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### Secondary Use of Highway Rights-of-Way

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Wyoming Department of Transportation  
**Secondary Use of Highway Rights-of-Way**

**CHAPTER 4**

Section 1. **General.**

(a) By Federal regulations, the rights-of-way of Federal-aid or Direct Federal roads are acquired exclusively for highway purposes which include the construction, reconstruction, maintenance, and safe operation of a highway and related facilities, and include the air rights above the right-of-way.

(b) Federal regulations and Department policy recognize and endorse the joint use of highway rights-of-way with utilities, provided such occupancy is in the public interest and shall not impair the highway or interfere with the free and safe flow of traffic.

(c) The applicant for a license shall allow adequate time for plans or field review of the applicant's project as well as the possibility of redesign in order to be in conformance with Department stipulations.

(d) The applicant shall consider the aesthetic quality of the proposed installation and make maximum use of the terrain to reduce visual clutter. 23 CFR 645.209(h) specifically addresses utility installations in scenic areas, and paragraph (l) addresses utilities in wetland areas.

Section 2. **Grant of Right.**

(a) When the Department grants a License or executes a License Agreement with a utility company, private entity, or governmental entity for the installation of a facility within or across a highway right-of-way, the Department does not convey an exclusive right or strip of land of specific width to the applicant. The Department merely gives permission to the applicant to occupy highway right-of-way with a facility in the exact location as shown in the proposal (Exhibit) furnished by the applicant, with the provision that the facility be removed by the owner, at the owner's expense, any time the right-of-way is required for highway purposes, unless otherwise provided for by law.

(b) Applicants shall not extend easement widths across the highway right-of-way when preparing exhibits for licenses. These lines add confusion and detract from what is actually being conveyed to the utility or railroad.

(c) Licenses, License Agreements, and Exhibits are covered in detail elsewhere in this regulation.

**Section 3. Construction Criteria.**

(a) The Department has developed specific criteria regarding how and where utility facilities may be constructed within the rights-of-way under its jurisdiction.

(b) These specific criteria are covered in detail elsewhere in this regulation and are in addition or complimentary to the general text of this section of the regulation.

(c) The Department reserves the right to operate any tracked or wheeled vehicles typical to highway construction or maintenance at any location in the highway right-of-way at any time without giving prior notice to the licensees.

(d) Licensees are solely responsible for anticipating this use and its accompanying ramifications in their design and construction by protecting their facilities with casing, heavy wall thickness pipe, below-surface concrete slabs, extra depth of bury, or other previously approved or agreed to methods of protection, not only underneath the roadway template but also across or along the entire length of that portion of the facility occupying the R/W.

**Section 4. Interstate Highways and Other Fully Access Controlled Roads.**

(a) Crossings of the Rights-of-Way.

(i) Crossing of the right-of-way and the area between the NO ACCESS lines shall be allowed for buried and aerial utility lines whether they are owned and operated by a private, public, or governmental entity.

(ii) The specific construction and safety criteria of this regulation shall apply. No above-ground appurtenances that might present a hazard or compromise safety standards shall be allowed between the NO ACCESS lines.

(iii) Customer service lines needed to serve a facility or industrial/residential development on the opposite side of a fully access controlled highway right-of-way shall be accomplished by construction of one crossing of sufficient capacity to serve the area instead of multiple individual service connections in several locations.

(b) Service roads and frontage roads are generally not included within the NO ACCESS lines and may be used for parallel utility facility encroachments as well as placement of facilities connected with a crossing of the adjacent access controlled portion of the right-of-way. Access shall be allowed based on available space and existing facilities.

(c) All construction and safety provisions of this regulation apply.

(d) Parallel Encroachments Within the No Access Lines.

(i) Nothing herein, either expressly or implied, limits, encumbers, or otherwise prevents the Department from imposing, requiring, agreeing to, or otherwise conditioning access controlled encroachments on such consideration as allowed by state law whether "in kind" or other negotiated considerations, as the Department deems in the best interests of the State of Wyoming and the Department.

