

Use of Right of Way by Others Manual



Revised June 2021

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Manual Notice 2021-1

From: James Stevenson, P.E., Director, Maintenance Division

Manual: *Use of Right of Way by Others Manual*

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Purpose

The *Use of Right of Way by Others Manual* has been updated to include additional information relating to providing assurances that pipelines meet minimum federal standards. The manual has also been updated to change the function code for removal of unauthorized signs. Other miscellaneous formatting changes were made and links to existing documents and regulations were also added.

Contents

Chapter 1 - Section 3: “Additional Requirements for High Pressure Pipelines” section was updated to include a statement of assurances that must be provided to show compliance with minimum federal safety standards found in 49 CFR part 192

Chapter 3 - Section 3: A hyperlink was added to Form 2057 and sign approval applications were changed from area engineer to district engineer.

Chapter 3 - Section 4: Function code and title were updated for removal of unauthorized signs.

Chapter 3 - Section 8: Reference was added that the Railroad Commission of Texas (RRC) is the primary agency for certain hazardous substances. Agreement for access heading was updated to include the RRC.

Chapter 3 - Section 12: Language was added stating property owners must sign Form 2047 for agricultural use agreements.

Contact

Address questions concerning information contained in this Manual Notice to Samuel Glinsky at (512) 968-7385 or samuel.glinsky@txdot.gov.

Archives

Past manual notices are available in a [PDF archive](#).

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Chapter 1 — Utility Policy

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Section 1 — Overview

Introduction to Use of Right of Way by Others

The *Use of Right of Way by Others Manual* contains the following chapters:

- ◆ Chapter 1, Utility Policy: Summarizes procedures for utility companies to obtain permits for the placement of utilities on the right of way. Policies governing the placement of utilities are contained in Title 43, Chapter 21, Sub-chapter C of the Texas Administrative Code.
- ◆ Chapter 2, Uses of Right of Way (Long Term): Describes circumstances in which the public, adjacent landowners or other governmental entities are allowed to use the right of way on the state system on a long term basis.
- ◆ Chapter 3, Uses of Right of Way (Temporary): Describes circumstances in which the public, adjacent landowners, local civic organizations or commercial companies may temporarily use the right of way.

Purpose of this Chapter

It is TxDOT's policy to stipulate the location, materials and methods for installation and adjustment of utility lines on all highways on the state highway system. This policy was developed for the safety, protection, use and future development of the highways with due consideration given to public service afforded by adequate and economical utility installations.

Whereas governing laws provide that certain utilities have a legal right to be placed on the highway [rights of way](#), TxDOT will designate the location and conditions that will govern their installation and maintenance in every case. However, in specific instances TxDOT may deny a request for the placement of certain utilities on highway right of way. For example, on a section of highway where the only available space for utilities is between the ditch backslope and the pavement, the request can be denied.

Policies governing the location, materials, and methods of installation are set out in this chapter and in the Title 43, Chapter 21, Sub-chapter C of the Texas Administrative Code. This chapter does not include the administration of utility adjustments or financial participation therein. For such guidance, see the Right of Way [Utility Manual](#).

Definitions

In this chapter, the word **utilities**, as defined in the rules, applies to all private as well as public lines, including electric power transmission, electrical power service, telephone, television coaxial cable, water, gas, petroleum products, chemicals, steam, waste water and similar lines. These utili-

ties may involve underground, surface appurtenances or overhead facilities either singularly or in combination.

The Utility Installation Request (Form [1082](#)) gives TxDOT official notice that a utility installation on highway right of way is proposed:

The form specifies the location and conditions under which TxDOT approves the utility installation. [Section 3](#) explains the proper use of this form.

Section 2 — Authority for Installation on Highway Right of Way

Rights Under Existing Laws

Texas Administrative Code, Title 43, Rule §21.36, "Rights of Utilities," provides public utilities have a right to operate, construct and maintain their lines over, under, across, on or along highway rights of way. This includes entities which are authorized by law to transport and/or distribute natural gas, water, electric power, telephone and cable television, or salt water, and those which are authorized to construct and operate common carrier petroleum and petroleum product lines.

A private utility may place a utility facility over, under, or across a highway, but should not be permitted longitudinally on the highway right of way.

If an entity's legal authority to install, adjust, or relocate its facility longitudinally within a highway right of way is not readily evident, the department may require that the entity provide:

- ◆ written certification that the entity is authorized by state law to operate, construct, and maintain its utility facilities over, under, across, on, or along state highways
- ◆ documentation that the entity filed its status with the applicable state regulatory commission or agency and its facilities are subject to public safety regulation.

The district determines the legal status of proposed installations and should call upon the applicant to provide evidence of their eligibility. Contact the Maintenance (MNT) or Right of Way (ROW) Divisions for advice or any questions.

Additional Guidelines

The following additional guidelines have been established for determining the legality of placing gas, petroleum and/or petroleum product lines within the highway right of way.

Use and occupancy agreement forms and notice forms are made available for utility facilities installed, adjusted, relocated or retained within highway rights of way. These forms provide for a definite understanding about the location and manner in which utilities will be installed and/or maintained and, where applicable, provide the necessary rights needed by the state to occupy the property interests held by the utility company.

Contact MNT or ROW concerning questions about the placement of utility lines. Contact the Secretary of State to determine if the owner or operator has been incorporated within the State of Texas and what kind of business the owner or operator manages. This assures that an entity legally exists within this state and verifies that the purpose of the subject line(s) agrees with the Articles of Incorporation. It has been found at times that the latter does not always agree.

Additional Guidelines For Oil and Gas Lines

Contact the Railroad Commission to determine if the subject entity has filed an "Application to Operate Pipeline," Form T-4 and whether the form has been approved by the Commission. Request a copy of the approved Form T-4 and the "Permit to Operate Pipeline," Form T-4A. The Railroad Commission has established a site to verify the T-4 information. By law, the Railroad Commission has the responsibility to monitor the placement of all oil and gas lines within this state and their website can provide further information on oil and gas lines.

This contact is made to ensure that the entity has filed the necessary Railroad Commission form for approval and provides the department opportunity to review Form T-4, for the purpose and intent of the subject line. The entity may be incorporated to do business within this state and the Application to Operate Pipeline, Form T-4 filed and approved indicating it is a common carrier or a gas utility. This assures that an entity legally exists. However, the data is further reviewed to ensure that the specific line in question is to be or is being used for public purposes rather than for private purposes.

