

# Utility Accommodation on Highway Right of Way Policy

Policy # OE002  
Revised: 5-30-2023

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Policy Owner: Director, Office of Land Management

Policy Contact: Utilities Engineer, Office of Land Management

## Policy Statement

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While highway rights of way are a finite resource, it is in the public interest to accommodate utility facilities on the rights of way of trunk highways, and local roads and streets receiving federal aid, when such use and occupancy of the right of way:

- does not interfere with the free and safe flow of traffic
- does not impair the highway or its protected visual quality
- does not conflict with any provision of federal, state, or local law, rule, or regulation, or
- does not unreasonably increase the difficulty or future cost of highway construction or maintenance.

### Principal points

- MnDOT operates the state trunk highway system to provide a safe and convenient means for the vehicular transportation of people and goods. Utility owners provide other essential services to the public. Cooperation between these entities is essential to serve the public in the most economical manner consistent with the respective public service needs, obligations, and interests. Although MnDOT strives to accommodate utility facilities whenever possible, the permitted use and occupancy of highway right of way for non-highway purposes is subordinate to the primary interest and safety of the traveling public.
- Trunk highways in Minnesota that are part of the federal-aid system are also subject to federal statutory and regulatory requirements. When determining whether a portion of a federal-aid highway should be used to accommodate a utility facility, federal law requires states to “first ascertain the effect such use will have on highway and traffic safety, since in no case shall any use be authorized or otherwise permitted, under this or any other provision of law, which would adversely affect safety.” (23 USC § 109(I)(1)(A))
- The procedures used by MnDOT for accommodating utility facilities along, across, or on the right of way of all highways under the jurisdiction of the Minnesota Commissioner of Transportation are prescribed in the Utility Accommodation Section of the [MnDOT Utility Accommodation and Coordination Manual](#) and referred to as the Manual in this policy.
- The FHWA has approved this statement of policy.

### Scope

- This policy addresses the location, design, and methods for installing, adjusting, accommodating, and maintaining utility facilities on trunk highway rights of way and projects subject to the requirements of 23 CFR 645.209(g).

- MnDOT will apply relevant Minnesota or federal statutes, rules, or industry codes as appropriate to the circumstances of the placement of a utility facility on trunk highway right of way. If a more stringent protection is prescribed by Minnesota or federal statutes, rules, or industry codes than is provided in this policy, the more stringent requirement shall prevail. Nothing in this policy shall be considered as a limitation on the authority or responsibility of MnDOT to apply statutes and regulations as appropriate to the specific circumstances.

### **FHWA Review**

When a utility owner submits a permit application or request to MnDOT to use or occupy the right of way of a federal-aid highway, MnDOT is not required to submit the matter to the FHWA for prior concurrence except when the proposed installation is not in accordance with this policy that is approved by the FHWA for use on federal-aid highways. MnDOT's authority, by mutual agreement with the local FHWA Division Office is manifested in the form of an approved Utility Accommodation Permit. *(See 23 CFR § 645.215(d))*

### **Exceptions**

MnDOT may allow exceptions to this policy if the utility owner can demonstrate that extreme hardships or unusual conditions provide justification and where alternative measures can be prescribed to fulfill the intent of applicable statutes and rules. Any such exceptions must be:

- Requested by an authorized person representing the utility owner;
- Recommended for approval by the MnDOT District Engineer (or authorized representative);
- Approved by the MnDOT Utilities Engineer, acting for the Commissioner of Transportation; and
- Submitted to the FHWA for concurrence if the exception applies to a utility facility located on the Interstate, other freeways, expressways, and other highways on the National Highway System

All requests for exceptions must include an evaluation of the direct and indirect design, environmental, and economic effects that would result from approval of the exception, plus any other pertinent information.

### **Enforcement**

MnDOT shall enforce this policy consistent with applicable Minnesota statutes and rules. Such enforcement may include, but is not limited to, the following:

- Assessment of responsibility for restoration costs when utilities begin work without a permit;
- Increased security deposit levels;
- Denial of future permits until past non-compliance is resolved;
- Misdemeanor citations by the appropriate enforcement agency;
- Litigation; and
- Removal of facilities placed without a permit, in nonconformance with a permit, or in nonconformance with other legal requirements.

### **Permit applications**

Minnesota statutes and rules require utility owners to obtain a permit from MnDOT to install, alter, or maintain utility facilities on the trunk highway right of way. Procedures for obtaining a permit may be found in the Utility Permit Application Section of the [MnDOT Utility Accommodation and Coordination Manual](#).

