

INDIAN AFFAIRS MANUAL

1.1 Purpose. This chapter establishes the Bureau of Indian Affairs' (BIA) policy for reviewing and approving rights-of-way (ROW) on Indian land. Under the regulations, a ROW is a legal right to go over or across Tribal land, individually owned Indian land, or BIA land for a specific purpose, including but not limited to building and operating a line or road. This term may also refer to the land subject to the grant of ROW¹. In Indian Affairs' (IA) case, all ROWs are currently granted by the Secretary of the Department of the Interior (DOI) pursuant to 25 U.S.C. §§ 323-328 with consent of the Indian landowner (or consent supplied by the Secretary in certain cases). The grant is issued as an easement. An easement for ROW creates an interest in the land, is for limited use or enjoyment, can be protected against third parties, and is not terminable at will by the Indian landowner. The accompanying handbook, 52 IAM 9-H: Rights-of-Way on Indian Lands, provides more details regarding the different types of easements and the specific procedures BIA has implemented to standardize ROW processes.

All references to "days" within this policy are to business days, unless otherwise specified. All references to "agency" staff or programs within this policy are to BIA agency staff and programs, unless otherwise specified.

1.2 Scope. This policy applies to all BIA management and staff involved in processing, reviewing, and approving ROWs on Indian land. This policy may also apply to entities carrying out activities on behalf of BIA under contracts or other agreements if expressly agreed to in the contracts or agreements, or if the requirement to abide by such policy is otherwise required by law. These entities may include contractors or Tribes operating through contracts issued pursuant to Public Law (P.L.) 93-638 and P.L. 103-413.

1.3 Policy. It is the policy of IA to process ROWs on trust and restricted lands in an accurate, standardized, and timely manner, and in compliance with all applicable regulations and standards. It is also IA's policy to utilize the Trust Asset and Accounting Management System (TAAMS) as its system of record for ROW transactions.

1.4 Authority.

A. Statutes and Regulations.

- 1) 16 U.S.C. Chapter 1B, Archaeological Resources Protection Act of 1979
- 2) 25 U.S.C. 176, Survey of reservations
- 3) 25 U.S.C. §§ 311 - 328, Rights-of-Way Through Indian Lands

¹ 25 CFR § 169.2

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- 4) 25 U.S.C. 2218, Approval of leases, rights-of-way, and sales of natural resources
- 5) 25 U.S.C. §§ 3001-3013, Native American Graves Protection and Repatriation Act of 1990
- 6) 42 U.S.C. Chapter 55, National Environmental Policy Act
- 7) 54 U.S.C. Subtitle III, Division A (formerly known as the National Historic Preservation Act of 1966, as amended)
- 8) 25 CFR 169, Rights-of-Way Over Indian Land
- 9) 40 CFR Parts 1500-1508, Council on Environmental Quality
- 10) 43 CFR 46, Implementation of the National Environmental Policy Act (NEPA) of 1969
- 11) 43 CFR 100, Waiving Departmental Review of Appraisals and Valuations of Indian Property

B. Guidance.

- 1) 516 Departmental Manual (DM) 10, Managing the NEPA Process – Bureau of Indian Affairs
- 2) 50 IAM 1: Irrigation Overview
- 3) 52 IAM 4: Processing Mortgages of Trust Properties
- 4) 52 IAM 8: Posting for Deposits of Right-of-Way Funds
- 5) 59 IAM 3: National Environmental Policy Act

C. Handbooks.

- 1) 52 IAM 2-H: Standards for Indian Trust Lands Boundary Evidence Handbook
- 2) 52 IAM 4-H: Indian Affairs Mortgage Handbook
- 3) 52 IAM 9-H: Rights-of-Way on Indian Lands Handbook
- 4) 59 IAM 3-H: National Environmental Policy Act Guidebook

1.5 Responsibilities.

- A. **Director, Bureau of Indian Affairs (DBIA)** is responsible for ensuring that appropriate organizational arrangements, resources, and personnel are available to implement and maintain the Office of Trust Services (OTS) Division of Real Estate Services (DRES), including the ROW program. The DBIA serves as the Senior Accountable Official for the DRES, and has primary responsibility for implementing and executing BIA programs in accordance with statute, regulation, and Departmental policy.
- B. **Deputy Bureau Director (DBD), Field Operations, BIA** is responsible for executive leadership, oversight, direction, and monitoring of the Regional Directors (RDs) to include periodic program reviews of field operations, and to provide policy and technical assistance to field offices and Tribes.
- C. **DBD, OTS, BIA** is responsible for ensuring that statutory and/or regulatory timetables for ROW application processing are met, and that guidance is available to regional and agency staff tasked with processing ROW applications.
- D. **Chief, DRES, OTS** is responsible for establishing BIA's ROW program policies, guidance, and standards for complying with statutory and regulatory requirements; providing real estate services technical assistance and training to BIA regions as appropriate; managing BIA's federal reporting requirements for real estate services; initiating periodic reviews of regional and agency programs for real estate services; and assisting in the development and dissemination of trust resource policy to the RDs.
- E. **RD, BIA** serves as the Senior Accountable Official for the ROW program in his/her respective region, and is responsible for approving or disapproving ROW applications; reviewing decisions on any appeals of denials of ROWs by Superintendents; interacting with federal and Tribal governments; assuring his/her respective region meets ROW processing deadlines; requiring accountability from regional and agency managers in his/her respective region; and conducting ROW program reviews.
- F. **Agency Superintendent, BIA** is responsible for managing and maintaining his/her respective organization's ROW program compliance, including meeting ROW processing deadlines; interacting with federal and Tribal governments; identifying opportunities for performance and process improvements; and approving or disapproving applications for ROW documents.
- G. **Regional/Agency Realty Officer** is responsible for reviewing ROW applications and responding to ROW reporting requirements.

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- H. **Appraisal Valuation Services Office (AVSO), DOI** is responsible for completing appraisals and reviewing contracted appraisals for ROW applications.

- I. **Land Titles and Records Office (LTRO), BIA** is responsible for recording ROWs; issuing certified Title Status Reports (TSRs); and verifying ownership and any/all restrictions, encumbrances, and/or limitations.

Approval

Darryl LaCounte Digitally signed by Darryl
LaCounte
Date: 2021.10.21 14:57:42 -04'00'

Darryl LaCounte
Director, Bureau of Indian Affairs

Date