(ii) Parallel encroachments within the NO ACCESS line of a fully access controlled interstate highway may be allowed if special and unique circumstances exist and if such a parallel encroachment does not affect the design, construction, reconstruction, safe operation, and maintenance of the highway.

(iii) Parallel encroachments within the NO ACCESS line of all other fully access controlled highways (non-interstate) may be allowed after Department review.

(iv) Requests for parallel encroachments shall be considered and evaluated by the Department on a case by case basis and shall meet the following minimum criteria:

(A) The facility carries a commodity that is non-flammable, non-corrosive, non-explosive, and non-toxic.

(B) The facility shall not require frequent servicing, maintenance, inspection, or patrolling on foot or by vehicle.

(C) No service connections, testing sites, or metering pits or devices—whether for distribution or transmission—shall be constructed within the highway right-of-way, initially or in the future.

(D) No pump stations, repeaters, transformers, regulators, meters, or facilities of a similar nature shall be located within the no-access lines.

(v) The key tests the Department shall use in determining whether to consider parallel encroachment are the following:

(A) Construction of the facility outside the right-of-way has been refused, in writing, by the adjacent landowner and documented by the utility company or owner in its statement of need.

(B) Construction of the utility facility outside the right-of-way is extremely difficult to implement because of terrain, environmentally or archeologically sensitive areas, heavily developed residential or industrial areas, or similar constraints.

(C) Construction outside the right-of-way is unreasonably costly, and based on the size of the utility company, would cause an economic hardship on the utility and its consumers.

(D) Construction outside the right-of-way will cause significant adverse impact on productive agricultural land.

(E) Utility facility construction within the highway right-of-way lines is the most prudent and feasible location available.

(vi) At the time of application, the applicant shall provide the Department with all pertinent documentation supporting the criteria described previously in this section.

(vii) All utility installations shall conform to the requirements of all applicable sections of Title 23 of the Code of Federal Regulations.

**Section 5. Access to a Facility Within a Fully Access Controlled Road.**

(a) If the Department approves a request for parallel encroachment within a fully access controlled right-of-way, the following steps shall be taken by the Department or Utility Company as applicable:

(i) The Department may, if deemed necessary, establish a new no-access line between the outer limits of the right-of-way and the traveled lanes of the highway that will encompass the proposed utility facility, creating a utility corridor.

(ii) On establishment of a utility corridor, the Department shall designate specific points of access and egress to the corridor for use by the utility company during construction and maintenance of the facility. Whenever possible, such access points shall begin and terminate at existing interchanges or intersecting roads and be tied to the ramps or crossroads.

(iii) If no interchanges or intersecting roads exist in the vicinity of the proposed utility encroachment and access/egress for construction purposes must be provided from the through traveled lanes, the Department, workload permitting and at the expense of the applicant, shall conduct or supervise the design of temporary access from the traveled lanes to the proposed work site.

(iv) The applicant or its contractor shall construct and ultimately remove any temporary access, provide safety signing and traffic control, and restore the disturbed area within the highway right-of-way in accordance with current Department specifications and under the supervision of Department personnel.

(b) If the utility requires permanent access to the facility for inspection or maintenance and no interchanges or crossroads are located nearby, the utility shall negotiate an access easement with the adjacent landowner. The access point shall be designated by the Department and a locked gate installed for the utility's access to the facility.

(c) In extreme cases, a permanent approach to the facility or utility corridor may be considered if no other access can be established, and design standards and safety requirements can be met.

(d) In no case shall the utility or its contractor access the facility by leaving or entering the traveled lanes of the road by driving off the shoulder of the roadway. Neither the utility company nor its contractor shall use the shoulder or the clear zone for parking equipment or vehicles.

(e) In no case, whether during construction or maintenance activities, shall personnel of the utility or its contractor cross the median of a divided road or make U-turns across the traveled lanes of any roadway to access the utility's facility or construction site.

(f) If access to the facility requires a change in direction of travel for construction equipment, this access shall be accomplished at locations designated by the Department and in compliance with applicable safety requirements.