Section 3 — Utility Installation Request Forms

Requirement of Utility Installation Request Forms

All requests for new installations of utilities on highway rights-of-way, other than for highway needs, should be made by the use of "Utility Installation Request" (Form 1082), with drawings to be used for new in-stallations, except for:

- ◆ attachments to bridges
- ◆ construction of utility bridges
- ◆ utilities located on rights of way owned or leased by the utility owners
- ◆ instances in which the state is participating in the adjustment or relocation cost of the utility installation to meet highway design requirements.

Requestors are encouraged to use the online Utility Installation Review (UIR) system to submit requests.

Utility Joint Use Agreements prescribed by the Right of Way Division (ROW) should be used when an adjustment or relocation of existing utility facilities is planned within the limits of a highway project. ROW forms are also to be used regardless of state participation or whether the utility facilities are adjusted or relocated within highway rights of way by statutory or compensable right. Use ROW's Utility Joint Use Agreement forms within projects when the utility facility is to remain in place without adjustment or relocation unless the facility has previously been covered by an appropriate approved departmental notice form.

Other sections in this chapter further discuss [attachment of utilities](#) to bridges and construction of [utility bridges](#).

Requirements for "Notice" Side of Form

The appropriate form is to be completed in detail and signed by the applicant on the "Notice" side. This portion of the form should briefly but adequately describe the proposed installation and give the following information:

- ◆ location of proposed site including GPS (latitude/longitude) information
- ◆ total length of proposed installation
- ◆ whether the proposed utility will parallel or cross state highway right of way
- ◆ whether installation will be inside or outside of city limits
- ◆ whether any paving or riprap is involved

- ◆ working pressure of pipelines
- ◆ whether sewer line is gravity flow or pressure
- ◆ voltage of transmission lines
- ◆ type of pipe, encasement or any other related information.

Additional Requirements for High Pressure Pipelines

All Utility Installation Request forms for high pressure pipelines (generally 60 psi or greater) should contain the following additional information in the description section of the permit form:

- ◆ diameter
- ◆ wall thickness
- ◆ material specification
- ◆ minimum yield strength
- ◆ maximum operation pressure of the pipeline.

With the exception of the maximum operation pressure of the pipeline, this information is to be supplied for both the carrier pipe and the casing. Assurance must also be given that the installation material and design meet the minimum federal safety standards for liquid and gas pipelines [49 CFR part 192](#).

High pressure pipeline requests, cased and unencased, will require the following project information:

- ◆ depth of cover
- ◆ accurate GPS location
- ◆ roadway crossing angle
- ◆ display of pipeline markers
- ◆ display of vent stacks (cased only)
- ◆ cathodic protection (unencased only)
- ◆ signed and sealed Barlow's equation (unencased only)

More information about requirements for high pressure pipelines may be found in the 43 Texas Administrative Code [Rule §21.40 Under-ground Utilities](#)

Special Provisions

Any specifications not included on the "Notice" or "Approval" side of the form must be included in a list of Special Provisions that must be attached to and made a part of the notice form. These provisions may be for one specific installation or may be a district requirement.

Review and Approval of Utility Notice Forms

After the applicant completes the appropriate form, the district should review and complete the form by attaching all special provisions and requirements necessary to achieve a safe installation and an undelayed approval.

The district engineer is authorized to approve all utility notice forms and agreements **except** the following:

- ◆ installations which involve an exception to policy;
- ◆ high pressure gas lines expected to operate at a pressure greater than 60 psi;
- ◆ installations which involve areas of scenic enhancement and natural beauty; or
- ◆ agreements for construction of utility bridges.

By cover letter, the district engineer will forward to the Maintenance Division any utility notice form along with their recommendation, which falls under any case listed above for review and administrative decision.

For an exception to policy, be sure the company memo and/or district cover letter addresses the [43 TAC Rule §21.35 Exceptions](#).

Review and Approval of Utility Notice Forms

Utility forms submitted to the Maintenance Division will receive appropriate review and handling, after which the Maintenance Division will advise the district of approval or disapproval. The district will then advise the utility company by letter accordingly. The utility company should not begin work until advised to do so by the district. It is the district engineer's responsibility to administer all utility installations in accordance with the policies of the department and to maintain a complete record of permits issued.

Section 4 — Drawing for Utility Installation Request Forms

Requirements for Drawing

One copy of the drawing should accompany each notice form. The drawing should show:

- ◆ the location of right of way lines
- ◆ frontage roads
- ◆ ramps
- ◆ control of access lines
- ◆ main lanes
- ◆ proposed location of utility installation
- ◆ limits of encasement
- ◆ depth of cover (if applicable)
- ◆ all other pertinent data including a north arrow and the scale.

Control of access lines must be shown on the inside edge of frontage roads only when control of access is located between frontage roads and main lanes.

The proposed installation must be shown in a different color from the rest of the drawing, or otherwise clearly identified. Minimum size of drawing is 8½" x 11" and the drawing must be large enough to show all necessary details clearly.

In addition, it is recommended that utility installations in rural areas be described on a separate vicinity map which references the location of the installation to readily identifiable and permanent landmarks, such as the junction of state highways, river crossings, etc. It is recommended that one of the various internet sources be used to provide a vicinity map with GPS coordinates of the location.

Underground Installations

A cross section drawing of all underground installations showing limits of encasement, if applicable, and depth of burial should be included if the proposed installation crosses the highway right of way. Any provision not included in the drawing must be included on the form or in a list of Special Provisions, which must be made a part of the request form. The drawing must also include:

- ◆ height of power and communications lines above highway pavements (when applicable)
- ◆ existing installations of the same utility

- ◆ whether the highway facility is proposed, under construction or completed and opened to traffic.

Requirements for Manholes

If manholes or above ground equipment housings are to be incorporated in the installation, they must be shown on the drawing, and a separate detailed drawing showing their dimensions must be included. Manholes and above ground equipment housings must conform to the requirements described in the Texas Administrative Code, Title 43, Chapter 21, Subchapter C and elsewhere in this chapter.

Future manholes that are to be located near existing manholes of the same utility line must be placed in line with the existing manholes. Offset manholes involve an excessive use of available right of way area and thus cause an undue burden on other utilities in securing an area for placement of their manholes or lines.

Bore Pits or Trenches in the Median

All installations which use bore pits or trenches located in the median or outer separation must include the following provisions, whether on the notice form or included in a Special Provisions page:

- ◆ Barricades, warning signs and other devices, as needed to comply with the *Texas Manual on Uniform Traffic Control Devices*, must be installed at any excavation or other work areas within 30 feet of lanes and ramps in order to adequately warn traffic and delineate obstruction and work areas.
- ◆ Trenches or bore pits must not be excavated where they may cause damage to roadways or to structures unless adequate and approved revetment is provided.
- ◆ No work will be undertaken within the controlled access area until adequate arrangements are made for its prompt completion.

