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U. S. DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

REAL PROPERTY MANAGEMENT

Rights-of-Way Handbook

BUREAU OF INDIAN AFFAIRS MANUAL SUPPLEMENT 7 54 BIAM 0
REAL PROPERTY MANAGEMENT
RIGHTS-OF-WAY OVER INDIAN LANDS HANDBOOK

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1.0 Policy.

The Bureau's responsibility in making grants of rights-of-way over Indian land stems from the United States Government's responsibilities as trustee for the land. Therefore, grants of rights-of-way shall be made in such manner as to discharge properly the responsibilities and obligations of a trustee to the owner of the land; that is, to assure that the rights of each of the owners of the land are protected. The granting of a right-of-way differs from the usual leasing, permitting, and other land transactions where the trust or restricted Indian landowner leases or permits with the approval of the Secretary. In rights-of-way, the Secretary, as provided by Congress, grants the right-of-way with the consent of the Indian landowner as provided in the enabling legislation. Therefore, in carrying out the trust responsibility as the grantor, the express grant should be in writing in the form of an easement since an easement for right-of-way creates an interest in the land, is a limited use or enjoyment, can be protected against third parties, is not terminable at will by the Indian landowner (possessory owner), is not a natural right but a created right which is capable of being created by conveyance. The conveyance instrument must define the nature and limited extent of the right-of-way issues relating to the use and purpose, width, length, duration, what use the possessory interest owner may make of the land under an electrical transmission line, etc., which are applicable to the right-of-way to be granted.

2.0 Regulations.

The regulations (25 CFR 161) are designed to implement the above-stated policy by giving the Secretary or his representative acting under delegated authority adequate latitude to act in the best interests of the owners in the wide variety of circumstances and situations which

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arise at the field level in connection with rights-of-way matters. There follows a section-by-section explanation of the regulations contained in 25 CFR 161.

.1 Definitions. (25 CFR 161.1)

- (a) Secretary - self-explanatory
- (b) Individually owned land - self-explanatory
- (c) Tribe - self-explanatory
- (d) Tribal land - self-explanatory
- (e) Government-owned land - The authorized representative of the Secretary upon execution of the easement document is consenting to and granting the right-of-way. Therefore, no separate documentation of a consent is required.

.2 Purpose and Scope of Regulations. (25 CFR 161.2)

- (a) The regulations in this part are of general applicability and, except for a license granted under § 161.2(c), cover all rights-of-way affecting tribal land, individually owned land, and Government-owned land. It should be kept in mind that situations may develop where it may be justified and necessary to make a change or omission in the regulatory requirements or procedures set forth under 25 CFR 161. Any such changes or omission must be considered on a case-by-case basis and processed as exceptions pursuant to 25 CFR 1.2. No change shall be considered which conflicts with a statutory requirement. The general delegations of authority to Superintendents or other officials designed to act as authorized representatives do not

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include the authority to waive or make exceptions under 25 CFR 1.2 unless clearly and expressly provided.

(b) Self-explanatory

(c) This section is self-explanatory and does not conflict with § 161.27, since § 161.2 removes from the regulations under 25 CFR 161 the granting of rights-of-way for the facilities associated with primary hydropower projects which must be licensed pursuant to the Federal Power Act. An applicant should file his application with the Federal Power Commission, who in turn will request Secretarial participation for the necessary protective conditions. The provisions of § 161.27 apply to those transmission lines and power projects which are not subject to the Federal Power Act.

.3 Consent of Landowners to Grants of Rights-of-Way. (25 CFR 161.3)

The regulations do not permit and it is not intended herein that the consents of landowners obtained shall extend to giving permission to construct prior to the grant of right-of-way. The grant must be made prior to any construction.

(a) The regulations require that the consent of the tribe be obtained prior to issuing permission to survey or granting a right-of-way over tribal land of tribes that are organized under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-473 and 474-479); the Act of May 1, 1936 (49 Stat. 1250; 25 U.S.C. 473a and 48 U.S.C. 358a and 362); and the Oklahoma Indian Welfare

Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 501-509); and tribal land belonging to all other tribes which have a tribal governing body recognized by the Secretary.

