

## RIGHT-OF-WAY (ROW) CHECKLIST

Terms and Conditions:

- General
- BIA Roads
- IHS/PHS

Check to see if ROW Terms and Conditions form contains standard provisions.

**EXAMPLE:**

- Compliance with Navajo and Federal Laws
- No waiver of sovereign immunity
- Consent to Navajo Nation jurisdiction

Note: NTUA ROWs do not generally require compensation to the Navajo Nation unless it serves a commercial purpose. If the terms and conditions provide for compensation make sure that the grantee provide the BIA with a copy (proof) of any payment to the Navajo Nation within at least five days of payment.

Term:

- The normal is (20) twenty years or less.

**EXCEPTIONS:**

- IHS P.L. 86-121 projects can be perpetual.
- BIA roads are issued for 75 years
- New Mexico and Arizona State roads can be perpetually granted as long as it is used for a “State Highway”.
- If an applicant is seeking longer than a twenty (20) year term, the applicant must justify in writing so that the Navajo Nation may decide whether or not to observe them.

Variation on Standard Terms and Conditions

- Other Projects
- Electrical Transmission Lines
- Gas Pipelines
- Fiber Optic Corridors

Resources and Development Committee Resolution

- The Resources and Development Committee (RDC) has final approval authority on ROW development based projects.
- Naa’biki’yati Committee Resolutions are not necessary where ROW is sought by another tribal governmental entity.

**EXCEPTIONS:**

- IHS P.L. 86-121 ROWs do not need a RDC Resolution – see Resolution RCF-41-95.
- NTUA ROWs do not need RDC approval. The Navajo Land Department Director has been delegated to consent on behalf of the Navajo Nation provided the Terms and Conditions are in “standard form”. “Standard Form” is as follows:

## RIGHT-OF-WAY (ROW) CHECKLIST

- Letter of Application
- Legal Description
- Right-of-Way Location maps
- Biological Resources Compliance Form (BRCF)
- Cultural Resources Compliance Form (CRCF)
- Field Clearance Documents
- Chapter Resolution
- Environmental Assessment (EA) and/ or Addendum
- Other supplementary documents if required

*See: RDC-104-10*

- Check exhibits for land user/ permittee consent
  - Projects on Navajo Trust Land need grazing permittees' consent
  - Fee land is exempt
  - Failure to submit a permittee's consent needs to be explained and justified in the resolution/legislation.
  - Check to see if surface damage compensation, if sought, has been placed in an escrow account.
  - Check to see if the respective Grazing Official has concurred.
  - If the project runs in the lands permitted to NAPI, their consent is needed.
- Check to see if all required Divisions and Departments have reviewed and surmamed the 164 routed application.
  - General Land Development Department (GLDD)
  - Navajo Land Department (NLD)
  - Historic and Heritage Preservation Department (HHPD)
  - Navajo Nation Environmental Protection Agency (NNEPA)
  - Division of Natural Resources (DNR)
- If additional Terms and Conditions are suggested outside of the BIA stipulated Terms and Conditions, 25 C.F.R. § 169, they will need to be determined if they are necessary.
- Check the content of the proposed resolution or legislation to ensure it expressly incorporates in a "Resolved Clause", the ROW Terms and Conditions.
- Check to ensure the legal description is accurate (acreage, footage, location).
- Check to see if all documents are attached:
  - Environmental Assessment (EA)
  - Archeological Clearances
  - Cultural Resources Compliance Form (CRCF)
  - Threatened and Endangered Species / Biological Survey/ Biological Resource Compliance Form (BRCF)
  - Letter from the Navajo Nation Fish and Wildlife Department (NNDFW) or an EA indicating that a Biological Assessment (BA) is not necessary.