Section 5 — Utility Lines on Bridges

Attachments to Structures

To every extent possible, utility lines should not be attached to bridges and separation structures because the proliferation of such lines and maintenance constitutes a hazard to traffic and complicates widening or repair. Attaching utility lines to a highway structure can materially affect the structure, the safe operation of traffic, the efficiency of maintenance, and the overall appearance.

Where other arrangements for a utility line to span an obstruction are not feasible, the department may consider the attachment of such line to a bridge structure. Guidelines are in the Bridge Project Development Manual. Agreements are submitted to the Bridge Division for approval.

Section 6 — Other Utility Topics

Utility Bridges

Structures constructed exclusively for utilities to cross over highways and waterways may be used where underground or aerial crossings are not feasible. The design of these structures must conform to all highway structural and safety standards and all pertinent laws and regulations and be of a type that is in harmony with the appearance of the highway facilities.

Any requests for such structures should be forwarded to the Maintenance Division (MNT) with justification data and proposed designs. The Bridge Division will consider the request for approval by reviewing the design of the installation.

If approved, an agreement will be executed in each case. The agreement should include provisions making the utility owner responsible for maintenance, adjustment for highway improvements, restoration or removal if damaged by traffic or other causes, and any damage to the state or the public which may be caused by the utility bridge.

Utilities for Highway Facilities

The department will handle the installation of utility lines for highway oriented needs by means other than utility notice forms. These installations must be handled by a written agreement between the district and the utility. The agreement must state the location and method of installation and must include a statement declaring that these lines will be devoted exclusively to highway use, and as such, the utility company will not be permitted to extend these lines at a later date to service other customers.

Accommodation of Large Communication Equipment Housings on Highway Right of Way

Above ground, non-pole mounted communication appurtenances that are significantly larger in plain view than single poles may be placed on highway right of way if the following stipulations are met:

- ◆ the installation will not significantly hinder highway maintenance operations (this will include consideration of the height of the supporting slab above groundline)
- ◆ the housing will be placed at or near the right of way line
- ◆ the installation will not reduce visibility and sight distance of the traveling public and create an unsafe condition (This will be a particular item of consideration where such housings are proposed for placement at or near highway intersections.)

- ◆ assurance is made that the dimensions of the housing are minimized, particularly where the need to allow space for highway improvement and accommodation of other utility lines is apparent (Outside depth, length, and height dimensions of the above ground portion of the housing should not exceed 36", 60", and 54" respectively. The supporting slab should not project more than 3" above the groundline.)
- ◆ the installation must be compatible with adjacent land uses.

Accommodation of Utility Facilities on Federal-Aid Freeways

Accommodation of utility facilities on federal-aid freeways longitudinally inside control of access lines is normally not permitted under federal regulations. Special case exceptions may be considered, providing the utility owner can show that:

- ◆ the accommodation will not adversely affect the safety, design, construction, operation, maintenance or stability of the freeway
- ◆ the accommodation will not be constructed and/or serviced by direct access from through traffic roadways or connecting ramps
- ◆ the accommodation will not interfere with or impair the present use or future expansion of the freeway
- ◆ any alternative location would be contrary to the public interest. Environmental and economic concerns will be considered.

This requirement is applicable to new or relocated utility installation on freeways that are proposed or have been constructed with federal-aid participation. Requests to locate on completed freeways should be submitted to MNT through the online Utility Installation Review (UIR) system with the appropriate forms. Requests to locate on an active freeway project or relocation of a utility on an active freeway project should be submitted to the Right of Way Division with the appropriate forms.

Chapter 2 — Uses of Right of Way (Long Term)

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Section 1 — Overview

Summary

Any use of TxDOT [right of way](#) needs to be controlled and monitored by the division to ensure the safety of highway users. Mailboxes, non-departmental signs, multiple use agreements, stockpasses and cattleguards, and access driveways should be controlled by the maintenance manager.

Section 2 — Mailboxes

Department Policy on Mailbox Supports

It is the policy of the department to construct and furnish, free of charge, mailbox supports for all rural postal patrons located on state maintained highways. The postal patron should provide a standard mailbox of light sheet metal or plastic construction that conforms to the requirements of the U.S. Postal Service. Additional information is available on the department's [homepage](#).

Rubbermaid and Step 2 brand molded plastic mailboxes may be mounted with lag bolts on a 4" x 4" wooden support post furnished by the postal patron. These types of mailboxes conform to USPS standards.

Installation Requirements

Mailbox supports must be installed in accordance with departmental policies and [standard details](#) for mailboxes.

Type 2 markers should be used to delineate mailbox supports. For further information, refer to the [Sign Crew Field Book](#) for installation requirements.

Mailbox Installations Inside City Corporate Limits

Cities should be encouraged to adopt the same or comparable standards for those installations on the state highway system within the incorporated city limits.

Placement of Installations

For safety and operational purposes, consideration should be given to placing installations a sufficient distance from the edge of the travelway to permit the delivery and receipt of mail without occupying the travel lane. Factors which should be considered include the number of mailboxes, [average daily traffic](#), and sight distances. All weather access should be provided for these installations.

Newspaper Delivery Tubes

Newspaper delivery tubes may be attached beneath the mailbox on the downstream side, opposite of "Type 2" marker on the same support. Newspaper tubes should be of light sheet metal or plastic construction of minimum dimensions suitable for holding a newspaper. The name of the newspaper may be imprinted on the tube; however, no other printing or advertising should be allowed. Tubes should not be painted except to eliminate advertising.

Installations Requiring Numerous Mailboxes

For those installations requiring numerous mailboxes such as apartment complexes, mobile home parks, etc., the postal patron should be encouraged to place the installation on a low volume intersecting roadway or on private property whenever possible.

Neighborhood Delivery and Collection Box Units (NDCBU) should not be allowed inside the safety clear zone and preferably should not be allowed in the right of way. NDCBU installation is encouraged on a low volume intersecting roadway or on private property whenever possible.

Where this is not practical, installation near the right of way line may be considered based on site conditions and safety considerations. The removal of an existing installation and its replacement off the right of way should be encouraged.

Removal of Mailboxes

Any mailbox and/or support that violates the intent of this policy must be removed by the postal patron upon written department notification (certified letter). A standardized form letter (Form [2050](#)) may be used for notification. If not removed within an acceptable period of time the department will remove the mailbox.