As to tribes which do not have a recognized governing body, the Secretary can, as a matter of law, grant a right-of-way; however, such cases would have to be handled as an exception to the regulations. Prior to submission as exceptions in these latter cases, the field officials are to determine the necessity for such a right-of-way, whether substantial damages may be incurred during construction or to adjacent property interests, and prepare a certification as to the status of the tribal land ownership.

- (b) Allotted land - self-explanatory.
- (c) The authority of this subsection is to be exercised with discretion. The Secretary should satisfy himself that the applicant has made reasonable effort to contact and ascertain the wishes of the landowners. Where the Secretary is exercising his authority, under § 161.3(c)(1) through (5), no consent form is necessary, the act of granting the right-of-way will suffice. However, the reasons for his action should be documented. Except when specifically waived and so stated in the consent form, the negotiated consideration for the granting of the right-of-way shall be set forth in the consent form and qualified by the statement that such consideration shall be not less than the appraised fair market value approved by the Secretary.

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.4 Permission to Survey. (25 CFR 161.4)

Anyone desiring permission to survey for a right-of-way across individually owned land, tribal land, or Government-owned land must file a written application with the Secretary, unless request for survey is incorporated in application for right-of-way pursuant to 161.5. The application shall adequately describe the proposed project, including purpose and general location, and shall contain an agreement to indemnify the United States, landowners, and/or legal occupants of the land, against liability for loss of life, personal injury and property damage caused by survey. The application shall be accompanied by:

- (1) Written consents as required by § 161.3.
- (2) Evidence of good faith and financial responsibility.
- (3) Twice the amount of estimated damages or a satisfactory surety bond.

Application filed by a corporation must be accompanied by:

- (1) Copy of charter or articles of incorporation, certified by the proper State official for the State wherein the corporation was organized. When the land is located in a State different from that in which the applicant was incorporated, the corporation must file a certificate of authority to do business in the State where the land is located. Applicants who have previously furnished the required documents may comply with this section by referring to the date and place of such filing and furnish the proof of continued financial responsibility.

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- (2) Certified copy of resolution or bylaws authorizing filing of application.

Application filed by an unincorporated partnership or association must be accompanied by:

- (1) Certified copy of articles of partnership or association, or if there are none, a statement to this effect, signed by each member of the partnership or association.

The Secretary's authority to issue permission to survey is based on his authority to grant a right-of-way. The deposit required by this section, less any damages incident to the survey as determined by the Secretary, may be refunded upon completion of the survey, or it may be held and applied toward the payment of the deposit required under § 161.5. For a sample of an application for permission to survey only, see Illustration No. 1.

.5 Application for Right-of-Way. (25 CFR 161.5)

The regulations in this section set forth the requirements, conditions and stipulations which govern the applicant's submission of his application for right-of-way. An application for permission to survey under § 161.4 and an application for grant of right-of-way under § 161.5 may be combined into one form if the applicant intends to file for both and the landowners have consented to the survey and grant. If application is filed in a combined form all requirements under each section must be met. The application and stipulations are to be furnished in duplicate; however, additional copies may be requested. A sample of an application with the stipulations (a) through (k) embodied therein is attached as Illustration No. 2.

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It is important to have the application and stipulations, if separate documents, properly executed by the applicant or its authorized official agreeing to the conditions contained therein. The applicant, if eligible, may cite an authorizing act other than the Act of February 5, 1948 (62 Stat. 17); however, said 1948 Act is preferred and the applicant should be encouraged to apply thereunder.

The consents of owners pursuant to § 161.3 are to accompany the application if not previously submitted. Consents to accompany an application for permission to survey, § 161.4, will satisfy all consent requirements if they contain language specifically consenting to the grant of right-of-way in addition to permitting the survey. A suggested sample of consent is attached as Illustration No. 3.

