

Bureau of Indian Affairs –  
Office of Trust Services  
Division of Real Estate Services  
Land Title Records Office  
Division of Transportation &  
Office of the Solicitor –  
Division of Indian Affairs

Part 169 Overview for ROW and the  
Tribal Transportation Program

July 26, 2017  
Holbrook, Arizona



# Stakeholders and Partners

To name a few...

## ▶ Beneficiaries

- Tribal Nations
  - Land Department
  - Minerals Office
  - Real Estate Department
  - Department of Justice
  - Transportation
- Individual Allotted Landowners

## ▶ Other BIA Programs

- Land Titles & Records Office (LTRO)
- Division of Natural Resources
- Transportation

## ▶ Other Government

- Office of Special Trustee for American Indians
  - Fiduciary Trust Officers
  - Individual Indian Monies
  - Office of Appraisal Services
  - Office of Historical Trust Accounting
  - Office of Trust Records
  - Indian Land Consolidation Office

- Indian Health Service
- Bureau of Land Management
- Bureau of Reclamation
- Minerals Management Service
- Office of Surface Mining
- Office of the Solicitor
- Housing & Urban Development

## ▶ Other

- Tribal enterprises
  - Tribal Utility entities
  - TDHE
- Oil & Gas industry
- Financial Lenders (Mortgages)
- State & Local Governments
  - Municipalities
  - State & County Transportation
  - Many others

## ▶ Various ROW

- Roads
- Bridges
- Oil & gas lines
- Water canals
- Electric lines
- Utility lines
- Etc.



# Federal Statutes Governing Right-of-Ways on Tribal Lands

25 U.S.C. § 323

## **Rights-of-way for all purposes across any Indian lands**

“The Secretary of the Interior be, and he is hereby, empowered to grant rights-of-way for all purposes, subject to such conditions as he may prescribe, over and across any lands now or hereafter held in trust by the United States for individual Indians or Indian tribes, communities, bands, or nations, or any lands now or hereafter owned, subject to restrictions against alienation, by individual Indians or Indian tribes, communities, bands, or nations, including the lands belonging to the Pueblo Indians in New Mexico, and any other lands heretofore or hereafter acquired, or set aside for the use and benefit of the Indians.”

# Federal Statutes Governing Right-of-Ways on Tribal Lands

## 25 U.S.C. § 324

### **Consent of certain tribes; consent of individual Indians –**

No grant of a right-of-way over and across any lands belonging to a tribe . . . shall be made without the consent of the proper tribal officials. Rights-of-way over and across lands of individual Indians may be granted without the consent of the individual Indian owners if (1) the land is owned by more than one person, and the owners or owner of a majority of the interests therein consent to the grant; (2) the whereabouts of the owner of the land or an interest therein are unknown, and the owners or owner of any interests therein whose whereabouts are known, or a majority thereof, consent to the grant; (3) the heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary of the Interior finds that the grant will cause no substantial injury to the land or any owner thereof; or (4) the owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent, and also finds that the grant will cause no substantial injury to the land or any owner thereof.

# Federal Statutes Governing Right-of-Ways on Tribal Lands

## 25 U.S.C. § 325

### Payment and disposition of compensation

No grant of a right-of-way shall be made without the payment of such compensation as the Secretary of the Interior shall determine to be just. The compensation received on behalf of the Indian owners shall be disposed of under rules and regulations to be prescribed by the Secretary of the Interior.

# Federal Statutes Governing Right-of-Ways on Tribal Lands

## 25 U.S.C. § 327

### **Application for grant by department or agency**

Rights-of-way for the use of the United States may be granted under this Act upon application by the department or agency having jurisdiction over the activity for which the right-of-way is to be used.

# Tribal Transportation Program

- ▶ Authorized under 23 U.S.C. §§ 201–202
- ▶ Generally, the purpose of the Tribal Transportation Program (TTP) is to provide funding for the planning, design and construction of transportation facilities for tribes that are within, or provide access to, tribal lands.
- ▶ The regulations governing the TTP are found at 25 C.F.R. Part 170, and were updated last year.