Section 3 — Multiple Use Agreements

Multiple Use Policy

The department may enter into an agreement with a political subdivision or federal agency to use portions of the highway right of way for public facilities other than highway purposes. Public facilities may include such things as parking areas, parks, recreational areas, hike and bike trails, boat ramps, law enforcement functions, etc. A Multiple Use Agreement (Form [2044](#)) must be executed for each multiple use facility under consideration. Projects on the Federal-Aid highway system require [FHWA](#) approval. Form [2044-FED](#) is used for multiple use agreements with federal agencies.

Any request for a Multiple Use Agreement should be coordinated with the Maintenance Division (MNT) in the early stages. The district should retain the responsibility for preparation of the agreement with the requesting entity providing the appropriate information, exhibits, etc. necessary for the district to prepare the agreement.

The district should inspect multiple use sites regularly during construction, within thirty days of completion of construction and once per year thereafter. Compliance with the terms of the agreement should be enforced. When an entity charges a fee for parking to cover the cost of construction, maintenance and operation of the facility, the district should perform audits periodically to assure the entity is not making a profit.

Execution of Multiple Use Agreements

Responsibility for administering Multiple Use Agreements will be shared by MNT and the Design Division (DES). On highway projects that are in the design stage or under construction, proposals for multiple use development will be submitted to DES. On completed highway projects, proposals for multiple use will be submitted to MNT.

Authority

The authority to execute a Multiple Use Agreement is contained in Texas Administrative Code, Title 43, [Rule §11.21](#).

Section 4 — Passes and Cattleguards

Definitions

A **pass** allows movement of livestock, vehicles or products to go underneath the roadway. A **cattleguard** is a structure placed across a highway which allows vehicles to pass but prevents livestock from crossing.

Policy

Where a landholding constitutes an operating farm, ranch or other rural type of economic operation, it is the policy of the department to negotiate with the landowner for a pass or cattleguard with the objective of continuing, if possible, uninterrupted usage and operation of such landholding.

Methods of Securing a Pass or Cattleguard

Passes or cattleguards may be secured by abutting property owners by permit or by the right of way conveyance. Passes or cattleguards installed by permit are subject to relocation or removal if requested by the department.

Construction and Maintenance Responsibility

All passes or cattleguards will be constructed by the department, its contractor or the property owner. Maintenance of passes is the responsibility of the property owner, unless specified otherwise in the right of way conveyance, and all materials should be approved by the department.

Permit Forms

Form [1075](#) should be executed for passes or cattleguards on existing highways. The district must submit permits for a pass on an interstate highway to the Maintenance Division for approval. Permits for a pass or cattle guard installation on other highways may be approved by the district engineer.

Authority

Texas Administrative Code, Title 43, [Rule §21.81](#) authorizes the department to issue permits for passes.

Section 5 — Lease of Right of Way

Requirements

TxDOT may lease highway right of way if it is not needed for highway purposes. Any person desiring to lease highway right of way should submit a written request to lease to the district engineer. The procedures are outlined in Texas Administrative Code, Title 43 [Rule §21.606](#).

For More Information

Questions or requests for additional information should be directed to the Right of Way Division.

Section 6 — Access Driveways

General Access Driveway Policy

Under the provisions and policies of [Texas Administrative Code, Title 43, Chapter 11, Subchapter C](#), the department will issue access driveway permits to owners of property abutting state highways. The permitting process on highways on the state highway system within the jurisdiction of a municipality or eligible county (as defined in the Texas Administrative Code) may be transferred to the municipality or eligible county at their request and with approval by the department. Issuance of permits, construction and maintenance of these driveways should be in accordance with the department's [Access Management Manual](#).

A completed Permit Form [1058](#) is necessary whenever new access driveways are constructed or existing access driveways are modified.

Section 7 — Historical Markers

Types of Markers

Some of the different kinds of markers that can be found along the highways include:

- ◆ official Texas Historical Commission subject markers—silver/black aluminum, 18" x 28" x 42" in height, usually mounted on aluminum posts (TxDOT erects the markers in highway rights of way and provides directional signage to them.)
- ◆ pink granite centennial markers—41"-47" rear height, 24"-30" depth, 30"-36" width with bronze star-in-circle on front and plaque on top
- ◆ gray granite centennial markers—tall with pointed top, engraved text on front, smaller bronze star and wreath on front
- ◆ concrete state boundary markers—cast in shape of Texas on a limestone foundation
- ◆ Blue Star Memorial markers—metal plaques, builder plaques

Relocation of Historical Markers

Before relocating or removing any historical markers on our rights of way, TxDOT is required by federal and state law to notify the County Historical Commission chairperson and receive approval from the Texas Historical Commission. Ordinarily, marker relocations are approved as long as the marker remains in close vicinity to its original location. Marker removals are not usually approved unless the marker is in poor condition and damage cannot be repaired.

The following table describes the process for relocating or removing a marker:

Process for Relocating/Removing Markers

Stage	Action
1*	District contacts County Historical Commission chairperson in writing, providing: <ul style="list-style-type: none"> ◆ information about plans ◆ information about marker ◆ map showing existing and proposed location ◆ explanation of need for relocation/removal.
2	District forwards marker relocation/removal proposal to the district environmental coordinator or the Cultural Resources Section of ENV.
3	ENV obtains approval for marker relocation/removal from the Texas Historical Commission.
4	District relocates/removes marker.
<p>*Note: The district environmental coordinator or the Cultural Resources Section of the Environmental Affairs Division (ENV) can assist with this effort.</p>	

Guidelines for Maintaining Historical Markers

ENV recommends that all markers be inspected and cleaned, if necessary, once every 18 months. The Cultural Resources Section of ENV can help determine the most appropriate cleaning and repair methods for these markers.

Cleaning Stone Markers

Most stone markers (granite, centennial markers, state boundary markers, picnic/rest area markers) in highway rights of way are in TxDOT ownership. Guidelines for cleaning older stone markers are available from ENV and district environmental coordinators.

Repairs

If stone or concrete markers are damaged, repairs should be made if feasible. Repairs should be made "in kind," using original material types and elements that are similar in size and dimensions to the original marker.

Replacement Parts

Districts are encouraged to replace bronze parts when they are missing from the pink or gray granite centennial markers. Bronze replacement parts can be ordered from the Texas Historical Commission. District environmental coordinators or ENV can provide the order forms.

Aluminum Markers

The Texas Historical Commission officially owns the modern aluminum historical markers and is responsible for cleaning, repairing or providing a replacement marker in the event the marker is damaged or vandalized. The district should notify the Texas Historical Commission which will work with the local county historical commission to repair the marker or provide a replacement to the district for installation. If the marker is not repaired or replaced, the district should initiate action to remove the marker following the procedure outlined above.