#### **Section 6. Other Roads on the State or Federal Highway System.**

(a) General Requirements. Proposed occupancy of highway rights-of-way for non-highway purposes shall meet the following criteria:

(i) The proposed facility shall directly or indirectly serve the general public. (See Private and Public Utilities and Governmental Facilities under Definitions.)

(ii) Adequate right-of-way is available and the proposed occupancy does not interfere with or restrict in any way the maintenance, operation, upgrading, and reconstruction of the road and its related facilities like: signs, delineators, guardrail, signals, drainage pipes, ditches, slopes, stockpasses, bridges, fences, etc.

(iii) The safety of the public is not impaired in any way during construction, operation, and maintenance of the facility.

(iv) Clear recovery area (clear zone) criteria is not violated.

(v) Major feeder lines of sufficient capacity shall be brought across the R/W to service developing areas instead of individual lines for each customer.

(b) Private Lines; Highway R/W Owned by the Department.

(i) Crossings

Privately owned facilities which are operated for private purposes may be allowed to cross the R/W.

(ii) Parallel encroachments

Generally not permitted unless unusual hardship or extenuating engineering, environmental, or aesthetic considerations make construction outside of the R/W extremely difficult or costly.

(iii) Construction methods and safety provisions shall be in compliance with this regulation and as directed by the Department.

(c) Private Lines; Highway R/W on Easement. When the Department holds an easement for highway or transportation purposes from a private landowner, privately owned lines that are operated for private purposes may cross or encroach upon the highway easement as in Para. (ii) above. (Previous case law and legal opinions uphold the following: "The highway rights-of-way are held in trust for the use of the citizens of the State of Wyoming as that may be determined by law. The fact a portion of its right-of-way is held by an easement for highway purposes as opposed to a fee simple interest does not create a greater or lesser estate in the public in and to the land embraced within the rights-of-way or create any difference in the way the public may utilize the right-of-way for highway purposes. The State is legally able to utilize the land within the boundaries of the highway for all lawful purposes consistent with every reasonable method of travel, transportation, and communication for which public highways are normally used." Extract from Opinion No. 88-003, dated January 15, 1988, by Joseph B. Meyer, Attorney General and Lawrence A. Bobbitt, III, Senior Assistant Attorney General, based on Wyoming Statute 1-26-813.)

(d) Private & Public Utility Lines; Highway on Federal Land. When the highway easement is on Federal land, the applicant is required to obtain permission from the applicable Federal agency which administers the land, after the Department has approved the proposed utility line construction.

(e) Private & Public Utility Lines; Highway on Railroad Operating R/W. When the Department's roads cross a railroad operating right-of-way, whether at grade or on a

separation structure, the railroad reserves the exclusive right to license secondary use by any type of utility facility. The utility shall first secure permission from the railroad to cross or encroach upon the rights held by the Department and then furnish the railroad's approval to the Department for issuance of a license. Failure to first obtain railroad approval shall jeopardize the rights granted to the Department by the railroad.

(f) Public Utilities; Highway R/W on Easement or Department Owned.

(i) General

Crossings and parallel encroachments may be granted to companies, corporations, districts, and joint powers boards organized under the laws of the State, Boards of Public Utilities, facilities belonging to the State or Federal Government, and facilities of the various political subdivisions of the State, who are providing a direct or indirect service to the public.

(ii) See Section 6(a) for General Requirements.

(iii) See Section 6(d) for Federal Lands.

(iv) See Section 6(e) for Railroad Operating R/W.

(v) All other applicable provisions of this regulation, the license form, or the license agreement, and other stipulations of the Department shall be complied with.

#### Section 7. **Inspection.**

(a) The Department may at any time, at the discretion of the District, assign full or part time inspectors to any utility's project within the right-of-way to assure full compliance with applicable State and Federal laws, rules, regulations, and Department policy.

(b) Such inspection shall be at the expense of the utility which owns the facility being installed. The District shall execute a WHD Form A-32, Authority for Rendering Special Service, with the utility to cover reimbursement of inspection costs incurred by the Department.