# Tribal Transportation Program

## Definition of BIA System Road

Definitions for the terms found in Part 170 are located at 25 C.F.R. § 170.5

The “BIA Road System” means “the Bureau of Indian Affairs Road System under the NTTFI [National Tribal Transportation Facility Inventory] and includes only those existing and proposed facilities for which the BIA has or plans to obtain legal right-of-way.”



# TTP & Maintenance Activities

23 U.S.C. § 202 (a)(8)

Maintenance.

**(A)** Use of funds. Notwithstanding any other provision of this title of the amount of funds allocated to an Indian tribe from the tribal transportation program, for the purpose of maintenance (excluding road sealing, which shall not be subject to any limitation), the Secretary shall not use an amount more than the greater of--

- (i) an amount equal to 25 percent; or
- (ii) \$ 500,000.

# Definition of “Maintenance”

- ▶ Federal law at 23 U.S.C. § 101 (a)(13) defines “Maintenance” as meaning “the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway.”
- ▶ The TTP regulations adopted this definition, and Maintenance using TTP funds is addressed in 25 C.F.R. Part 170, Subpart G, §§ 170.800 to 170.805.
- ▶ A list of eligible maintenance activities using TTP funds can be found in the Appendix Subpart G.

# TTP Projects & Categorical Exclusions

The recent updates to the TTP regulations specifically addressed Categorical Exclusions:

*25 C.F.R. § 170.453. Do the Categorical Exclusions under the National Environmental Policy Act (NEPA) and the regulations at 23 CFR 771 apply to TTP activities?*

Yes. Regardless of whether BIA or FHWA is responsible for the oversight of a Tribe's TTP activities, the Categorical Exclusions under NEPA at 23 CFR 771.117 governing the use of funds made available through title 23 shall apply to all qualifying TTP projects involving the construction or maintenance of roads.

NOTE: This provision applies *only* to actual construction or maintenance of roads using TTP funds, *not* to the review and approval of a right-of-way by BIA Realty.

# Crosswalk Part 170 & 169 ROW

Part 170 (Inventory)

Part 169

BIA System Roads

YES

Tribal Road System  
(100% Tribally Owned Lands;  
No other interests involved)

NO

Roads Owned by Others  
(Federal agencies, states  
and their political subdivisions)

YES

# 25 CFR 169.4

- ▶ Do I need a BIA-approved ROW to authorize possession over or across Indian Land?
  - Tribally-owned roads: NO
    - A tribal ROW to a wholly owned tribal entity can be authorized by a tribal resolution without BIA approval.
      - Legal description
      - Purpose
      - Conditions and Terms
  - BIA-owned roads: YES
    - A body such as another Federal, State or local governmental entity who does not own trust land, must obtain a ROW from the BIA with the consent of the majority interest trust landowners including the tribe if the tribe is a beneficial trust landowner of land.

# Guidance & Checklists 25 CFR 169.127

- ▶ Is a new right-of-way required for a new use within or overlapping an existing right-of-way?
  - Yes, normally a new ROW is required
    - Is the scope covered in the original grant?
    - Will there be ground disturbance?

# Guidance & Checklists–25 CFR 169.103

- ▶ What bonds, insurance, or other security must accompany the application?
  - Bond waiver – Under consideration by Acting Assistant Secretary.
  - Insurance – Final Rule has new requirements for bonds, insurance, or other security to cover:
    - Highest annual rental specified in the grant (unless a one-time payment).
    - Estimated construction damages.
    - Estimated damages and remediation costs from release of hazardous wastes, explosives, etc.
    - Operation and maintenance charges for land within an irrigation project.
    - Restoration of premises to initial condition or condition specified in grant.