Section 8 — Wastewater Discharges

The department's policy is to deny requests that seek permission to discharge wastewater directly to department property. The department concludes that a wastewater discharge onto department property would constitute a trespass and unauthorized use of property rights owned by the state. Unless the property can be determined surplus and other statutory requirements met under Transportation Code [Sections 202.021](#) or 202.052, the property cannot be sold or leased for this purpose.

A District Engineer, with the agreement of the Director of the Maintenance Division, may make an exception to the requirements in the preceding paragraph, if a person making a request to discharge shows that there is no feasible and prudent alternative to the proposed discharge to department property. If an exception is made, the department will require a written license agreement with the person (the "discharger") and such license agreement will not convey any property rights to the discharger. Form [2489](#) "Agreement for Access to TxDOT Right of Way For Purposes of Wastewater Discharges" should be used for this purpose. Among other terms, the agreement requires the discharger to:

- ◆ reimburse the department for reasonable construction or maintenance work on department property that the department deems appropriate as a result of the discharge
- ◆ indemnify the department for all liabilities incurred by the department as a result of the discharge
- ◆ compensate the department for any adverse impacts to department property as a result of the discharge including environmental contamination and erosion.

The agreement must allow the department, in its sole discretion, to cancel the authorization to discharge upon reasonable notice. The agreement cannot require a cancellation notice period of more than 60 days.

Department staff should request assistance from the Office of General Counsel concerning a proposed wastewater discharge to a watercourse or a navigable river that lies within the boundaries of department property.

(A person that desires to install a utility (e.g. a wastewater pipeline) on highway right of way should follow the requirements in chapter 1 ("[Utility Policy](#)") in this manual.)

Chapter 3 — Uses of Right of Way (Temporary)

Contents:

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[Section 2 — Vendors on the Right of Way](#)

[Section 3 — Authorized Signs on the Right of Way](#)

[Section 4 — Illegal Signs on the Right of Way](#)

[Section 5 — Closures of State Right of Way](#)

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[Section 8 — Petroleum or Hazardous Substance Investigation and/or Remediation Agreements](#)

[Section 9 — Highway Crossing Agreements](#)

[Section 10 — Memorial Markers Within the Right of Way](#)

[Section 11 — Mowing and Baling Hay on Highway Right of Way](#)

[Section 12 — Agricultural Use Agreements](#)

[Section 13 — Debris on Private Property](#)

[Section 14 — Temporary Utility Installations](#)

[Section 15 — Geophysical Surveys](#)

Section 1 — Overview

Introduction

Temporary uses of the right of way may last from several hours to several years. This chapter includes guidelines for the following types of uses:

- ◆ vendors
- ◆ [special events](#)
- ◆ agreements for [permanent signs](#) encroaching on the right of way when they are attached to buildings off the right of way
- ◆ state right of way closure agreements
- ◆ filming/video production agreements
- ◆ coffee rest stops
- ◆ petroleum or hazardous substance and/or remediation agreements
- ◆ highway crossing agreements
- ◆ memorial markers within the right of way
- ◆ mowing and baling agreements
- ◆ agricultural use agreements
- ◆ agreements for geophysical surveys on the right of way

Section 2 — Vendors on the Right of Way

Purpose of Section

Encroachments on state highways and rights of way by unauthorized structures, vehicles and roadside vendors cause damage to the system, increase litter and frequently create an unsafe or hazardous condition. This section prescribes policies and procedures governing the use of the state highway rights of way by vendors.

Policy

Under the provisions of Texas Administrative Code, Title 43, [Rule §22.14](#), a person may not park or place any vehicle or structure wholly or partly within the right of way of a state highway for the purpose of selling the same or of selling any article, service or item from such vehicle or structure, with the exception of the sale of **edible agricultural commodities**. The sale of edible agricultural commodities must comply with these conditions:

- ◆ for a period not to exceed 60 days
- ◆ within the right-of-way of a state highway other than a controlled-access facility
- ◆ the commodity was grown or produced upon the property immediately abutting the affected right-of-way.

Note that under the Texas Transportation Code, Section 285.001, counties with a population of more than 1.3 million may regulate roadside vendors through their own permitting processes.

Application

A person who desires to sell edible agricultural products on the right of way should request approval on a Form [2056](#) "Application for Use of State of Texas Right of Way for Vending" not fewer than seven (7) calendar days before the requested date of placement.

Section 3 — Authorized Signs on the Right of Way

Policy for Temporary Signs for Special Events

Under the provisions of Texas Administrative Code, Title 43, [Rule §22.15](#), the department may authorize the temporary placement and maintenance of a sign on state highway for special events.

- ◆ A special event is defined as an event serving a public purpose and sponsored by a civic or non-profit organization. This includes, but is not limited to, fairs, festivals, bicycle events, marathons, walkathons, rodeos and charitable fund-raising events, but does **not** include political events or events that could be construed to advocate or oppose a candidate for election or influence the passage or defeat of a measure on an election ballot.
- ◆ A sign is any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster or other thing that is designed, intended or used to advertise or inform.

Sign Requirements and Restrictions

Temporary special event signs are subject to the following conditions:

- ◆ A sign approved for **placement** under this section may not:
 - exceed 16 square feet if placed on the roadside to inform the traveling public
 - exceed four square feet if used to guide participants in a bicycle or pedestrian event
 - extend more than three feet past the pavement edge if the sign is a banner
 - imitate or resemble any official traffic sign, signal or device.
- ◆ **Sign Material**—A sign approved for placement under this section should be constructed of heavy cardboard, plastic, fabric mesh or plywood no thicker than 1/4 inch. The sign supports should be approved by the district engineer.
- ◆ **Sign Location**—A sign approved for placement under this section should be placed as far from the edge of the pavement as possible, and should not be placed:
 - in a location where it may prevent the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic
 - on any highway appurtenance, including, but not limited to, bridges, traffic control devices, official signs, sign supports, light standards, poles and delineators
 - on any tree or other natural feature
 - less than 18½ feet above the pavement if the sign is a banner placed over the pavement
 - closer to the pavement edge than official highway signs, except for signs used to guide participants in a bicycle or pedestrian event, which should be placed no less than one foot from the edge of the pavement.

