

New ROW Regulations

25 CFR 169 – Rights-of-Way Over Indian Lands

When is a Rights-of-Way required on Indian Land?

- When a proposed project encumbers restricted trust land (allotments)
- The applicant is a 3rd party entity outside the tribal Government
- When title evidence of an encumbrance is required
- The rule does NOT apply if the Tribe authorizes a ROW to a wholly owned Tribal entity over Tribal land

Changes to Rights-of-Way Regulations

- Intended to streamline procedures and conditions under which BIA will consider a request to grant or deny ROW over and across Trust lands
- Provides for the use of the broad authority under 25 U.S.C 324-328;
- Intended to support Tribal Self-Determination and Self-Governance by acknowledging and incorporating Tribal laws and policies;
- Defers to the maximum extent possible to landowners' decisions regarding their Trust land(s).

Obtaining a Rights-of-Way

- To obtain access to survey on Indian land, consent of the Indian landowners is required;
- BIA approval is not needed (169.101)
- Upon written request, BIA will provide names, addresses, and ownership percentage of individual landowners to obtain landowners' consent to survey.

Obtaining a Rights-of-Way

- Application must identify (169.102(a)):
- The Applicant
- Tract(s) or parcel(s)
- General location of the Proposed Project
- Purpose of the ROW
- Duration of the ROW
- Ownership of permanent improvements and responsibility for construction, operation, maintenance, and management of permanent improvements

Obtaining a Rights-of-Way

- The following must be submitted with the application (169.102(6)(b)):
- Accurate legal description and associated parcels
- Map of definite location
- Bond(s), insurance, and/or other security
- Copy of notice sent to all landowners (record)
- Copy of consents received (record)
- Valuation, if applicable
- Corporate documents, if applicable
- NEPA documents – Environmental & archaeological reports
- Statement that proposed use is in accordance with applicable Tribal Law, if required

Bonding (169.103)

- Bonds, insurance, and/or other security examples include:
 - CD, Irrevocable letter of credit, Treasury Securities, Surety bonds, Assigned savings account
- Bond amount must cover:
 - Highest annual rent (unless a one-time payment)
 - Estimated damages from construction of permanent improvements
 - Estimated damages and remediation costs from any potential release
 - O&M charges (if land is located in Irrigation Project)
 - Restoration and reclamation of premises
 - Duration of ROW grant
 - May be waived by Tribe/Owner's – Best Interest

Obtaining a Rights-of-Way

- Consents (169.106)
 - Tribal Land – Tribal consent (Resolution/Letter)
 - Individually owned land – majority interest
- BIA may grant a ROW without consent if ALL apply:
 - Owners are so numerous, it would be impracticable to obtain consents
 - 50 or more co – owners
 - No substantial injury to the land or any landowner
 - All landowners will be adequately compensated
 - BIA provides 60-day notice of intent to all owners and provide 30 days to object.

Compensation Requirements (169.110)

- Tribal Land
 - BIA defers to the Tribe
 - Valuation not required if the Tribe submits authorization stating that it:
 - Has negotiated compensation
 - Waives valuation
 - Has determined compensation and waiver is in its best interest

Compensation Requirements (169.112)

- Individually owned land
 - Compensation must not be less than fair market value, unless:
 - Grantee is utility cooperative providing a direct benefit to the Indian land
 - Grantee is a Tribal utility cooperative
 - Individual landowners waive right to receive fair market value and BIA determines its in the best interest of the landowners based on certain factors (immediate family, co – owner, special relationship/circumstance, or waived valuation)

Compensation Requirements (169.112)

- Individually owned land
 - Valuation is required, unless:
 - 100% of individual landowners waive; or
 - Non – consenting individual landowners receive fair market value; unless
 - Grantee is a utility cooperative providing direct benefit to Indian land; or
 - Grantee is a Tribal utility cooperative; or
 - BIA waives because the Grantee will construct infrastructure improvements benefitting Indian Landowners and its in the best interest of all the landowners

