



RIGHTS-OF-WAY ON INDIVIDUALLY OWNED INDIAN AND TRIBAL LANDS

The Bureau of Indian Affairs (BIA), coordinates the process of granting access to American Indian and Alaska Native lands for major infrastructure projects. The federal government has a fiduciary responsibility to Indian landowners to protect and conserve the resources on trust and restricted land—including the land itself.

WHAT IS A RIGHT-OF-WAY?

A “grant of easement” for right-of-way, or ROW, is a written agreement between an Indian land owner(s) and the “grantee,” and which defines the purpose, type, extent, use, width, length, and duration of the ROW. ROWs on trust and restricted allotted land must be approved by the BIA. A ROW allows access to pass across, under, or through another person’s property for a specific use, while ensuring appropriate and legal use of the land. ROW regulations, under 25 CFR Part 169, provide a uniform system for granting a ROW over individually Indian owned land. While giving landowners and Tribes as much flexibility and control as possible. A ROW creates an interest in the allotted lands, may be protected against third parties, and cannot be terminated at will by the American Indian and Alaska Native (AI/AN) landowner or Tribe without cause. Regulations charge BIA with upholding these protections and require that compensation for Indian landowners meets fair market value.

Land Eligibility

A ROW may be requested to access individually Indian owned trust land, or restricted fee land that is subject to federal restrictions against the alienation (i.e., sale or transfer) or encumbrance (i.e., lien, leases, etc.) by operation of law of interest in the property.

Rights-of-Way on Tribal Trust Land

The federal government’s Indian trust responsibility emphasizes protection of Tribal trust lands and Tribal sovereignty. There is no established maximum level of compensation for Tribally owned land. Tribes do not need ROW crossing over their 100% Tribal Trust land, if a specific written instrument authorizing use without Secretarial approval, that will be submitted to BIA for recording.

Rights-of-Way on Trust and Restricted Fee Lands

Trust land, where the legal title is held by the federal government in trust for a Tribe or for individual Indian owners (allotment), is the most common form of land ownership in Indian Country. However, restricted fee land, where the title is held by a Tribe or an individual Native landowner, is also subject to federal laws and a ROW on such lands must receive approval from BIA.

Development Activities Eligible for Rights-of-Way Under this Part 169:

BIA approves Grants of Easement for ROWs for several types of infrastructure projects:

- Railroads
- Public roads and highways
- Access roads
- Service roads and trails
- Public and community water lines
- Electric transmission and distribution systems
- Public sanitary and storm sewer lines
- Water control and use projects
- Oil and gas pipelines
- Telecommunications, broadband, and fiber optics
- Aviation hazard easements
- Conservation easements

HOW TO APPLY FOR RIGHT-OF-WAY

What Is the ROW Process

All applicants must complete the BIA ROW Application and submit the required supporting documentation to the local BIA office with jurisdiction over the land where the ROW project crosses. When a ROW application package is submitted to BIA, BIA will acknowledge receipt of application and will review for any missing required supporting documents. If your application package is incomplete, we will inform you and provide an explanation of what needs to be completed. You must then resubmit a completed version of your application along with all supporting documents. BIA isn't responsible for application preparation costs.

Applicant Eligibility

An applicant (known as a ROW grantee) can be an individual, Tribe or Tribal utility or a private company such as utility company, or other federal, state, or municipal entity. For more information on when you need a ROW, see the table in 169.4(a).

Expedited Processing

The revised ROW regulations streamline the process for obtaining a ROW, simplify requirements for applicants, and clarify Tribal jurisdiction over lands subject to a ROW by:

- Eliminating the need for consent from BIA for surveying activities
- Establishing regulatory timelines for BIA's review and decision of ROW requests
- Requiring compelling reasons for BIA to deny a ROW application

How to Apply

The ROW application must be in writing and submitted to the BIA office with jurisdiction over the land covered by the ROW. Applicants are required to submit completed application packages via postal mail or by electronic mail.

- Contact BIA for landownership information for the proposed ROW.
- Review the 25 CFR part 169 regulations for a ROW for the required supporting documentation.
- Submit your application form and documentation to the BIA Regional Office and/or Agency Office that oversees the land.

Next Steps

Applicants will receive an acknowledgment letter no more than five business days after their application is received by BIA.

It may take up to 60 days for BIA to determine on a ROW application and grant a ROW in most cases. However, if broadband ROW application is complete a decision may occur immediately upon making the determination that the application is complete.

If the ROW will be crossing 100% Tribal Trust land, contact the tribe as soon as possible to collaborate on the ROW project design.

How to Apply for Right-of-Way

For more information please scan the QR code or visit

www.bia.gov/service/rights-of-way-individually-owned-indian-and-tribal-lands/apply-right-of-way

