



**HO-CHUNK NATION CODE (HCC)**  
**TITLE 8 – HOUSING, REAL ESTATE AND PROPERTY CODE SECTION**  
**15 – RIGHTS-OF-WAY ORDINANCE**

**ENACTED BY LEGISLATURE: 00/00/0000**

**CITE AS: 8 HCC § 16**

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**1. Authority.**

a. Article V, Section 2(a) of the Constitution of the Ho-Chunk Nation (“Constitution”) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive Branch to be administered by such Departments, in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power.

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c. Article V, Section 2(i) of the Constitution grants the Legislature the power to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals.

d. Article V, Section 2(l) of the Constitution grants the Legislature the power to enact laws to manage, lease, permit, or otherwise deal with the Nation's lands, interest in lands or other assets;

e. Article V, Section 2(m) of the Constitution grants the Legislature the power to prevent the sale, disposition, or encumbrance of Ho-Chunk lands, or other Ho-Chunk assets;

f. Article V, Section 2(m) of the Constitution grants the Legislature the power to enact laws to create and regulate a system of property including but not limited to use, title, deed, inheritance, transfer, conveyance and devise;

**2. Purpose.**

The purpose of this Code is to exercise the Nation's sovereignty while managing development on Ho-Chunk lands and resources effectively, protect the Nation's land base, cultural resources and well-being of its people, while balancing competing interests to promote sustainable development, establish clear and concessive processing of proposed right-of-way applications to ensure development occurs in a manner that aligns with the Nation's priorities, values and long-term vision.

**3. Scope.**

This Code shall govern the process of rights-of-way and service line agreements over the Nation's lands, property the Nation holds in fee simple status and property the Nation has fractional interests held in trust by the United States of America for the benefit of the Nation and its people. This code shall cover right-of-way for uses including, but not limited to, the following: railroads, public roads and highways, access roads, service roads and trails, even where they are appurtenant to any other right-of-way purpose, public and community water lines (including pumping stations and appurtenant facilities), public sanitary and storm water lines (including sewage disposal and treatment plant lines), water control and use projects (including but not limited to, flowage easements, irrigation ditches and canals, water treatment plant lines), oil and gas pipelines (including pump stations, meter stations and other appurtenant facilities), electric transmission and distribution systems (including lines, poles, towers, telecommunication, protection, measurement and data acquisition equipment, other items necessary to operate and maintain the system, and appurtenant facilities), telecommunications, broadband, fiber optic lines, aviation hazard easements, conservation easements not covered by 25 CFR 84 or 25 CFR 162, any new use for which a right-of-way is appropriate but which is unforeseeable as of the effective date of this code.

**4. Definitions.**

a. Allotment lands. Any tract of land in which the Nation owns a fractional interest in or lands the BIA has determined to be under the Nation's jurisdiction.

b. Applicant. An individual or entity who has submitted a formal application for a right-of-way.