## Reason for Policy

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Federal and Minnesota statutes and rules address the accommodation of utility facilities on Minnesota trunk highway rights of way.

The Code of Federal Regulations (23 CFR § 645.215(a)) requires each state transportation department to submit to its Federal Highway Administration (FHWA) Division Administrator a statement on the authority of utilities:

- to use and occupy the right of way of federal-aid highways,
- the authority of the state to regulate such use, and
- the policies the state employs or proposes to employ for accommodating utilities within the right of way of any highway project receiving federal aid.

MnDOT developed this policy in accordance with Minnesota statutes and rules, federal statutes and regulations, the *Federal Highway Administration (FHWA) Program Guide: Utility Relocation and Accommodation on Federal-Aid Highway Projects*, and applicable American Association of State Highway and Transportation Officials (AASHTO) publications. The Related Information section of this policy lists relevant references.

[Minnesota Statutes §10.65](#), [Executive Order 19-24](#), and the MnDOT Tribal Nations Policy recognize the unique relationship between Tribal Nations and the State government. MnDOT and the utility owner must coordinate meaningfully and in a timely fashion with Tribal Nations for activities relating to accommodation of utility facilities on trunk highway rights of way in Indian Country.

## Applicability

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This policy applies to:

- All placements of public utilities (and private lines that are also allowed to cross highways), including, but not limited to:
  - all forms of communication facilities
  - cable television
  - electric power
  - water, steam and sewer lines
  - pipelines that carry gas, liquids, or solids in suspension
  - facilities that carry waste, drainage, or storm water not connected with highway drainage; or
  - any other similar commodity that may be accommodated within the right of way of highways under the jurisdiction of the Commissioner of Transportation.
- Underground, surface, or overhead facilities, either singularly or in combination, including bridge attachments.
- All existing utility facilities retained, relocated, replaced, or altered and to new utility facilities installed on state right of way, including facilities needed for highway purposes (such as for highway lighting or utility facilities to serve a weigh station, rest area, or recreation area).

Note: Energy generation facilities are not utility facilities for the purpose of this policy. Energy generation facilities may be allowed to occupy a portion of a trunk highway right of way by means of a lease agreement, dependent upon:

- the nature of the trunk highway right of way,
- MnDOT's ownership interest of the right of way, and

- the nature and ownership of the proposed energy generation facility.

All MnDOT employees and third parties working on MnDOT projects must comply with this policy.

Key stakeholders with responsibilities under this policy include:

- Utilities Engineer
- Utility Permit Writers
- Utility Transmission Route Coordinator
- District Permit Staff

## Definitions

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### Control of Access

The condition where the right of owners or occupants abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority. *(See Minnesota Statutes § 160.08)*

### FHWA - Federal Highway Administration

A division of the U.S. Department of Transportation specializing in highway transportation. FHWA provides stewardship over the construction, maintenance and preservation of the Nation's highways, bridges, and tunnels.

“The Federal Highway Administration (FHWA) Division Offices are local field offices that provide leadership, guidance, and direction to State Departments of Transportation in the project development and delivery of transportation projects. Working collaboratively with State partners, FHWA Division Offices ensure that the nation's roads, bridges and tunnels are safe and continue to support economic growth and environmental sustainability. Additionally, to ensure accountability, the FHWA Division Offices work with the State to develop, track and analyze activities and recommend innovative techniques and strategies to improve the performance of the transportation system. FHWA and its Division Offices are responsible for working with State Departments of Transportation to ensure that the nation's strategic investments preserve and modernize the U.S. highway system - and ultimately to save lives.” *(See [Federal Highway Administration Minnesota Division website](#))*

### Freeway

A divided arterial highway with full control of access. *(See 23 CFR § 645.207)*

### Highway

Any public way for vehicular travel, including the entire area within the right of way and related facilities constructed or improved in whole or in part with Federal-aid or direct Federal highway funds. *(See 23 CFR § 645.207)*

### Indian Country

As defined in 18 United States Code section 1151, Indian country includes reservations, allotments, and dependent Indian communities. Indian country may include off-reservation land.

Note: See the [Indian Country Guidance](#) and the [MnDOT Tribal Map Application](#) for additional information.

### **Interstate Highways**

Highways that are a part of the Dwight D. Eisenhower National System of Interstate and Defense Highways. Highways on this system that are in Minnesota are included in the Minnesota Trunk Highway System.

### **National Highway System**

A network of roadways designated and approved in accordance with the provisions of 23 U.S.C. 103(b), which includes interstate highways, principal arterials, the STRAHNET, major strategic highway network connectors, and intermodal connectors.

