

Requesting a Grant of Easement for Right-of-Way on Trust Lands

The purpose of this procedure is to provide guidance for requesting a Grant of Easement for Right-of-way on trust land.

Note: Not all of the steps are in sequential order. Many steps may be completed simultaneously.

Definitions

Applicant – Grantee of right-of-way, entity requesting the right-of-way

Grant – to transfer or convey, especially by deed or writing

Grantee – a person or entity to which a grant is made

Grantor – a person or entity that makes a grant

TCR – Tribal Council Resolution

Trust Land – land or any interest therein, title to which is held by the USA for an individual(s) or Tribe

Process

Step 1: Land title status (Form 2 of checklist)

- The Applicant submits the Request for Title Status Report as well as maps of general location to the Realty Division (Realty) to determine land status of the project location. Once the project is determined to be located within Trust land, Realty will research for any existing grant of easement for the proposed project. If no easement is located or if the request is for a renewal, Realty will supply the Applicant with the applicable application documents.

Step 2: Evidence of Authority of Officers to Execute Documents (Form 3 of checklist)

- The Applicant will submit the Evidence of Authority form to Realty. The individual named on this form is the person authorized to sign as the Applicant on all future documents for the project.
- The Applicant is also to provide, when applicable, the following documentation:
 - Double estimated damage deposit
 - State certified corporate charter
 - Certified copy of resolution or by-laws
 - Articles of Partnership or Association
 - State Business License

Step 3: Application for permission to survey (Form 4 of checklist)

- The Applicant is always responsible for survey of the subject property regardless of who actually performs the survey. The Applicant completes a new survey application for each Right-of-Way.
- Realty will supply the following information for completion of the permission to survey application form:
 - Landowner Name
 - Allotment/Tract Number
 - Allotment/Tract Description
 - Any and all other fields are the responsibility of the Applicant

Step 4: Consent for permission to survey (Form 5 of checklist)

- Realty will supply the following information for completion of the permission to survey consent form:
 - Landowner Name
 - Allotment/Tract Number
 - Allotment/Tract Description
 - Any and all other fields are the responsibility of the Applicant
- Realty will provide the Applicant with the consent forms along with a listing of the current landowner names and most recent address on file.
- The Applicant, by certified mail, shall contact the landowners to obtain majority consent for permission to survey.
- If the Tribe holds any undivided interest in the tract of land, a Tribal Council Resolution (TCR) is required for their consent.
- The Applicant will request from the Tribal Governing Board or Tribal Council a TCR authorizing permission to survey.
- The TCR submitted by the Tribe's federally recognized governing body and signed by duly authorized tribal officers is required in order to approve the Application for Survey. The resolution should include the following information:
 - Name of tribe
 - A statement specifically addressing what the tribe is requesting the Secretary to approve
 - Land description
 - Tract number, if applicable
 - Tribal organizational authority
 - Authority for the signatories
 - Date the resolution was signed

- Date the Tribe met on the resolution if different from the date the resolution was signed.

****Note: Only one TCR may be needed for approval of the entire project, if it also includes:***

- Authorization of the permission to survey
- Authorization of the approval of the grant of easement
- Tenure of the easement
- Consideration, pertaining to the survey, damages and the grant of easement
- **Consent to survey does not imply permission to construct – mobilizing or initiating construction activities – on Indian trust land.**

Step 5: Receive a survey of the proposed project

- When majority consent or ILCA sliding scale consent requirement is achieved for permission to survey, the Applicant will have the survey completed, map created and submitted to Realty.
- The map or plat must comply with the following criteria:
 - Include the specific location of the Right-of-Way
 - Be drawn to a scale of 2,000 feet to the inch or large in most instances
 - Identify the allotment/tract number of each parcel of trust land
 - Identify the section, township and range of the lands that will be crossed by the Right-of-Way
- The Realty Officer and the Regional Director or Agency Superintendent places his/her acceptance signature on the map, if applicable.
- A separate map must be filed for each section of 20 miles of Right-of-Way, but the map of the last section may include any excess of 10 miles or less.

Step 6: Application for Grant of Easement for Right-of-Way (Form 6 of checklist)

- Realty will assist the Applicant with the completion of the Application for Grant of Easement by supplying the following information for said form:
 - Landowner Name
 - Allotment/Tract Number
 - Allotment/Tract Description
 - Any and all other fields are the responsibility of the Applicant

Step 7: Applicant Certificate (Form 7 of checklist) & Engineer's Affidavit (Form 8 of checklist)

- In addition to the survey, the Applicant will submit the Applicant Certificate and Engineer's Affidavit
- These two forms may be included on the survey map.