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- c. Authorization. A duly adopted Ho-Chunk resolution authorizing a grant of right-of-way.
- d. Assignment. An agreement between a grantee and an assignee, whereby the assignee acquires all or part of the grantee's rights and assumes all the grantee's obligations under a grant.
- e. BIA. The Bureau of Indian Affairs within the Department of the Interior.
- f. Consent. A written authorization by the Nation via Legislative resolution or by an individual landowner to a specified action.
- g. Easement. An interest consisting of the right to use or control, for a specific limited purpose, land owned by another person, or an area above or below it, while title remains vested in the landowner.
- h. Fair market value. The amount of compensation a right-of-way would most probably command in an open and competitive market.
- i. Fee simple status. An absolute ownership of interest in real estate under the jurisdiction of the state and local municipality.
- j. Fractional interest. An undivided interest in Ho-Chunk allotment land owned as tenancy in common by individual Indians, Ho-Chunk members and/or fee owners.
- k. Grant. The formal transfer of a right-of-way interest by the Secretary's approval or the document evidencing the formal transfer, including any changes made by a right-of-way document.
- l. Grantee. A person or entity to whom the Secretary or the Nation grants a right-of-way or to whom the right-of-way has been assigned once the assignment is effective.
- m. Ho-Chunk Realty. The Division of Realty under the Department of Administration of the Ho-Chunk Nation.
- n. Individually owned Indian Land. Any tract in which the surface estate, or an undivided interest in the surface estate, is owned by one or more individuals Indians in trust or restricted status. Also referred to as Allotment or Heirship properties.
- o. LTRO. The Land Titles and Records Office of the BIA.
- p. Permanent improvements. Pipelines, roads, structures, and other infrastructure attached to the land and subject to the right-of-way.
- q. PLSS. Public Land Survey System is a surveying method developed and adopted by the United States to plat, or divide, real property.
- r. Right-of-way. An easement or legal right to go over or across Ho-Chunk land or individually owned Indian Land for a specific purpose, including but not limited to building and operating a line or road. This term may also refer to land subject to the grant of right-of-way; however, in all cases, title to the land remains vested in the landowner.
- s. Secretary. The Secretary of the Interior.
- t. Service line agreement. An agreement between a utility provider, a homeowner and the Nation where the Nation
- u. Trust lands. Any tract of land in which the Ho-Chunk Nation owns 100% interest of surface estate held in trust by the United States of America.

**5. Pre-application for Rights-of-Way.**

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a. Ho-Chunk Realty will review proposed right-of-way and identify what property types may be impacted. If multiple types of properties are impacted, the applicant may be required to submit separate applications for the areas covering the different types of properties.

b. Ho-Chunk Realty will review existing right-of-way agreements to see if the Nation has already established the easement rights for the proposed right-of-way.

**6. Application for Rights-of-Way on Trust Lands.**

a. An individual or entity shall submit a complete right-of-way application to the Realty Division that shall, at minimum, include:

- (1) The applicant's contact information (including name and address);
- (2) An accurate legal description of the proposed right-of-way formatted in the PLSS, its boundaries, and the tracts associated with the right-of-way;
- (3) The purpose of the right-of-way;
- (4) A map with the defined location of the right-of-way;
- (5) The requested duration of the right-of-way;
- (6) The ownership of permanent improvements associated with the right-of-way and the responsibility for constructing, operating, maintaining, and managing permanent improvements under 25 CFR § 169.105;
- (7) Bond(s), insurance and/or other security meeting the requirements of 25 CFR § 169.103;
- (8) A National Environmental Policy Act (NEPA) questionnaire;
- (9) Evidence that a Section 106 Consultation has been conducted with the Nation's Tribal Historical Preservation Officer;
- (10) If the applicant is a corporation, limited liability company, partnership, joint venture, or other legal entity (except one owned by the Nation), they shall furnish information such as organizational documents, certificates, filing records, and resolutions, demonstrating that:
  - (i) the representative has the authority to execute the application;
  - (ii) the right-of-way will be enforceable against the applicant;
  - (iii) the legal entity is in good standing and authorized to conduct business within the Nation's jurisdiction;

b. Application for a right-of-way shall be furnished by Ho-Chunk Realty upon request. Ho-Chunk Realty may establish a fee schedule for application pursuant to this code.

c. Once a completed application is received by Ho-Chunk Realty, Ho-Chunk Realty will create a right-of-way package that includes:

- (1) The complete application;
- (2) A draft legislative resolution authorizing the grant of right-of-way containing the following:
  - (i) the Nation's name;
  - (ii) tract number of impacted tracts;

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- (iii) a statement specifically addressing what the Nation is requesting the Secretary to approve;
- (iv) a land description;
- (v) consideration pertaining to the survey, compensation, and grant of right-of-way;

(3) A map displaying the trust lands to be impacted and the route of the proposed right-of-way;

d. Ho-Chunk Realty will submit the right-of-way package to Legislature for consideration. Once a decision is rendered by the Legislature, Ho-Chunk Realty will submit the decision to BIA Realty. Once compensation has been collected (if applicable) and if there is no appeal of decision, the designated approving official signs the grant of easement. BIA Realty will provide the Nation and the applicant with approved copies and ensure the grant of right-of-way is recorded with the Land Titles and Records Office (LTRO) having jurisdiction over the Nation's lands.