Obtaining a Rights-of-Way

- Review process for granting a ROW (169.123)
 - Review ROW application and supporting documentation
 - Incomplete Package
 - Promptly send letter identifying missing information
 - Complete Package (includes all required documents)
 - Review and issue decision within 60 days
 - Approve or Deny
 - Return the package for revision; or
 - Request for additional review time

Obtaining a Right-of-Way

- Grant of Easement (169.125)
 - Any conditions or restrictions set out in consents
 - Address:
 - Use(s) the grant is authorizing
 - Assignments if permitted
 - Mortgaging if permitted
 - Ownership of permanent improvements

Obtaining a Right-of-Way

- Grant of Easement will state (169.125):
 - The Tribe maintains its existing jurisdiction
 - The grantee has no right to any of the products or resources of the land
 - Any violation of Federal Law will be treated as a violation of the grant
 - If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered, all activity will cease and BIA and Tribe will be contacted.

Obtaining a Right-of-Way

- The grantee must (169.125)
 - Construct and maintain the ROW in a professional manner consistent with industrial standards
 - Comply with all applicable laws and obtain all required permits
 - Comply with due diligence requirements
 - Attach or include by reference maps of definite location

Duration, Renewals, Amendments, Mortgages

- Assignments (169.207)
 - Assignments resulting from corporate merger, acquisition, or transfer by operation of law require only filing with BIA and Tribe within 30 days
 - Grantee may assign by:
 - Meeting consent requirements unless the grant expressly allows for assignments without further consent
 - BIA approval required, unless:
 - Original ROW expressly allows
 - Parties provide copy to BIA within 30 days
- Amendment/Assignment/Mortgage approval process
 - Notify grantee of the date received by BIA
 - BIA has 30 days to approve/disapprove in writing
- Amendments (169.204-206);
- Assignments (169.207-209);
- Mortgages on rights-of-way easements (169.210-212);

No Piggybacking (169.127)

- Use is not specified or not the same scope as in original ROW
 - Obtain amendment or new ROW
- New use but no new ground disturbance
 - Apply for amendment
- New use with new ground disturbance
 - Apply for new ROW
- New User, same scope (fiber optic)
 - Request for assignment
- New User, different scope
 - Apply for new ROW

Effectiveness

- Right-of-Way will be Effective (169.301)
 - A ROW document will be effective on the date approved unless otherwise negotiated
- Recordation (169.302)
 - ROW document will be recorded immediately following approval
- Appeals (169.303-.305)
 - Right to appeal decision – 25 CFR Part 2
 - Parties to file notice with RD, then BIA Director
 - RD has 15 days to grant or deny (if not, same 15 days applies to Director)
 - Appeal Bond

Service Line Agreements (169.51)

- Service Line
 - A utility line running from a main line used only for supplying telephone, water, electricity, gas, internet service or other utility service to a house, business, or other structure.
 - Electric lines are limited to a voltage of 14.5Kv or less, or a voltage of 34.5 Kv or less is serving irrigation pumps and commercial and industrial uses.

Service Line Agreements

- Service Line Agreements (169.52-.53)
 - An agreement signed by the utility provider and landowner(s) and should address:
 - Utility services being provided and to whom
 - Mitigation of any damages incurred during construction
 - Restoration of the premises at the termination of the agreement