The stipulations (a) through (k) are mandatory provisions, except in cases where the Secretary or his authorized representative may waive. Where an applicant is prohibited by law from subscribing to certain of these stipulations, he should furnish sufficient information to the Secretary's representative to justify a waiver of any one or more stipulations. The information is to be kept with the file on each right-of-way as one of the permanent supporting documents or cross-referenced if the applicant has a justification on record in a prior case.

.6 Maps. (25 CFR 161.6)

- (a) The original reproducible map and two reproductions thereof are for Bureau of Indian Affairs purposes in identification and recording of the lands involved in the right-

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of-way. The field notes may appear on the map if in sufficient detail to permit ground identification and retracement of the right-of-way. NOTE § 161.11 for requirements for including an engineer's affidavit and applicant's certificate.

- (b) If more than one map is required to designate the lands involved in the right-of-way, each map is to be numbered; for example, sheet 1 of 5, sheet 2 of 5, etc. Each map and separate sheet, if more than one, shall carry a reference to the applicant's project number or other identification specified to the right-of-way. For clarity, where the right-of-way is more than 30 miles long, there shall be separate maps filed in 20-mile sections. The last section may be 30 miles or less in length.
- (c) Self-explanatory.
- (d) The regulations set forth the minimum identifying information; however, if local practices require other information in addition to the allotment number, the applicant should be informed in advance. A name or names can locally assist in identifying a tract or its allotted owner.

.7 Field Notes. (25 CFR 161.7)

The field notes are the basic survey information for the preparation and review of the right-of-way description to be included in the easement document. The applicant shall be required to prepare and furnish to the processing agency this description using the same information, such as, angles, bearings, courses and distances, or other

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information incorporated in the field notes. The description so furnished shall be complete for each separate ownership. The processing agency is responsible for the review and acceptability of the description in conformity with the survey and that each separate ownership is accurately described. The survey may describe the right-of-way in the most convenient method applicable to the particular case, such as, metes and bounds, center line or subdivision line reference, depicted on a map, or a combination of these.

.8 Public Survey. (25 CFR 161.8)

(a) and (b) The purpose of this subsection is to assure that the right-of-way can be retraced and relocated from a public survey marker or monument. It also provides, in unsurveyed areas, a limit of six miles distance that a single line must be run from a known or established corner. Where no such initial point is available, or the distance exceeds six miles, either terminal must be located by reference to a permanent monument or natural permanent object which can be tied into a rectangular survey system at some future date as set out under § 161.9. Protraction Diagrams issued by the Bureau of Land Management are acceptable references.

.9 Connection with Natural Objects. (25 CFR 161.9)

When the distance to an established corner of the public survey is more than six miles, connection will be made with a readily identifiable natural object or permanent monument. Such connections must be shown on the maps, engineer's affidavit, and the certificate. Careful review should be made of any such object or monument selected as

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the reference point to see that it can be defined and does not permit wide latitudes of judgment as to the intended location.

.10 Township and Section Lines. (25 CFR 161.10)

Self-explanatory.

.11 Affidavit and Certificate. (25 CFR 161.11)

(a) The engineer's affidavit and applicant's certificate may be included on or attached to the maps if properly referenced to the map. For a sample affidavit and certificate, see Illustration Nos. 4 and 5.

(b) For sample affidavit and certificate used in connection with the transfer of a Bureau road to a county or State government, see Illustration Nos. 6 and 7.

.12 Consideration for Right-of-Way Grants. (25 CFR 161.12)

The Secretary may not grant a right-of-way or renewal for less than the appraised fair-market value, plus any severance damages, unless waived in writing by the landowners or their representatives. It should be noted that the consideration is stated as not less than the appraised value, but this is not intended to limit or restrict the individuals or tribes in negotiating amounts in excess of the appraised value. Likewise, the term "waived" as used herein extends to a waiver of all or part; it does not mean that the consideration has to be the appraised value or waived in total. The regulations give the authority, with the landowner's written consent, to waive all compensation; therefore, it is also implied and follows

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that less than the total compensation may be waived if such partial compensation and other considerations have been negotiated and together compensate the landowner for the taking. If all or a part of the consideration is waived, reasons for doing so should be clearly documented.