A special event sign location will be allocated on a first-come, first-served basis. A sign approved for placement under this section for a special event may not be placed more than 24 hours before the event; however, a banner may be installed no more than 30 days before the event. All signs should comply with the following standards:

- ◆ **Text of the Sign**—A sign approved for placement for a special event under this section should not contain commercial advertising but may identify the event's sponsor by name and the sponsor's trademark. The name of the event's sponsor and the sponsor's trademark should be displayed less conspicuously than the activity.
- ◆ **Lighting**—A sign approved for placement under this section may not display lighting.
- ◆ **Banner Supports**—A banner not placed on existing utility poles should be placed on supports which comply with the safety standards of the *Texas Manual on Uniform Traffic Control Devices* and the latest version of the Barricade and Construction Standard Sheets (published by the Traffic Operations Division) and must be approved by department personnel before installation.
- ◆ **Sign Removal**—The applicant should remove surface mounted signs within 24 hours of the completion of the event. Banners should be removed within seven days of the completion of the event. A special event sign not removed in compliance with this sub-section is subject to removal by the department, and the applicant is liable for removal and disposal costs. If a sign becomes a hazard due to inclement weather, inadequate maintenance, accidental damage or other cause, the department will remove the sign.
- ◆ **Maintenance**—The sign should be maintained by the owner in compliance with all requirements of the application. The department may remove signs not maintained in accordance with the application, and the applicant is liable for removal and disposal costs.
- ◆ **Exceptions**—The district engineer may waive one or more of the requirements of this section consistent with applicable law. In that case, he or she must specify the public benefits resulting from the sign placement by written order.

Application

Signs may be authorized when the signs will inform the public of a special event that is open to the public. Application for these signs should be made on the [Form 2057](#) "Application for Use of State of Texas Right of Way for Temporary Signs for Special Events". The requirements for placement of both surface mounted signs and banners are included in the application.

The district engineer may **approve** the application, subject to any additional terms and conditions deemed necessary to protect the safety of the traveling public, by signing and returning to the applicant a copy of the application. The area engineer should request additional information when necessary to make his or her determination. If the area engineer does not approve the request, he or she will send written notice describing the basis for the determination.

Policy for Use of Highway Right of Way for Permanent Signs Attached to a Building Outside the Right of Way

Transportation Code [Section §392.0325](#) authorizes a person to request department approval to maintain certain signs that are attached to a building located off state highway right of way, but where the sign itself encroaches onto state highway right of way. Following Texas Administrative Code, Title 43, [Rule §22.16](#), a person may request approval by submitting an application to the local TxDOT district office. The requestor should complete the "Application and Agreement for Use of Highway Right of Way for Permanent Signs Attached to a Building Outside the Right of Way" (Form [2058](#)), along with all applicable items requested in the document. After the district office has recommended approval, the applicant should sign the agreement and forward it along with all applicable items to the Maintenance Division (MNT) director for final approval.

For the purposes of the application, a **sign** is a sign or awning that will:

- ◆ encroach on state highway right of way
- ◆ be attached to a building located on property other than state highway right of way;
- ◆ refer to a commercial activity or business located in the building
- ◆ contain wording that consists solely of the name of the establishment, identifies the establishment's principal product or services, or advertises the sale or lease of the property on which the sign is located.

A **historic sign** is a sign as defined above that is attached to and is a contributing feature of a historic building or structure.

Requirements and Restrictions for Encroaching Permanent Signs

When securing an agreement for permanent signs to encroach on the right of way from a building off the right of way, the requestor must supply the following proof of compliance:

- ◆ a brief statement about the historic significance of the sign and of the building or structure (if any) to which the sign is attached
- ◆ detailed plans (initial procedure, materials, equipment and workforce) for the installation and maintenance of the sign
- ◆ a traffic control plan (if required by TxDOT) that incorporates the requirements contained in the *Texas Manual on Uniform Traffic Control Devices*, if it will be necessary to use state highway right of way to install or maintain the sign
- ◆ any additional information necessary for TxDOT to properly evaluate the request.

All costs to collect information or performances are the sole responsibility of the applicant.

When considering the request, the MNT director will take into account the historic significance of the sign and the building or structure to which it is attached. The director will approve a request submitted if it is:

- ◆ determined that the sign will not constitute a safety hazard
- ◆ determined that the sign will not interfere with the construction, reconstruction, operation or maintenance of the highway facility
- ◆ approved by the [Federal Highway Administration](#), if approval is required under federal law.

The MNT director may not approve a request if the sign:

- ◆ is attached in any manner to a structure on the right of way;
- ◆ encroaches into the clear zone as defined by the *Texas Manual on Uniform Traffic Control Devices*
- ◆ encroaches on right of way that is scheduled for future construction or rehabilitation in TxDOT's Unified Transportation Program
- ◆ has utilities located above or below the proposed sign
- ◆ will distract drivers from direction or other official signs authorized by law
- ◆ will unduly distract the traveling public.

If a request is denied, a written notice describing the basis for the determination will be provided to the applicant. A person denied approval may file an appeal with the Executive Director. The decision of the Executive Director is final.

Section 4 — Illegal Signs on the Right of Way

Policy

A person may not place a sign on a public road or right of way unless authorized by state law or otherwise approved by the department.

Political Signs

It is illegal to place political signs on the right of way. No notification before removal is required. However, the department should make an effort to contact local political campaign headquarters prior to the election season to request that they not place political signs on the rights of way. The same procedures should be utilized to remove them.

Under Election Code, Section [255.007](#) political signs are required to have the following notice placed on the sign: "NOTICE: IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE), TO PLACE THIS SIGN IN THE RIGHT OF WAY OF A HIGHWAY."

Regulated Sign

If a sign permitted under Transportation Code, Chapter [§391](#), "Highway Beautification on Interstate and Primary Systems and Certain Roads", encroaches on state highway right of way, the department will notify the sign's owner of the encroachment with Form [2055](#) "Notice of Unauthorized Sign Placement, 31 Day Notice" and request that the encroachment is remedied.

Sign Removal

TxDOT may immediately and without prior notice remove a sign erected, placed or maintained, in whole or in part, on state highway right of way if the sign is not authorized by state law or approved by the department. If a traffic hazard exists, the sign should be removed as soon as practical. Other unauthorized signs should be removed as the workload permits after proper notification.

In accordance with the terms of the Municipal Maintenance Agreement, unauthorized signs within the limits of incorporated cities should be removed by the city.

Storage of Removed Signs

Removed signs should be stored at a department maintenance office pending disposal or return to the rightful owner(s). Signs should be stored in such a manner as to minimize damage. The department has the obligation to exercise ordinary care while such personal property is in its possession.

Notification of Removal

No notification prior to removal is necessary. If TxDOT removes the sign and the name and address of the owner is **reasonably ascertainable**, the department will notify the owner of the sign's removal within three working days of the date of removal and provide the owner information regarding retrieval of the sign. A sample notice of removal form can be found at the end of this section. **Reasonably ascertainable** means that either the name and mailing address of the owner are displayed on the sign, or a name is displayed on the sign from which the department can identify the name and address of the owner.