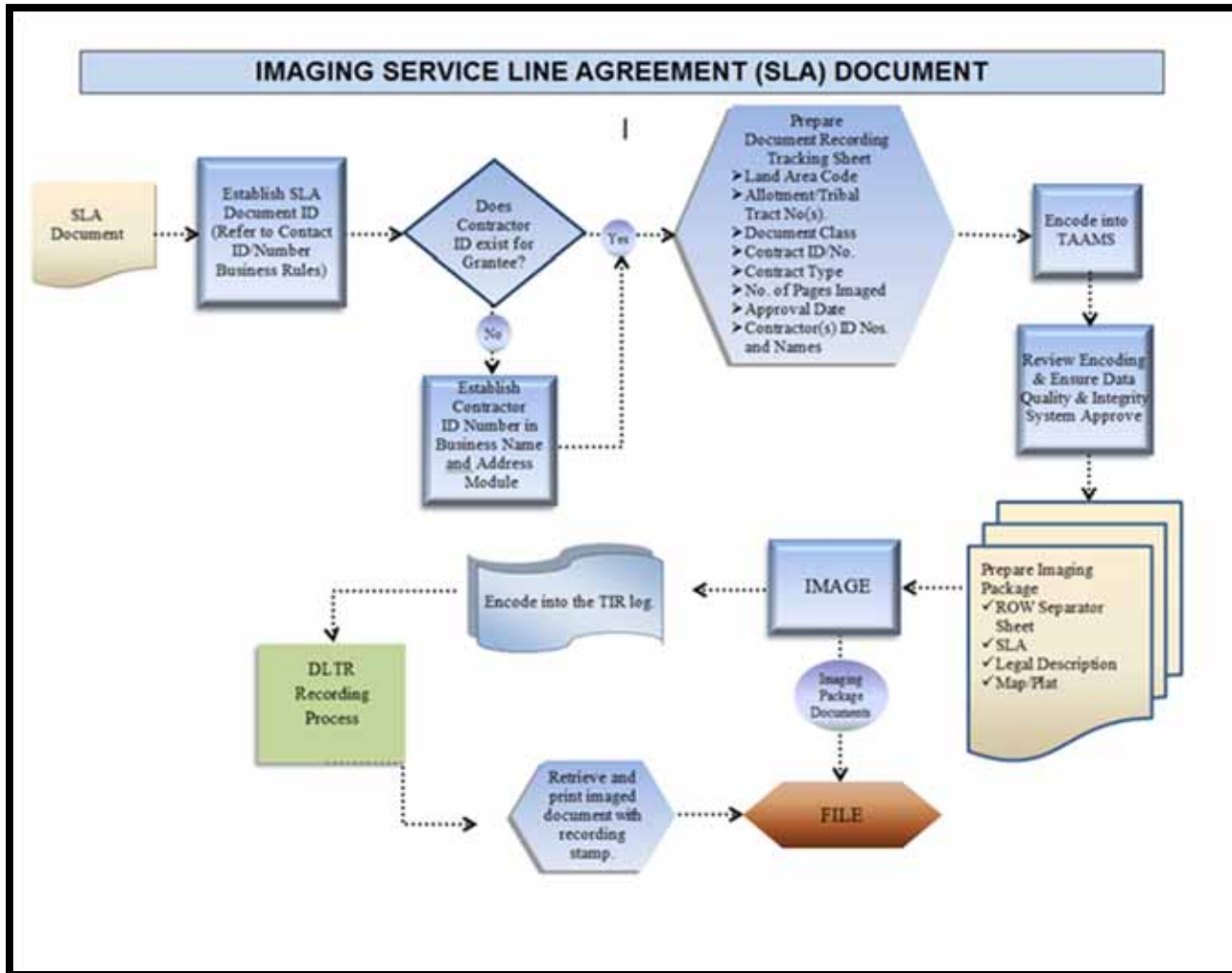
Service Line Agreements

- Contents Requirement (169.54)
 - Before construction of the service line across Tribal or individually owned land, the utility provider and landowner(s), must execute a service line agreement.
- Valuation (169.55)
 - No valuation is required

Service Line Agreements

- Filing and Recording (169.52)
 - Parties must file a copy of the agreement with a plat or diagram with BIA within 30 days after signing.
 - Realty to encode in TAAMS ROW Module
 - Business Rules have been provided to LTRO
 - Agreement will be recorded in the LTRO

Imaging Service Line Agreement (SLA) Document



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