.13 Other Damages. (25 CFR 161.13)

Section 161.12 covers the consideration for the rights granted, plus severance damages, if any; however, other damages may be sustained incident to survey, construction, maintenance and subsequent actions of the applicant. The authorized representative of the Secretary shall be responsible for assessing those damages which may be caused by the applicant, its officers, agents, employees, contractors, or subcontractors, their agents and employees. The applicant's written agreement to pay such other damages has been made a part of § 161.5, Application for Right-of-Way, and unless waived as provided therein, shall be considered a mandatory provision to facilitate recovery of these other damages.

.14 Deposit and Disbursement of Consideration and Damages. (25 CFR 161.14)

The consideration for the right-of-way shall be held in a special deposit account until the right-of-way conveyance instrument has been approved, whereupon said funds shall be paid to the respective landowners. Funds remaining on deposit after payment to the landowners shall be held until the applicant (grantee) has filed the affidavit of completion required by § 161.16. Upon receipt of the affidavit of completion and following a determination that no additional damages have been sustained and the right-of-way is in a satisfactory

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condition, the remaining funds may be refunded to the applicant. If additional damages have been caused, these funds should be held until they can be applied toward the requirements set forth under § 161.13.

.15 Action on Application. (25 CFR 161.15)

A suggested sample of conveyance to be used is included as Illustration No. 8. The form can be modified to meet local needs or the applicant's form may be used upon modifying the applicant's form to make it compatible with the Bureau and landowner's requirements; care should be taken to delete any language relating to warranty. The granting official has the responsibility to use the proper conveyance form and substantial modifications or adoption of other forms should be referred to the local Solicitor's office for prior review. All supporting documents should be carefully reviewed to assure that special conditions and requirements contained in the landowner's consents and tribal resolution are set forth in the conveyance instrument.

.16 Affidavit of Completion. (25 CFR 161.16)

The original copy of affidavit of completion is to be submitted to the office of record. A suggested sample is attached as Illustration No. 9.

.17 Change of Location. (25 CFR 161.17)

The relinquishment pertaining to those segments of a right-of-way affected by change in location shall be filed in the office of record and, in the event the original instrument is filed in the county records, the relinquishment shall also be filed there. The applicant's relinquishment notice may

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be in any form, such as a letter; however, it must be duly executed. As indicated in § 161.17, the right-of-way has been granted and the conveyance instrument issued; therefore, the Secretary should issue a terminating instrument, which may be similar to the instrument suggested under § 161.20.

.18 Tenure of Approved Right-of-Way Grants. (25 CFR 161.18)

The tenure of the right-of-way grant shall not be for a longer term than is stated in the Landowner's Consent. The actual tenure of any right-of-way grant is discretionary within the maximum tenures stated in this § 161.18; however, in determining the tenure of a specific right-of-way, the consenting and granting parties should examine the effect and purpose served by the right-of-way, and the consideration involved. Further, if an applicant has applied under a specific act which contains maximum tenure less than is specified under § 161.18, the limitations of tenure of the specific act shall govern. No tenure shall exceed the statutory authority nor exceed the regulations.

.19 Renewal of Right-of-Way. (25 CFR 161.19)

If the current regulations provide for longer tenures of right-of-way grants for certain types of facilities or uses and the grantee, under a grant whose term has nearly expired, requests a longer term than previously granted, the case should be handled as an original right-of-way instead of a renewal, even though there is no change in location. It is to be noted that the portion of this section of the regulations pertaining to "application for renewal" is silent on updating the application to conform to current requirements (new cases) concerning stipulations

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to be subscribed to by the applicant. Current requirements should be imposed in processing renewals.