**7. Application for Rights-of-Way on Allotment Lands.**

a. An individual or entity shall submit a complete right-of-way application to the Realty Division that shall, at minimum, include:

- (1) The applicant's contact information (including name and address);
- (2) An accurate legal description of the proposed right-of-way formatted in the PLSS, its boundaries, and the tracts associated with the right-of-way;
- (3) The purpose of the right-of-way;
- (4) A map with the defined location of the right-of-way;
- (5) The requested duration of the right-of-way;
- (6) The ownership of permanent improvements associated with the right-of-way and the responsibility for constructing, operating, maintaining, and managing permanent improvements under 25 CFR § 169.105;
- (7) Bond(s), insurance and/or other security meeting the requirements of 25 CFR § 169.103;
- (8) A National Environmental Policy Act (NEPA) questionnaire;
- (9) Evidence that a Section 106 Consultation has been conducted with the Nation's Tribal Historical Preservation Officer;
- (10) If the applicant is a corporation, limited liability company, partnership, joint venture, or other legal entity (except one owned by the Nation), they shall furnish information such as organizational documents, certificates, filing records, and resolutions, demonstrating that:
  - (i) the representative has the authority to execute the application;
  - (ii) the right-of-way will be enforceable against the applicant;
  - (iii) the legal entity is in good standing and authorized to conduct business within the Nation's jurisdiction;

b. Application for a right-of-way shall be furnished by Ho-Chunk Realty upon request. Ho-Chunk Realty may establish a fee schedule for application pursuant to this code.

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c. Ho-Chunk Realty will furnish a listing of current owners of the impacted tracts to the applicant. This listing will include the following:

- (1) Names and address of the individual landowners or their representatives;
- (2) Information on the location of the tracts;
- (3) The percentage of undivided interest owned by each individual Indian landowner.

The applicant will ultimately be responsible for acquiring written consent from the owners of the majority interest in each tract affected by the application. Ho-Chunk Realty may assist applicants in contacting the individual Indian landowners. Ho-Chunk Realty will not forward the application to the Legislature until a majority of ownership needed to approve the application has consented (including the Nation's interest).

d. Once a completed application is received by Ho-Chunk Realty, Ho-Chunk Realty will create a right-of-way package that includes:

- (1) The complete application;
- (2) A draft legislative resolution authorizing the grant of right-of-way containing the following:
  - (i) the Nation's name and fractional interest held in the property;
  - (ii) tract number of impacted tracts;
  - (iii) a statement specifically addressing what the Nation is requesting the Secretary to approve;
  - (iv) a land description;
  - (v) consideration pertaining to the survey, compensation, and grant of right-of-way;
- (3) A map displaying the trust lands to be impacted and the route of the proposed right-of-way;

e. Ho-Chunk Realty will submit the right-of-way package to Legislature for consideration. Once a decision is rendered by the Legislature, Ho-Chunk Realty will submit the decision to BIA Realty, along with the required consents from the Indian landowners. Once compensation has been collected (if applicable) and if there is no appeal of decision, the designated approving official signs the grant of right-of-way. BIA Realty will provide the Nation and the applicant with approved copies and ensure the grant of right-of-way is recorded with the Land Titles and Records Office (LTRO) having jurisdiction over the Nation's lands.