Step 8: Appraisal Request (Form 9 of checklist)

- Once Realty receives the right-of-way application, applicant certificate and engineer's affidavit, they will submit a request to the Office of Appraisal Services.
- The minimum consideration for use of the land is established by the appraisal or valuation, plus consideration for severance damages, if any.
 - The consideration for a Right-of-Way includes several types of compensation paid by the grantee for the use of the land:
 - Fair market value for the right to use the land unless otherwise waived in writing by the landowner(s)
 - Severance damages for separating the normal land use pattern by granting a Right-of-Way across the land
 - All other damages that are caused by the Right-of-Way or caused by the survey. In certain situations, the consideration for damages may be waived pursuant to 25 CFR§169.3(b), but only with prior written consent of the landowners and approval by the Secretary
- In some instances the Applicant may contract out the appraisal.
 - Once Realty receives the supporting documents, they will submit a Statement of Work (SOW) request to the Office of Appraisal Services (OAS).
 - Upon receipt of the SOW, Realty will forward it to the Applicant. The Applicant is then responsible for obtaining the appraisal per the standards set out in the SOW. Any questions pertaining to the SOW should be addressed before the appraisal has begun.
 - Once the appraisal is complete, the Applicant will forward it to Realty who in turn will then submit to OAS for final review and approval.

Step 9: NEPA compliance (Form 10 of checklist)

- The Applicant will complete the National Environmental Policy Act (NEPA) Environmental Assessment Questionnaire and submit to Realty, and/or Applicant will supply their Environmental documentation for review.
- Realty will then submit the project for environmental review with the BIA Natural Resources Department.

Step 10: Statement of Fair Market Value (Form 11 of checklist)

- Upon approval of the appraisal, Realty will submit the landowners the Statement of Fair Market Value for signature.

Step 11: Consent of the landowners for the Grant of Easement (Form 12 of checklist)

- Realty will supply the following information for the Consent of Owner form:
 - Landowner Name
 - Allotment/Tract Number
 - Allotment/Tract Legal Description
 - Fair Market Value – FMV
 - Any and all other fields are the responsibility of the Applicant
- Realty will provide the Applicant with the consent forms along with a listing of the current landowner names and most recent address on file, as well as the individual landowners undivided percentage owned.
- The Applicant, by certified mail, shall contact the landowners and provide them with the Consent of Owners Form to obtain majority consent for the Grant of Easement.
- If the Tribe holds any undivided interest in the tract of land, a TCR is required for their consent.
- The Applicant will request from the Tribal Governing Board or Tribal Council a TCR authorizing the grant of easement if not already covered by the first TCR issued at the time of the survey application.
- The TCR submitted by the Tribe's federally recognized governing body and signed by the duly authorized tribal officers is required in order to approve the Application for Right-of-Way. The resolution should include the following information:
 - Name of Tribe
 - A statement specifically addressing what the Tribe is requesting the Secretary to approve
 - Land description
 - Tract number, if applicable

- Tribal organizational authority
- Authority for the signatories
- Date the resolution was signed
- Date the Tribe met on the resolution if different from the date the resolution was signed
- Authorization of the approval of the grant of easement
- Tenure of the easement
- Consideration, pertaining to the survey and the grant of easement

Step 12: Prepare the Grant of Easement for approval

- Realty will receive and review all documentation submitted for the proposed project.
- Realty will review and complete the Right-of-Way checklist for each project
- Upon compliance with all regulations and once all documents are received, Realty will execute and submit the Grant of Easement to the designated official for approval.
 - Separate grant(s) will be given for temporary construction easement(s) (TCE), and will be recorded as separate encumbrances, as these easements have a shorter term than the master easement.
 - Once the Affidavit of Completion is filed (**Form 14 of checklist**), the TCE will be expired.

Step 13: Approve the Grant of Easement (Form 13 of checklist)

- Once compensation has been collected (if applicable) and if there is no appeal of the decision to approve, the designated approving official signs the grant of easement.
- Realty staff will provide approved copies to the Applicant and the Tribe upon approval.
- The approved recorded copy will be retained with the Realty case files.

Step 14: Process the completion of the Right-of-Way project

- The Applicant will notify Realty when construction is complete on new projects.
- The Applicant will provide Realty the completed Affidavit of Completion for the Right-of-Way project, if applicable. (**Form 14 of checklist**)
- The Applicant will provide the completed Certificate of Completion for the Right-of-Way project, if applicable. (**Form 15 of checklist**)