.20 Termination of Right-of-Way Grants. (25 CFR 161.20)

If it becomes necessary to serve the 30-day notice as contemplated by this section, said notice shall advise the grantee of his appeal rights. Copies of correspondence written to the grantee in the termination of the easement shall be included with the original document in the Title Plant. A suggested sample of termination notice is attached as Illustration No. 10.

.21 Condemnation Action Involving Individually Owned Lands. (25 CFR 161.21)

Self-explanatory.

.22 Service Lines. (25 CFR 161.22)

The service line agreement is a limited right and not a grant of right-of-way. Its use is restricted to furnishing service across lands of the owner, authorized occupant or user for facilities within these lands. It does not include or extend to lands which are not owned or not under the authorized occupancy or use. Applicants should be encouraged to obtain a right-of-way pursuant to the regulations in order to protect the facilities installed.

.23 Railroads. (25 CFR 161.23)

Various acts exist under which the Secretary is empowered to grant rights-of-way for railroads. The existing authority was not repealed by the 1948 general right-of-way act. The limitations

and specific conditions in these acts are included under this part. Unless it is determined otherwise, grants under the Act of February 5, 1948 (62 Stat. 17), will comply with this part. Railroad rights-of-way granted under the various authorizing acts, including the 1948 Act, are subject to the provisions of this Section 161.23, as well as the other pertinent sections under Part 161.

.24 Railroads in Oklahoma. (25 CFR 161.24)

Self-explanatory.

.25 Oil and Gas Pipelines. (25 CFR 161.25)

This section is self-explanatory and applies to special authorizing acts as well as the Act of February 5, 1948, applications. Note the limitations on tenure and other special requirements applicable to pipelines which are to be incorporated in the application and subsequent grant.

.26 Telephone and Telegraph Lines; Radio, Television, and Other Communications Facilities. (25 CFR 161.26)

Self-explanatory provisions for the above facilities. The approving official should note the limiting factors and special requirements prior to making the grant.

.27 Power Projects. (25 CFR 161.27)

Tribal and individually owned lands as defined under § 161.1 are exempt from the requirements contained under 161.27(b) and (f). However, the wheeling stipulations (para. f) and clearance

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through Departmental channels (para. b) will still be required where Government-owned lands under our jurisdiction are involved. This section is also not applicable to power projects requiring the issuance of a license through the Federal Power Commission, see § 161.2(c).

.28 Public Highways. (25 CFR 161.28)

Self-explanatory.

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APPLICATION FOR PERMISSION TO
SURVEY FOR RIGHT-OF-WAY

having a residence or principal place of business at _____
_____ hereby files an application with
the Bureau of Indian Affairs, pursuant to the terms and
provisions of the Act of February 5, 1948 (62 Stat. 17; 25
U.S.C. 323), and to the regulations of the Department of the
Interior contained in Title 25, Code of Federal Regulations,
Part 161, for permission to survey a right-of-way for the
following purposes and reasons:

Across the following described Indian land:

The applicant understands and hereby expressly agrees to
indemnify the United States, the owners of the land, and

occupants of the land, against liability for loss of life, personal injury and property damage occurring because of survey activities and caused by the applicant, his employees, contractors and their employees, or subcontractors and their employees.

IN WITNESS WHEREOF, _____ has caused this instrument to be executed this _____ day of _____ 19____.

WITNESS

APPLICANT

WITNESS

SUPPORTING DOCUMENTS

- Written consent of the landowners.
- Evidence of good faith and financial responsibility.
- Double estimated damages.
- State certified corporate charter or articles of incorporation.
- Certified copy of resolution or bylaws of the corporation authorizing the filing of the application.
- State certification that the applicant is authorized in the State where the land is located.
- Certified copy of the articles of partnership or association.
- Other:

APPLICATION FOR GRANT OF RIGHT-OF-WAY

having a residence or principal place of business at _____
_____ hereby files an application with
the Bureau of Indian Affairs, pursuant to the terms and
provisions of the Act of February 5, 1948 (62 Stat. 17; 25
U.S.C. 323), and to the regulations of the Department of the
Interior contained in Title 25, Code of Federal Regulations,
Part 161, for the grant of a right-of-way for the following
purposes and reasons:

Across the following described Indian land:

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

The applicant understands and hereby expressly agrees to the following stipulations:

(a)

(b)

IN WITNESS WHEREOF, _____ has caused this instrument to be executed this _____ day of _____ 19____.