If immediate removal is not necessary and the name and address of the owner is reasonably ascertained, the department will notify the owner that the sign must be removed within 14 calendar days. A 14-day notice can be given using Form 2054 "Notice of Unauthorized Sign Placement, 14 Day Notice". If the owner does not remove the sign within 14 calendar days or if the owner is not reasonably ascertainable, the department may remove the sign without further notice.

Notice to Immediately Remove a Sign

If an unauthorized sign is placed on the right of way and the owner can be easily contacted in person, [Form 2052](#), "Notice of Unauthorized Sign Placement Immediate Removal," may be handed to the owner. This form should only be used when it can be handed to the sign owner. The owner should be informed that state forces will remove the sign as soon as possible if the owner does not remove it immediately.

Removal Costs

The department will notify the owner of all removal costs and the procedures for retrieving the removed sign(s). The owner will remit the costs by cash, cashier's check or money order to the appropriate district office within 30 days of the date of the notice. If the owner fails to remit all costs, the department may refer the matter to the Office of the Attorney General for collection.

To expedite the process, estimated costs may be used in place of actual costs. The following table shows how to calculate estimated removal costs for both temporary and permanent unauthorized signs.

How to Calculate Removal Costs for Unauthorized Signs

Step	
1	Obtain the State's average cost per sign for removing unauthorized signs. (Function Code 582 for encroachment removal)
2	Figure the indirect or overhead cost. This will be a percentage of the average unit cost described in Step 1. This percentage is computed annually by the Finance Division and can be obtained from the district accounting office.

How to Calculate Removal Costs for Unauthorized Signs

Step	
3	Add the average cost obtained in Step 1 to the indirect cost obtained in Step 2.
4	Multiply the sum obtained in Step 3 by the number of signs involved.

Retrieval of Signs by the Owners

Owners may declare ownership of their signs at any time between time of removal and before disposal. However, owners may regain possession of their signs only after proof of payment of appropriate removal costs. Proof of payment may be obtained from the appointed payment locations in the district.

Disposal of Signs

The department may dispose of a removed sign unless it is claimed by the owner within 10 days after the date of removal or the date notice is mailed in accordance with notification requirements, whichever is later. The department may return a sign to its owner after payment of appropriate removal costs. If an owner claims a sign within 10 days but removal costs are unpaid, the department should inform the owner of payment procedures. Unless the owner makes arrangements to retrieve the sign, the department may dispose of the sign after 30 days following the date of removal or the original date of notification, whichever is later.

Record Keeping

Districts should keep a permanent record of each incident of unauthorized signs on the right of way. Form [2059](#) "Illegal Signs on the Right of Way Log" may be used for record keeping of billing and payment received or disposal if applicable.

Section 5 — Closures of State Right of Way

Policy

Texas Administrative Code, Rule [§22.12](#), established rules and procedures for the temporary closure of a segment of the state highway system, and agreements have been developed in accordance with those rules and procedures. Agreements are not required for certain situations such as routine traffic control or competitive bicycle races that do not completely restrict vehicular traffic in one or both directions. Routine traffic control is defined as the handling of events which last no more than four hours at one location and no more than nine consecutive total hours for moving events. Examples of these events include parades, marches, and other such events, and use authorized law enforcement personnel who accept the responsibility for traffic control.

Incorporated Agreement

On the occasion of a special event, a city may enter into an agreement with TxDOT, authorizing the city to temporarily close a portion of the state highway right of way. State highway right of way is defined as the right of way of a highway designated as part of the state highway system. The special event will be located within the city's incorporated area. The State, in recognition of the public purpose of the event, wishes to cooperate with the city so long as the safety and convenience of the traveling public is ensured and that the closure of the state's right-of-way will be performed within the state's requirements. These types of closures may be requested using the [form TEA30A](#) "Agreement for the Temporary Closure of State Right of Way." A multi-year agreement is available for events that occur annually and do not change substantially from year to year.

Unincorporated Agreement

For special events located outside a city's incorporated area, the group wishing to temporarily close a portion of the state highway right of way must also enter into an agreement with TxDOT. These types of closures may be requested using the form [Form TEA29A](#), "Agreement for the Temporary Closure of State Right-of-Way (Unincorporated)." A multi-year agreement is available for events that occur annually and do not change substantially from year to year.

Guidelines

The district engineer must approve temporary closure agreements. The same basic guidelines apply when considering closure agreements for both incorporated and unincorporated areas. For more information about these agreements, see Road Closure Agreements in Chapter 11 of the [Negotiated Contracts Procedures Manual](#).

Section 6 — Filming/Video Production on State Right of Way

Policy

In accordance with Government Code, [Chapter 485](#), it is the policy of the department to cooperate with the Office of the Governor's Music, Film, Television, and Multimedia Office to the greatest extent possible to fully implement the state's goal of promoting the development of the music, film, television, and multimedia industries in Texas. Texas Administrative Code, Title 43, [Rule §22.13](#), established rules and procedures for promoting this industry.

An agreement has been developed in accordance with those rules and procedures. The agreement is intended to encourage and facilitate access to department highway facilities and their adjacent rights of way for the promotion of that goal, while protecting the safety of the traveling public and the integrity of state highway facilities and right of way in accordance with the State's requirements.

A requestor may enter into an "Agreement for Film/Video Production on State Highway Right of Way " [Form TEA28](#) with TxDOT in order to authorize the closure of a segment of the state highway right of way. State highway right of way means the right of way of a highway designated as part of the state highway system.

For more information about these agreements, see Film and Video Agreements in Chapter 11 of the [Negotiated Contracts Procedures Manual](#).

Section 7 — Coffee Rest Stops

Policy

To enhance safety, the department may authorize the use of rest and picnic areas by organizations for the purpose of providing the traveling public non-alcoholic refreshments.

Approval of Operation

Approval of the operation of coffee rest stops depends upon agreement by the department and operating organizations that the primary purpose of the rest stop is to provide the traveling public an opportunity to rest and to serve them refreshments.

Approval of coffee rest stops should be in writing and should list all the restrictions. This approval should also list dates and times of operation. The approval may be given in a Letter for Approval of a Coffee Rest Stop (Form [2048](#)).

Location of Coffee Rest Stops

Coffee rest stops on controlled access facilities should be limited to:

- ◆ picnic areas
- ◆ rest areas
- ◆ areas adjoining Travel Information Centers (TICs).

On other than controlled access facilities, the locations should be limited to:

- ◆ picnic areas
- ◆ rest areas
- ◆ designated parking areas.

The district (or TIC supervisor if at a TIC) will designate the area used by the coffee rest stop. The area selected must not interfere with the use of vending machines.

Prohibition of Solicitation

Contributions, donations, etc. must not be solicited. This prohibition includes using labeled or unlabeled cans or any other device that could be interpreted to be a solicitation.