The NHS comprises roadways important to the nation's economy, defense, and mobility. It is also known as the *Federal-aid highway system*. The NHS was developed by the U.S. Department of Transportation in cooperation with the states, local officials, and metropolitan planning organizations.

Note: The NHS includes the Interstate Highway System and over 117,000 miles (7,627 roadway miles within Minnesota) of other roads and connectors to major intermodal terminals.

### **Permit**

The document by which MnDOT regulates and gives approval for the use and occupancy of highway right of way by utility facilities or private lines.

### **Private Lines**

Privately owned facilities that convey or transmit communications, electric power, gas, oil, water, or any other similar commodities outlined in the definition of "utility facility" but devoted exclusively to private use.

### **Right of Way**

Real property or interests therein, acquired, dedicated, or reserved for the construction, operation, and maintenance of a highway.

### **Road**

See highway.

### **Street**

See highway.

### **Trunk Highway System**

All roads established or to be established under the provisions of [Article XIV, Section 2 of the Constitution of the State of Minnesota](#). This system includes highways that are constructed, improved, and maintained as public highways under the jurisdiction of the Commissioner of Transportation, including highways on the Interstate system.

### **Utility Facility**

A privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, cable television, electric power, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. This term includes utility-type facilities that are owned or leased by a government agency for its own use, or otherwise dedicated solely for governmental use. This term includes those facilities used solely by the utility that are a part of its operating plant. (See *Minnesota Statutes §§ 161.45, 222.37, subd. 2, and 23 CFR § 645.207*)

## Responsibilities

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### MnDOT Utility Agreements and Permits Unit (Central Office)

- **Utilities Engineer:**
  - Oversee the activities of the Utility Agreements and Permits Unit.
  - Approve permits on behalf of the Commissioner of Transportation.
  - Enforce the MnDOT Utility Accommodation Policy.
  - Assist in resolving any outstanding utility issues.
- **Utility Permit Writers:**
  - Review and process all applications for Utility Accommodation (Form 2525) to install permanent facilities on trunk highway right of way.
  - Suggest alternatives to application requests, if necessary.
  - Issue permits with special provisions.
  - Ensure the utility owner has coordinated with Tribal officials for utility permit applications in Indian Country prior to approving the permit application. If the utility company or representative have not contacted tribal authorities, send the permit to tribal officials for review, comment, and approval. (See the [Indian Country Guidance](#) and the [MnDOT Tribal Map Application](#))
- **Utility Transmission Route Coordinator**
  - Act as MnDOT's liaison between the Public Utilities Commission (PUC), the Department of Commerce (DOC), and MnDOT districts when projects involving high-voltage transmission lines, power plants, wind turbine farms, solar, or pipelines affect or potentially affect MnDOT property or right of way.
  - Research, supply information, and formally respond to inquiries by the PUC and DOC to protect the interest and safety of the agency, the state transportation system, and the traveling public.

### MnDOT District Permit Staff

- Review and process many different types of permit applications, including Miscellaneous Work Permits (Form 1723) for minor or temporary installations and maintenance projects, drainage permits, and access permits.
- Check the accuracy of information on completed applications for Utility Accommodation (Form 2525).
- Verify field location.

### Policy Owner (Director, Office of Land Management)

- Review the policy every two years, or sooner as necessary, to ensure the policy remains up-to-date.
- Ensure manuals and other documents associated with the policy remain current.
- Monitor state, federal, enterprise, agency, or other requirements that apply to the policy or procedures.
- Consult with the Office of Chief Counsel to ensure the policy and procedures remain compliant with all state, federal, enterprise, agency, or other requirements.
- Ensure that necessary approvals by state or federal agencies are obtained before changes to the policy or procedures are implemented.
- Work with the Policy Coordinator to revise the policy and/or confirm its accuracy.
- Communicate policy revisions, reviews, and retirements to stakeholders.

## Resources & Related Information

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### Forms

- [Application for Utility Accommodation on Trunk Highway Right of Way \(Form 2525\)](#)
- [Application for Miscellaneous Work on Trunk Highway Right of Way \(Form 1723\)](#)

### Processes, Procedures, and Instructions

- [MnDOT Utility Accommodation and Coordination Manual](#)

### Resources

- [Office of Land Management – Utility Agreements and Permits](#) (including FAQs)
- [Indian Country Guidance](#)
- [MnDOT Tribal Map Application \(arcgis.com\)](#)
- Business Data Catalog (BDC) – accessible from employee Intranet
- MnDOT's [Policy Website](#)

### Related Information

The Utility Accommodation Section of the [MnDOT Utility Accommodation and Coordination Manual](#) includes technical requirements regarding the location, design, and methods for installing, adjusting, accommodating, and maintaining utility facilities on trunk highway right of way. The Utility Accommodation Section of the manual is hereby incorporated by reference as a part of this policy.