WITNESS

APPLICANT

WITNESS

SUPPORTING DOCUMENTS

- Written consent of the landowners.
- Evidence of good faith and financial responsibility.
- _____ estimated damages.
- State certified copy of corporate charter or articles of incorporation.
- Certified copy of resolution or bylaws of the corporation authorizing the filing of the application.
- State certification that the applicant is authorized to do business in the State where the land is located.
- Certified copy of the articles of partnership or association.
- Map of definite location.
- Other:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

CONSENT OF OWNERS TO GRANT OF RIGHT-OF-WAY

_____ Agency, _____ 19____
Allotment No. _____ Allottee _____

Description:

The undersigned owner_ of said land hereby do___ (do__ not)
give permission to make surveys (and to the granting) of a
_____ right-of-way thereover, as
contemplated by the application of _____
_____ on the payment of a negotiated
monetary consideration in the amount of \$ _____
for the rights granted and severance damages or the appraised
fair market value of the rights granted and severance
damages as determined by the Secretary, whichever is greater.

Other terms or comment:

Witnesses:

- (1) _____
- (2) _____
- (1) _____
- (2) _____
- (1) _____
- (2) _____
- (1) _____
- (2) _____

Owners:

- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

ENGINEER'S AFFIDAVIT

STATE OF _____ :

: ss.

COUNTY OF _____ :

_____, being first duly sworn, deposes and states that he is the _____ Engineer, for the _____; that the survey was made by him (or under his direction); that he has examined the field notes of the survey for a _____ right-of-way as described and shown on this map; that this map was prepared under his direction from said field notes; and that said right-of-way _____ miles in length beginning at _____ and ending at _____ is accurately located on this map.

 _____ Engineer

Subscribed and sworn to before me this ___ day of _____
 19__.

 Notary Public. My commission
 expires _____, 19__.

APPLICANT'S CERTIFICATE

I, _____, do hereby certify that I am the _____ for _____, hereinafter designated the applicant; that _____ who subscribed to the foregoing affidavit, is employed by the applicant as a _____ and that he was directed by the applicant to survey the location of a _____ right-of-way and to prepare this map; that the location of said right-of-way, _____ miles in length beginning at _____ and ending at _____, is accurately represented on this map; that such survey as represented on this map has been adopted by the applicant as the definite location of the right-of-way thereby shown; and that the map has been prepared to be filed with the Secretary of the Interior or his duly authorized representative as part of the application for said right-of-way to be granted the applicant, its successors and assigns, with the right to construct, maintain, and repair improvements, thereon and thereover, for such purposes, and with the further right in

the applicant, its successors and assigns, to transfer this right-of-way by assignment, grant, or otherwise.

Applicant

Subscribed and sworn to before me this _____ day of
_____, 19__.

(SEAL)

Notary Public

My Commission expires _____

ILLUSTRATION #7

ROAD COMMISSIONER'S CERTIFICATE:

I, _____, being Road Commissioner of _____ County, State of _____, do hereby state that I am satisfied with the accuracy of the survey and map and do hereby recommend to the _____ County Board of Supervisors an application for and acceptance of the right-of-way as delineated on this map of definite location.

Date: _____

Road Commissioner

State of _____)

) ss

County of _____)

On _____, before me _____, a Notary Public in and for said _____ County, State of _____, personally appeared _____, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

My Commission Expires _____

Notary Public

RIGHT-OF-WAY APPLICATION AND CONVEYANCE

COUNTY APPLICATION:

By _____ County Board of Supervisors'
Resolution of Application No. _____ adopted _____.

