

# HYPOTHETICAL CASE

## RIGHT OF WAYS (ROW) IN INDIAN COUNTRY

The Three Rivers Nation (TRN), a federally-recognized tribal nation, has a 5,000 acre trust reservation within the boundaries of the state of Wisconsin in central Wisconsin. TRN also owns several parcels of fee land adjacent to the reservation boundaries and in the local city of Wausau, Wisconsin held in fee title. TRN has a Realty Division Director, a Register of Deeds and typically outsources surveying and appraisal services. TRN has an approved Leasing Code under the 2012 HEARTH Act and therefore, has authority to enter into agricultural, business and residential leases on trust land. The Tribe also does not have its own ROW Ordinance that compliments the new 25 CFR 169 regulations in effect since March 2016 and is fairly new to ROW issues.

TRN had portions of the fee and trust parcels recently surveyed for subdivision and development for commercial leasing and mixed use, consistent with the tribe's land use, residential and economic development plans. Title work is underway. TRN has preliminary agreements with several commercial lessees, but notably, Starbucks, Target and Texas Roadhouse need every square inch of parcel as agreed to seal the deal. The tribe secured HUD monies to build a 50-unit apartment complex on the west side of the parcel to help meet the tribe's housing crisis. The tribe also carved out a .5 acre for a single effigy mound located on the northern border of the existing ROW just off Highway 51 slated for long-term protection of the site.

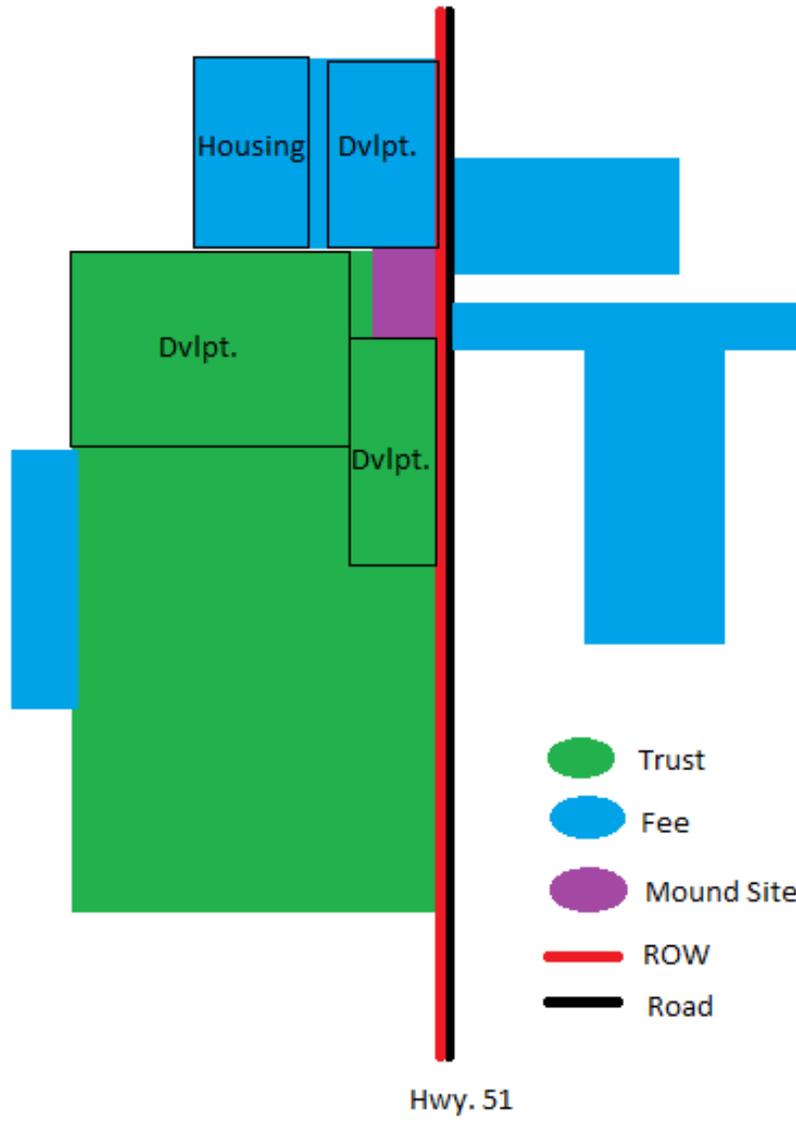
The Wisconsin Department of Transportation (WisDOT) had been in the early phases of project planning to widen the Right-of-Way (ROW) on Highway 51 for shoulder improvement and to accommodate the demand for increased utility infrastructure. In fact, WisDOT had been approached by ABC Electric and other utility companies to report that the ROW must be expanded per the highway project scope. WisDOT began the process based on state ROW requirements and the new BIA's ROW regulations. The project impact through the reservation involves original reservation land, allotted land parcels, some of which fell outside of tribal ownership due to taxation and some repurchased in 2007-2010 in fee. On November 1, 2018, the ABC Power Co. (ABC) sent a certified letter to TRN's Chairman Deer that ABC sought easements for new power lines infrastructure within the TRN's fee and trust reservation and along the western ROW area of Highway 51 that includes one of TRN's fee parcels and the large trust parcel slated for development. Chairman Deer is upset but also cognizant that the planned developments will need to also have services.

Per the highway project, WisDOT begins processing temporary limited easements (TLEs). ABC's notice to TRN only included a plat map showing a proposed encumbrance through the reservation and beyond the existing easement on the fee parcel. No other supportive documents accompanied the notice. TRN reaches out the BIA as soon as they learn of ABC and WisDOT's plans for support and help with processing or denying the ROW.

Discuss:

- TLE
- ROW Application
- Appraisals, negotiation and settlement or no settlement
- BIA process/views, including any possible grant and conditions
- Tribal view
- WisDOT view
- Utility Company view
- Other issues

Three Rivers Nation Reservation & Fee Land



Wausau, WI