# Guidance & Checklists–25 CFR 169

- ▶ Standardized Checklists
- ▶ Uniform Procedures
  - Preliminary Documents review
  - ROW application package
  - Decision
  - Post Decision



# ROW Handbook– 25 CFR 169

## ▶ ROW Handbook

- Procedural ROW Steps.
- Includes templates, checklist and guidance material.

# Templates–25 CFR 169

- ▶ Templates for Processes
  - Reply Letter
  - Application for Grant of Easement for ROW
  - Applicants Letter of Intent
  - BIA Revocable Access
  - Survey requirements
  - Consent of Owner to grant a ROW
  - Consent of Owner for renewal/ amendment/ assignment/mortgage
  - Permit– Permission to Encroach on ROW
  - Grant of Easement sample

# TAAMS & 25 CFR 169

- ▶ TAAMS – Trust Asset and Accounting Management System, including BIA’s Land Records.
- ▶ Enhancements will be made to TAAMS to reflect recently updated 25 C.F.R. Part 169.
- ▶ Tracking ROW applications received.

# Division of Land Titles and Records

- ❖ The Land Titles and Records Office (LTRO) is the “**Office of Record**” for all Land Title Documents for Indian Trust and Restricted Lands –Delegated authority– 25 CFR 150

Charged with the Federal responsibility to record, provide custody, and maintain records that affect titles to Indian lands, to examine titles and to provide title status reports for such land.

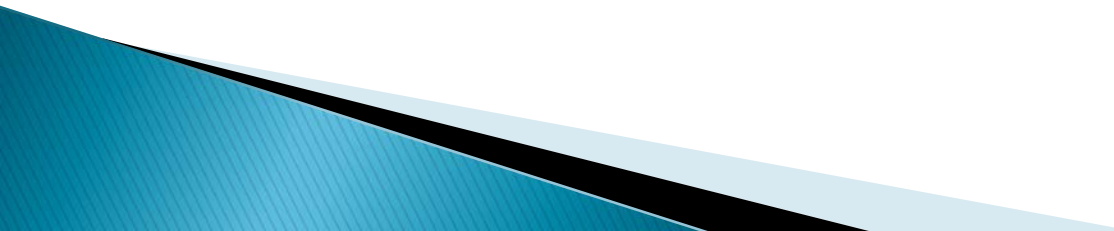


# RECORDING OVERVIEW

## Code of Federal Regulations (25 C.F.R. Part 150)

### 25 CFR 150.6 Recordation of Title Documents

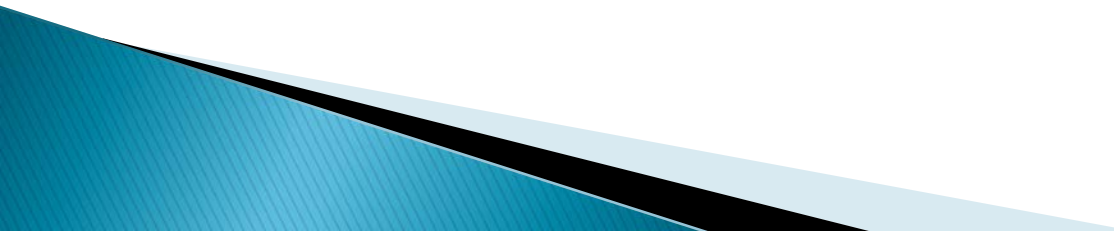
“All title documents shall be submitted to the appropriate Land Titles and Records Office for recording immediately after final approval, issuance, or acceptance. Bureau officials delegated authority by the Secretary to approve title documents or accept title are responsible for prompt compliance with the recording requirement. Documents submitted for recording shall be completed in accordance with prescribed Bureau regulations.”





# Record of Title

**Record of title** is the compilation of deeds and other conveyances and encumbrances recorded at the land title office of record, the Land Titles and Records Office, as required by a recording act. *See* Act of July 26, 1892, ch. 256, Sec. 2, 27 Stat. 273, codified today as 25 USC § 5.