TRIBAL OWNED _____

INDIVIDUALLY OWNED _____

GOVERNMENT OWNED _____

FILE NO. _____

GRANT OF EASEMENT FOR RIGHT-OF-WAY

KNOW ALL MEN BY THESE PRESENTS:

That the United States of America, acting by
and through _____, Bureau of
Indian Affairs, Department of the Interior, _____
_____, hereinafter referred to as "Grantor",
under authority contained in _____ (1)
_____; and pursuant to the provisions of
the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328),
and Part 161, Title 25, Code of Federal Regulations, in
consideration of _____ (2),
the receipt of which is acknowledged, does hereby grant to
the _____ (3),
its successors and assigns, hereinafter referred to as
"Grantee", an easement for right-of-way for the following

purpose(s), namely: _____ (4) _____

_____, on, over,
under, and across the land embraced within the right-of-way
situated on the following described lands located within
the _____ Reservation, County of _____
_____, State of _____:

(5) (Enter appropriate legal subdivision or tribal
or allotted or Government-owned land upon
which the easement is imposed.)

said easement, as shown on the tract map attached hereto,
limited to and more particularly described as:

(Enter the detailed description, which may be
by metes and bounds, centerline, or legal
subdivision; also show a width and length for
said right-of-way.)

(6)

This easement is subject to any prior valid
existing right or adverse claim and is _____ (7) _____,
so long as said easement shall be actually used for the

purpose above specified; PROVIDED, that this right-of-way shall be terminable in whole or in part by the Grantor for any of the following causes upon 30 days' written notice and failure of the Grantee within said notice period to correct the basis of termination (25 CFR 161.20):

A. Failure to comply with any term or condition of the grant or the applicable regulations.

B. A nonuse of the right-of-way for a consecutive two-year period for the purpose for which it was granted.

C. An abandonment of the right-of-way.

D. Failure of the Grantee, upon completion of construction, to file with the Grantor an affidavit of completion pursuant to 25 CFR 161.16.

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

IN WITNESS WHEREOF, Grantor has executed this grant of easement this _____, day of _____, 19____.

UNITED STATES OF AMERICA

by _____

U.S. DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

A C K N O W L E D G M E N T

STATE OF _____)

) ss

COUNTY OF _____)

BEFORE ME, a Notary Public, in and for said County and State, on this _____ day of _____, 19____, personally appeared _____, whose name is subscribed to the foregoing Grant of Easement for Right-of-Way as _____, Bureau of Indian Affairs, and who acknowledged that he is and was at the time of signing the same, _____, Bureau of Indian Affairs; and he personally acknowledged to me that he executed the said Grant of Easement for Right-of-Way as his free and voluntary act and deed for the uses and purposes set forth therein.

Notary Public

My commission expires: _____

SUPPLEMENTAL INSTRUCTIONS FOR DRAFTING GRANT OF
EASEMENT FOR RIGHT-OF-WAY

(1) Delegation of Authority for officer executing as Grantor.

Enter the current delegation of authority such as "Secretarial Order 2508 and 10 BIAM 3," plus any other redelegation order in effect.

(2) The consideration may be expressed in the following manner; however, it should be specific for the subject right-of-way.

a. "ONE DOLLAR (\$1.00) and other good and valuable consideration,". Use primarily when the consideration is waived in writing by the landowner in the consent form, and the other considerations are specified therein.

b. "An annual payment in the amount of \$ _____, payable annually in advance for the use and benefit of the landowners,".

(3) Designation of Grantee:

a. "United States", where applicant is the Bureau of Indian Affairs for such programs as Roads, Irrigation, Plant Management, etc.

b. Enter the full name and address of the Grantee as shown on the application and supporting documents.

