

Tribal Consent

Tribal consent is a condition to participate in the ARPA SLFRF Broadband Investment Grant Program. Tribal consent for the Grant program is no different than it would be for any other broadband infrastructure project in the United States. An ISP would need approval for necessary permitting from the Bureau of Indian Affairs (BIA) when proposing a project on certain designated lands. Consent would come from the BIA. However, before BIA approval is established, a request for Tribal consultation in the form of a letter or email to the Tribe, providing notice of the potential project, must be submitted to the Oklahoma Broadband Office with the application.

Documentation

The Oklahoma Broadband Office (OBO) is requesting proof of correspondence from an Internet Service Provider (ISP) to a Tribe affected by a proposed project. For the second part of the requirement, the Bureau of Indian Affairs will obtain proof of consent *from* an affected Tribe or the affected owners in order to approve any necessary rights-of-way, easements or land grants by a proposed project. An ISP will need to obtain BIA approval for applicable projects before grants can be awarded.

Proof of Correspondence

Treasury Guidance requires ISPs to provide proof of correspondence to a Tribe if an ISP's proposed project will affect "BIA lands" or "Tribal lands." Specifically, the Oklahoma Broadband Office is acting in compliance with the Treasury's SLFRF "Equity and Outcomes Resource Guide" in which the Treasury outlines prioritizing Tribal consultations to provide ongoing government-to-government support to Tribal governments.¹ Proof of correspondence can be in the form of a letter or email to a Tribe, providing notice of a potential project.

BIA Approval

For grants, easements and rights-of-ways, ISPs will demonstrate evidence of the necessary BIA approved rights-of-way, easements or land grants. These are required in any infrastructure project, regardless of funding source when it touches "BIA land" or "Indian land" as defined in 25 CFR § 169.3. Under the Indian Right of Way Act of 1948, the Secretary of the Interior has authorized the Bureau of Indian Affairs (BIA) with authority and oversight under [5 U.S.C. 301](#); [25 U.S.C. 323–328](#); [25 U.S.C. 2201](#), to grant rights-of-way across Indian lands in accordance with the terms and conditions under 25 CFR Part 169. When addressing the acquisition of Indian lands, the type of Indian lands that invoke federal (BIA) and tribal jurisdiction, including rights-of-way, are Indian lands that may be Tribal lands, individually owned Indian lands, and BIA lands.² A right-of-way is a non-possessory interest in land, and title does not pass to the grantee. The BIA is responsible for granting rights-of-way for Broadband infrastructure across Indian lands. For more information on tribal land designations, please contact the BIA regional office for the area, [Regional Offices | Indian Affairs \(bia.gov\)](#).

Grants, Easements and Rights of Way

As discussed in 25 CFR § 169.4, the following scenarios regarding acquisitions of land may require BIA approval for a right-of-way if the request is from:

¹ State and Local Fiscal Recovery Funds "Equity and Outcomes Resource Guide", June 14, 2022.
<https://home.treasury.gov/system/files/136/SLFRF-Best-Practices-Guide.pdf>

² 25 CFR 169.1(a) [https://www.ecfr.gov/current/title-25/part-169#p-169.1\(a\)](https://www.ecfr.gov/current/title-25/part-169#p-169.1(a))

- 1) A person or legal entity, including a Federal, State or local government entity which is not an owner of the Indian land
 - a. The right-of-way must be requested from the BIA, with consent of the owners of the majority interest in the land, and the Tribe for Tribal land before crossing the land or any portion thereof.
- 2) An individual landowner who owns a fractional interest in the land, even if the individual Indian landowner owns a majority of the fractional interests
 - a. Use of rights-of-way must be requested from the BIA, with the consent of the owners of other trust and restricted interests in the land, totaling at least a majority interest in the tract, and with the consent of the Tribe for Tribal land.
 - b. No right of way is required from the BIA if all the owners have given you permissions to cross without a right-of-way. This would require consent from the Tribe for Tribal land.
- 3) An Indian Tribe, agency or instrumentality of the Tribe, or an independent legal entity wholly owned and operated by the Tribe who owns only a fractional interest in the land, even if the Tribe, agency, instrumentality or legal entity owns a majority of the fractional interests
 - a. The right-of-way must be requested from the BIA, with the consent of the owners of other trust and restricted interests in the land, totaling at least a majority interest in the tract, unless all other owners have given permission to cross without a right-of-way.

According to the BIA under 25 CFR 169.4(b), you **do not** need a right-of-way to cross Indian land if:

- 1) You are an Indian landowner who owns 100% of the trust or restricted land; or
- 2) You are authorized by:
 - a. A lease under 25 CFR part 162, 211, 212 or 225 or permit under 25 CFR part 166
 - b. A Tribal land assignment or similar authorizing use of the Tribal land without Secretarial approval, or
 - c. Another land use agreement not subject to this part (e.g., under 25 CFR part 84)

You do not need a right-of-way if you are . . .	but the following conditions apply . . .
(i) A parent or guardian of a minor child who owns 100 percent of the trust or restricted interests in the land	The BIA may require you to provide evidence of a direct benefit to the minor child and when the child is no longer a minor, you must obtain a right-of-way to authorize continued possession.
(ii) Authorized by a service line agreement to cross the land	You must file the agreement with the BIA under § 169.56 .
(iii) An independent legal entity wholly owned and operated by the Tibe that owns 100 percent of the trust or restricted interests in the land	The tribal governing body must pass a Tribal authorization authorizing access without BIA approval and including a legal description, and you must submit both documents to BIA for its records.
(iv) Otherwise authorized by law	You must comply with the requirements of the applicable law.

Type of Land Interest (<i>as defined in 25 CFR Part 169</i>)	Governing Authority and Documentation to Acquire the Land	
	Bureau of Indian Affairs	Oklahoma Broadband Office
BIA Land: means any tract, or interest therein, in which the surface estate is owned (<i>25 CFR 169.2 "BIA land"</i>)	Proof of BIA approval	Proof of Correspondence to tribe
Indian Land: means individually owned land and/or Tribal land. (<i>25 CFR 169.2 "Indian land"</i>)	Proof of BIA approval	Proof of Correspondence to Tribe
All other land	NOTHING REQUIRED	NOTHING REQUIRED