**8. Application for Rights-of-Way on Fee Simple Lands.**

Ho-Chunk Realty will consider the local municipal and state laws and regulations when processing rights-of-way for the Nation's fee simple lands.

a. An individual or entity shall submit a complete right-of-way application to the Realty Division that shall, at minimum, include:

- (1) The applicant's contact information (including name and address);
- (2) An accurate legal description of the proposed right-of-way formatted in the PLSS, its boundaries, and the tracts associated with the right-of-way;

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- (3) The purpose of the right-of-way;
- (4) A map with the defined location of the right-of-way;
- (5) The requested duration of the right-of-way;
- (6) The ownership of permanent improvements associated with the right-of-way and the responsibility for constructing, operating, maintaining, and managing permanent improvements under;
- (7) Bond(s), insurance and/or other security;
- (8) A National Environmental Policy Act (NEPA) questionnaire;
- (9) Evidence that a Section 106 Consultation has been conducted with the Nation's Tribal Historical Preservation Officer;
- (10) If the applicant is a corporation, limited liability company, partnership, joint venture, or other legal entity (except one owned by the Nation), they shall furnish information such as organizational documents, certificates, filing records, and resolutions, demonstrating that:
  - (i) the representative has the authority to execute the application;
  - (ii) the right-of-way will be enforceable against the applicant;
  - (iii) the legal entity is in good standing and authorized to conduct business within the Nation's jurisdiction;

b. Application for a right-of-way shall be furnished by Ho-Chunk Realty upon request. Ho-Chunk Realty may establish a fee schedule for application pursuant to this code.

c. Once a completed application is received by Ho-Chunk Realty, Ho-Chunk Realty will create a right-of-way package that includes:

- (1) The complete application;
- (2) A draft legislative resolution authorizing the grant of right-of-way containing the following:
  - (i) the Nation's name;
  - (ii) tract number of impacted tracts;
  - (iii) a land description;
  - (iv) consideration pertaining to the survey, compensation, and grant of right-of-way;
- (3) A map displaying the fee simple lands to be impacted and the route of the proposed right-of-way;

d. Ho-Chunk Realty will submit the right-of-way package to Legislature for consideration. If a decision is rendered by the Legislature authorizing the proposed right-of-way, Ho-Chunk Realty will submit the grant right-of-way to Legislature to signature by the Vice-President of the Ho-Chunk Nation, once compensation has been collected (if applicable). Ho-Chunk Realty will ensure the grant of right-of-way is recorded in the office of the register of deeds of the county in which the grant(s) is located in.

**9. Service Line Agreements.**

Service Line Agreements outlines the responsibilities of parties that are involved with providing utility services to structures on the Nation's lands. Service lines generally branch off from facility for which a right-of-way had already been obtained.

- a. Service line agreements will at minimum address the following:
- (1) The parties of the agreement;
  - (2) The length of the agreement;
  - (3) What utility services the provider will be supplying;
  - (4) To whom the provider is supplying the service too;
  - (5) Any mitigation of damages incurred during construction, restoration or reclamation of the premises upon the termination of the agreement;
  - (6) Compensation (if applicable);

b. Ho-Chunk Realty will submit the Service Line Agreement to the Executive Director of the Department of Administration (EDO) for consideration. Once a decision is rendered by the EDO, Ho-Chunk Realty will process signatures from all parties required to sign the agreement. All agreements will be subject to signature of the EDO. Ho-Chunk Realty will provide executed agreement to BIA Realty and the applicant and ensure the grant of right-of-way is recorded with the Land Titles and Records Office (LTRO) having jurisdiction over the Nation's lands within 30-days of full execution.

**10. Severability.**

If any part or parts, or application of any part of this Act is held invalid, such holding shall not affect the validity of the remaining parts of this Act.

**11. Sovereign Immunity.**

No section, clause, sentence or provision of this Act shall be construed as a waiver of the Nation's sovereign immunity.

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Legislative History:

- 00/00/00 Legislature places Draft Ordinance out for 45-Day Public Review.  
00/00/00 45-Day Public Review period ends.  
00/00/00 Legislature adopts Rights-of-Way as 8 HCC § via Legislative Resolution 00/00/00\_.