(4) Purpose for which right-of-way granted:

- a. "The right to enter upon the hereinafter described land, grade, level, fill, drain, pave, build, maintain, repair, and rebuild a public road, including incidental purposes consistent therewith, together with such bridges, culverts, ramps, and cuts as may be necessary,".
- b. "The right, easement, and privilege of constructing, maintaining, operating, inspecting, and repairing water lines and the necessary adjuncts thereto, laid thereon and therein, together with the right of ingress and egress when necessary for the purposes above mentioned,".
"The right, easement, and privilege of placing, erecting, constructing, repairing, replacing, maintaining, and using a line of poles with wires suspended thereon and all necessary and proper guys, anchorage, crossarms, braces and other fixtures for use in connection therewith, as may be necessary for an electrical distribution line,".
(Similar language may be used by changing the designation of purpose and the descriptive facilities, when granting rights-of-way for telephone, transmission lines or other such facilities.)

- d. "The right, easement, and privilege to construct, operate and maintain an underground telephone cable with necessary appurtenances thereon or therein, together with the right of ingress and egress when necessary for the above mentioned purposes, through,". (Similar provisions are adaptable to underground electrical conduits.)
- e. In compliance with 25 CFR 162.5 for Bureau roads, particularly those that may be transferred to a county or State: "the right to enter upon the hereinafter described premises to grade, level, fill, drain, pave, build, maintain, repair, and rebuild a public road including incidental purposes consistent therewith, together with such bridges, culverts, ramps, and improvements as may be necessary; and with the further right in the United States, its successors and assigns, to transfer said easement for right-of-way by assignment, grant or otherwise,". (Note: The landowner's consent must incorporate the consent of such a transfer.)

(5) Where the tribe or individual trust or restricted interest is less than 100 percent, the fractional interest

must be stated - such as, a 1/2 undivided interest in the NW 1/4 NW 1/4 of sec. 5, etc.

(6) Enter such additional provisions as may be indicated in tribal resolutions, consents obtained from individual Indians or otherwise which express the extent or limitations set forth therein:

- a. "TO HAVE AND TO HOLD the said easement and right-of-way unto the Grantee and unto its successors and assigns, together with the right to authorize, permit and license the use thereof for utility lines, when these are not inconsistent with the use of the property for a public road."
- b. If not included under 4(b), (c), or (d), access should be provided: "TO HAVE AND TO HOLD the said easement and right-of-way unto the Grantee and unto its successors and assigns, together with the right of ingress and egress to permit the economical operation and maintenance of said telephone line."
- c. "The said easement to include the right to cut back and trim such portion of the branches and tops of the trees now growing or that may hereafter grow upon the above-described premises, as may extend over said

right-of-way, so as to prevent the same from interfering with the efficient maintenance and operation of said electrical distribution line."

(7) Tenure of grant:

- a. "without limitation as to tenure"
- b. "for a term of years ending on _____"

CERTIFICATE

I, _____, do hereby certify that I am
_____ for _____,
hereinafter designated the "Grantee"; that _____,
who subscribed the foregoing affidavit, is employed by the
"Grantee"; that in its construction the right-of-way does
not deviate from the approved plans, notes, and maps filed
_____, 19___; and that the "Grantee" has in
all things complied with the requirements of the act of
February 5, 1948, and applicable regulations pursuant to
which the "Grantee" has been granted the right-of-way.

"Grantee"

TRIBAL _____

ALLOTTED _____

FILE NO. _____

TERMINATION OF EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, by an easement for right-of-way dated
the _____ day of _____, 19____, and recorded

_____ the _____

(Name, Title and Office) _____,

did thereby grant to _____

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

over, across, in or upon the following described lands

located in the _____ Indian Reservation,

_____ County, State of _____:

and,

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

and,

WHEREAS, said Grantor, pursuant to 25 CFR 161.20, did give said Grantee written notice allowing 30 days to correct the basis for termination,

and,

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

NOW THEREFORE, the Grantor, pursuant to the terms of the grant of right-of-way, and pursuant to the authorities cited therein, does hereby revoke, rescind and terminate said grant and the land is freed of any encumbrance created thereby.

UNITED STATES
DEPARTMENT OF THE INTERIOR
(City and State)

Date: _____

By: _____

(Name and Title)

(Agency)

