to secure the repayment of a loan obtained by the grantee.

Section lines are the 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.

Standards for boundary evidence are the formalized system of identifying and documenting boundary evidence for trust, restricted, and BIA lands; see 303 DM 7.

Survey is the plat and the field note record of the observations, measurements, and monuments descriptive of the work performed in accordance with federal survey standards (25 U.S.C. 176 and 43 U.S.C. 2).

Temporary Construction Easement (TCE) provides a work area for the temporary use of land outside the normal ROW that is necessary for construction of the project.

Throughput means the total volume of oil or gas that passes through a pipeline.

Township lines are 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.

Township is 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.

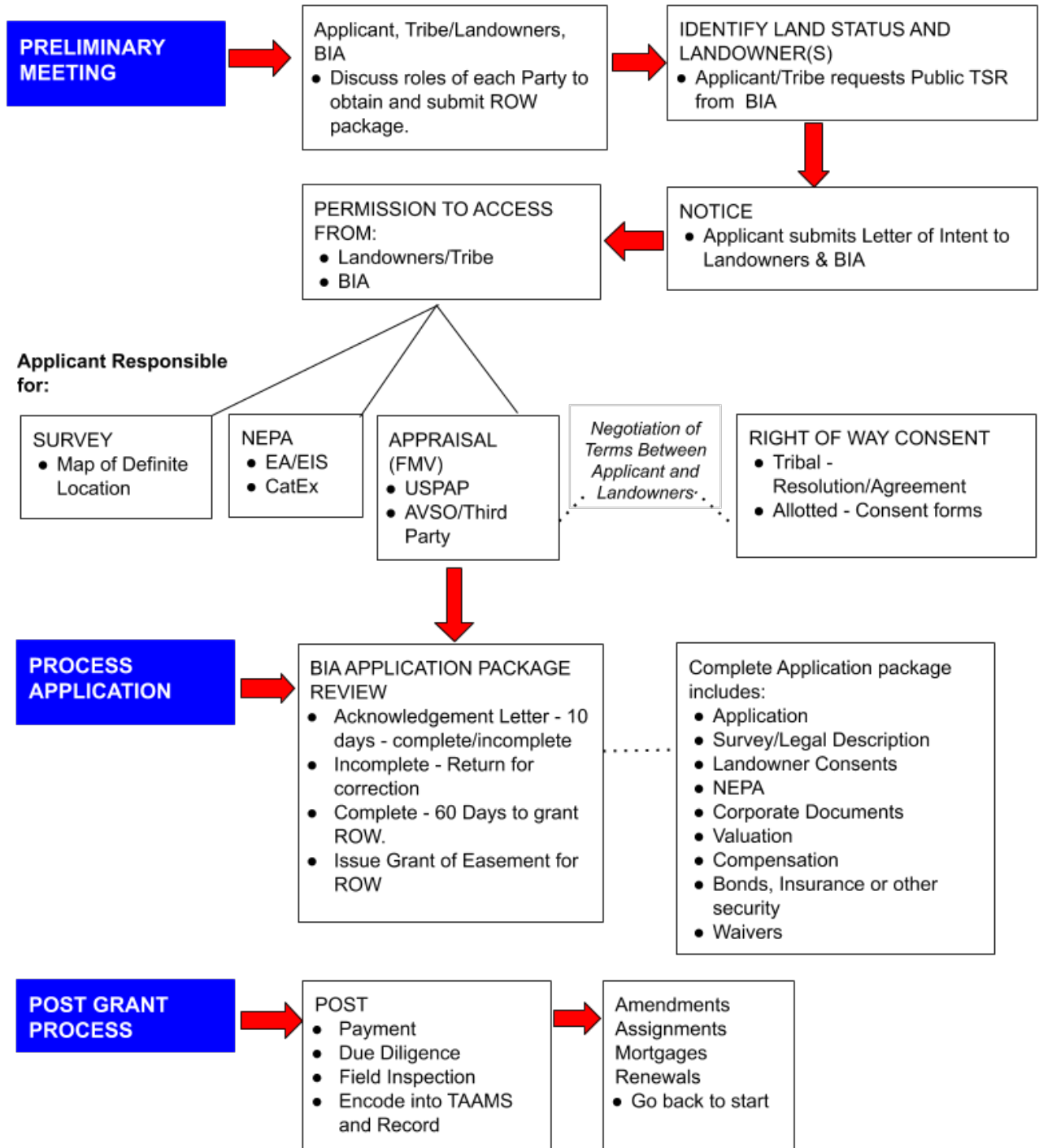
Trespass is any unauthorized possession, occupancy, use of, or action on Tribal, individually owned Indian land, or BIA land.

Tribal law is 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, customary, or traditional law.

Trust land is any tract or interest therein, that the United States holds in trust status for the benefit of a Tribe or individual Indian.

Attachment 1: General Flowchart to Obtain ROW

General Flowchart To Obtain ROW



Attachment 2: List of Forms, Checklists, and Templates applicable to the ROW Process

The forms, templates, and checklists on this list are posted on the IA Online Forms webpage here: <https://www.bia.gov/policy-forms/online-forms>. For the ROW application (i.e., “Right-of-Way Application” form), select the “IA Paperwork Reduction Act (PRA) Forms tab, and scroll down until OMB Number 1076-0181. For all other forms, templates, and checklists, select the “Indian Affairs Specific Forms and Guidance” tab, and scroll down.

60-day Notice of Intent to Approve without Landowner(s) Consent Template
Administrative Modification Template
Amendment Acknowledgement Letter
Applicant’s Letter of Intent (LOI) Template
Applicant’s Request to Amend Template
Assignment Acknowledgement Letter
Assignment/Amendment Decision Letter
Assignment of ROW Template
BIA Approval without Consent of Landowner(s) Template
BIA Consent on Behalf of Deceased Landowners
BIA’s Consent on Behalf of Non Compos Mentis
BIA’s Consent on Behalf of Orphaned Minors
BIA’s Consent on Behalf of the Power of Attorney (POA)
BIA’s Consent on Behalf of Whereabouts Unknown
BIA’s Reply Letter Template
Cancellation/Termination of Easement
Consent of Owner for Renewal/Amendment/Assignment/Mortgage of an Existing Right-of-Way Template
Consent of Owner to Grant a Right-of-Way Template
Grant of Easement Template
Letter for a Complete ROW Application
Letter for Incomplete ROW Application
Notice of an Extension
Notice of Decision to Applicant
Notice of Decision to Landowner(s)
Permission to Overlap on ROW Template
Rights-of-Way (ROW) Checklist
ROW Amendment Template