# Recordation

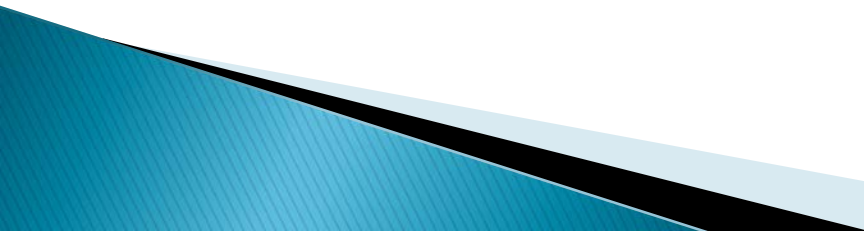
- “***Recordation or recording*** is the acceptance of a title document by the appropriate Land Titles and Records Office. The purpose of recording is to provide evidence of a transaction, event or happening that affects land titles; to preserve a record of the title document; and to give constructive notice of the ownership and change of ownership and the existence of encumbrances to the land.” 25 C.F.R. 150.2(m).
- To “***preserve a record of the title document***” images of the title Document are made as true and accurate representations of the titles document, and are a “duplicate original” of the title document for which a “chain of custody” is maintained by the LTRO for all legal, financial, and evidentiary purposes. 51 IAM 2



# Land Title Documents

“Title document is any document that affects the title to or encumbers Indian land and is required to be recorded by regulation by Bureau policy.” 25 CFR 150.2(l).

Title documents include conveyances, such as patents, deeds, and probate documents, and encumbrances (leases, **rights-of-way**, easements, mortgages).



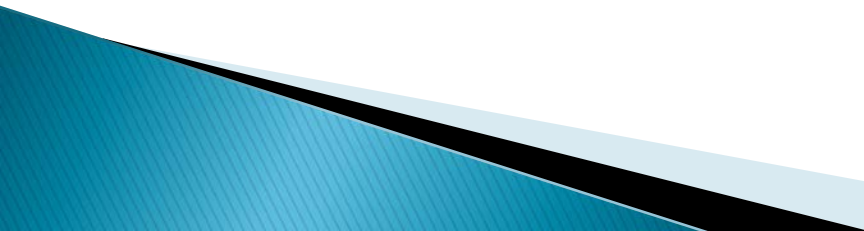


# Encumbrance & Location

- **Encumbrance:** Encumbrance is not on the land but on the ownership of the land; an encumbrance is created when one or more “property rights” are granted from ownership in the land. Examples of encumbrances are a lease, **a right-of-way**, an easement, a covenant, mortgage, etc.
- **Location:** The **location of the land must be known** and stated clearly and correctly as a “legal land description”. Legal land descriptions can be “metes and bounds” , “rectangular, containing references to Section, Township, Range and Aliquot Part” or can be based on “Subdivision (Lot, Block, and Subdivision Name).
- The location requirement can be met by an appended plat or Bureau of Land Management (BLM) approved cadastral survey that is incorporated by reference or by reference to a recorded plat or survey.



# Indian Land Title Processes

- Trust land title documents are processed through probates, conveyance transactions, and the recording of encumbrance transactions such as ROWs).
  - The examination and certification of Indian land title requires that all the documents affecting the title to the tract of land be recorded and examined for accuracy, and to verify each owner's interest in the tract and the encumbrances on such ownership.
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# System of Record

- TAAMS is the system-of-record for all recorded title documents and the Federal repository for all image copies of recorded title documents and chains of title for Indian lands, for all original copies of Indian Land title documents, for all data extracted from Indian land title documents, for all transactions that convey, encumber, describe or locate Indian lands. 51 IAM 2.
- TAAMS calculates and maintains all title and beneficial ownership and chains of title, **maintains all active encumbrances**, and is the Indian land title system-of-record.