Minnesota statutes and rules permit the accommodation of utility facilities on the right of way of Minnesota trunk highways. Trunk highways include all roads established under the provisions of Constitution of the State of Minnesota, Article XIV, Section 2. This includes all highways that are constructed, improved, and maintained as public highways under the jurisdiction of the Commissioner of Transportation. Thus, all state-maintained highways, including highways on the Interstate Highway System, are trunk highways.

The Code of Federal Regulations, Title 23, § 645.215 requires each state transportation department to prepare and submit to the FHWA a statement of the authority of utilities to use and occupy highway rights of way and the policies employed for accommodating such utilities within the right of way of federal-aid highways. This policy's procedures and requirements were developed in accordance with the following:

- [Minnesota Statutes, Section 161.20, "General Powers of Commissioner"](#)
- [Minnesota Statutes, Section 161.45, "Utility on Highway Right of way; Relocation"](#)
- [Minnesota Statutes, Section 161.46, "Reimbursement of Utility"](#)
- [Minnesota Statutes, Section 222.37, subd 2, "Public Road; Use, Restriction - Pipeline"](#)
- [Minnesota Statutes, Chapter 216D, "Excavation Notice System"](#)
  
- [Minnesota Administrative Rules Part 7560 "Excavation Notice System"](#)
- [Minnesota Administrative Rules Part 8810.3100, "Definitions"](#)
- [Minnesota Administrative Rules Part 8810.3200, "Purpose and Scope"](#)
- [Minnesota Administrative Rules Part 8810.3300, "Permits"](#)
- [Minnesota Administrative Rules Part 8810.3400, "Standards for Work Conducted Under Permit"](#)
- [Minnesota Administrative Rules Part 8810.3500, "Aerial Lines"](#)
- [Minnesota Administrative Rules Part 8810.3600, "Underground Lines"](#)

- [Title 23, United States Code, Section 103 "Federal Aid Systems"](#)
- [Title 23, United States Code, Section 109, "Standards"](#)
- [Title 23, United States Code, Section 123 "Relocation of utility facilities"](#)
- [Code of Federal Regulations, Title 23 - Highways, Part 1 "General"](#)
- [Code of Federal Regulations, Title 23 - Highways, Part 645 "Utilities"](#)
- [Code of Federal Regulations, Title 23 - Highways, Part 710 "Right-of-Way and Real Estate"](#)
- [Code of Federal Regulations, Title 23 - Highways, Part 752 "Landscape and Roadside Development"](#)
- [Federal Highway Administration Program Guide, "Utility Relocation and Accommodation on Federal-Aid Highway Projects"](#)
- [American Association of State Highway and Transportation Officials, "A Policy on the Accommodation of Utilities within Freeway Right-of-Way"](#)
- [American Association of State Highway and Transportation Officials, "A Guide for Accommodating Utilities within Highway Right-of-Way"](#)
- [Highway/Utility Guide, June 1993, FHWA-SA-93-049](#)

In addition to the above, utilities must also be installed and maintained in a safe manner in accordance with the following:

- [Minnesota Manual on Uniform Traffic Control Devices \(MN MUTCD\)](#)
  - [Minnesota Manual on Uniform Traffic Control Devices Temporary Traffic Control Zone Layouts "Field Manual" \(Part 6K of the MN MUTCD\)](#)
- [American Association of State Highway and Transportation Officials, "Roadside Design Guide"](#)
- [American Association of State Highway and Transportation Officials, "A Policy on Geometric Design of Highways and Streets"](#)
- Any other manuals which may apply to specific situations.

## History & Updates

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### Initial Adoption

Date: 7-27-1990

Comments: Policy #90-1 adopted

### First Revision

Date: 11-8-2005

Comments: Policy revised and renumbered as #6.4

### Second Revision

Date: 9-19-2013

Comments: Policy #OP002 adopted

Superseded:

- Policy #6.4 – Accommodation of Utilities on Highway Right of Way



- Guideline #6.4.G-1 – Permits for Accommodation of Utilities on Highway Right of Way
- Procedure #6.4.P-1 – Procedures of Accommodation of Utilities on Highway Right of Way

**Third Revision**

Date: 3-17-2016

Comments: Policy revised

**Fourth Revision**

Date: 5-30-2023

Comments: Policy moved to new template; procedures incorporated into manual; FAQs moved to website; renumbered as #OE002