Signs

The organization should prominently display a sign stating "ALL DRINKS, REFRESHMENTS, AND SERVICES PROVIDED ARE FREE OF CHARGE."

Advertising signs must be limited to those identifying the sponsoring group, organization, etc. and normal ownership signs permanently affixed to trailers, vehicles, tents and other equipment directly associated with operation of the coffee rest stop.

Any signs installed in the vicinity of the highway must receive prior approval of the department. These signs must not be attached to or interfere with highway signs.

Handouts

Handouts, such as leaflets, brochures, etc., must be limited to non-political transportation-related material. No other handouts are permitted. This includes information on the sponsoring organization, raffle tickets, announcements of upcoming events, etc.

Responsibilities of the Department and Sponsoring Organization

The department will not furnish electricity or other services except water where available.

The organization sponsoring the coffee rest stop is responsible for cleanup of the facilities used for the coffee rest stop during and immediately following the activity.

Coffee rest stop operations should be monitored or checked periodically for compliance with the guidelines. Non-compliance may result in cancellation of approval and denying approval for future events.

Section 8 — Petroleum or Hazardous Substance Investigation and/or Remediation Agreements

Policy

The department may allow access to highway rights of way for an investigation to determine the presence of or for the remediation of petroleum or hazardous substances. The types of agreements are State Lead and Private Party.

The Maintenance Division acts as a liaison and provides detailed support services to TCEQ, the Railroad Commission of Texas (RRC), various remediation contractors, and TxDOT district offices that are involved in each case of leaking underground storage tank investigation and removal, as well as subsequent remediation and soil cleanup activities.

State Lead Investigation or Remediation

In some instances, TCEQ assumes the responsibility to investigate and remediate hazardous material on the rights of way. TxDOT has executed a "State Lead Master Agreement" with the Texas Commission on Environmental Quality (TCEQ) for temporary use of right of way during petroleum substance investigation and/or remediation which contains terms and conditions that must be followed. When TCEQ assumes the responsibility to investigate and/or remediate petroleum or hazardous substances, TCEQ issues a written project authorization. The TCEQ contractor submits a request to access TxDOT right of way (Form [2035](#)).

State Lead Agreement

In a "state lead" investigation/remediation, TxDOT determines when such entry is in the public interest and will not damage the highway facility, impair safety, impede maintenance, or in any way restrict the operation of the highway facility.

In order to request access to state highway rights of way, TCEQ contractors need to furnish the appropriate district office with:

- ◆ a completed "Request For Access to TxDOT Right of Way For State Lead Petroleum or Hazardous Substance Investigation and/or Remediation" (Form [2034](#))
- ◆ a written project authorization from the TCEQ (work order form)
- ◆ a completed Certificate of Insurance (Form [1560](#))
- ◆ a completed TxDOT Right-of-Entry Agreement (Form 2035)
- ◆ a site plan
- ◆ a traffic control plan.

The "State Lead Master Agreement" with the TCEQ along with the following documents will constitute the project agreement:

- ◆ Exhibit A, "Request For Access to TxDOT Right of Way For State Lead Petroleum or Hazardous Substance Investigation and/or Remediation" (Form 2034)
- ◆ Exhibit B, "Right of Entry" (Form 2035) (The Right-of-Entry form is executed by and between TxDOT and TCEQ's contractor.)
- ◆ Certificate of Insurance (Form 1560) (The policy should remain in effect for the duration of the investigation and/or remediation.)
- ◆ site plan (specifically identifying the location) and proposed activity
- ◆ traffic control plan.

Investigation and/or Remediation by a Private Party

A private party may obtain an agreement for the investigation and/or remediation of potential contamination caused by leaking petroleum storage tanks, spills or other hazardous materials that may have migrated onto the right of way.

Investigation and remediation should normally involve drilling and monitoring wells on the right of way. Well locations should be limited to areas that provide safe access without interfering with the normal operation of the highway system. Wells should not be allowed in travel lanes, shoulders or medians (not even grassy medians).

Agreement for Access

When a private party is directed by RRC or TCEQ to conduct an investigation and/or remediation of petroleum or hazardous substances, use the "Agreement for Access to TxDOT Property Concerning Petroleum or Hazardous Substance in Soils or Groundwater" (Form [2036](#)). This type of agreement can be completed at the district level.

TxDOT determines when such entry is in the public interest and will not damage the highway facility, impair safety, impede maintenance, or in any way restrict the operation of the highway facility.

To access state right of way, the private party needs to furnish:

- ◆ a completed request for "Agreement for Access to TxDOT Property Concerning Petroleum or Hazardous Substances in Soils or Groundwater" (Form 2036)
- ◆ completed Certificate of Insurance (Form 1560).

Separate agreements should be used for investigation and/or remediation.

Form 2036 includes an option in Article 1 Regulatory Authority to clarify whether the governing agency is the Railroad Commission of Texas (RRC) or the Texas Commission on Environmental Quality (TCEQ). The RRC will govern on investigations or remediation of petroleum substances (unrefined products), while the TCEQ will govern on any investigation of other hazardous substances (including refined petroleum products).

Section 9 — Highway Crossing Agreements

Policy

In accordance with Transportation Code, Sections [§623.051](#) and [§623.052](#), a person may enter into an agreement with TxDOT to transport commodities or products from private property across a highway to other private property in the following instances:

- ◆ in licensed vehicles, if the vehicle is transporting grain, sand or other commodity or product and vehicle's overall gross weight is not heavier than 110,000 pounds
- ◆ in unlicensed vehicles, if the vehicle is transporting mined materials such as sand, gravel, stones, rock, caliche or a similar commodity. No "at grade" crossing may be allowed in controlled access highways.

Agreement

A Highway Crossing Agreement (Form [2037](#)) should be executed between TxDOT and a person, firm or corporation to document the other party's responsibility for damage caused to that portion of the highway crossed by vehicles traveling from private property to other private property. The agreement will indemnify the state for the costs of the upgrading, maintenance, rehabilitation and repair.

Bond

Before a person may operate a vehicle under this agreement, a surety bond adequate to compensate for the cost of maintenance and repair should be executed. Adequate lead-time should be allowed for the review and approval by the comptroller and attorney general.

Section 10 — Memorial Markers Within the Right of Way

Guidelines

The department may authorize the placement of a memorial marker for any traffic-related fatality. (Special programs have been set up for the victims of impaired drivers, victims of motorcycle crashes and to honor peace officers killed in the line of duty and are discussed later in this section. The information below applies only to memorial markers.)

Qualifications

Markers are limited to traffic-related fatalities occurring on the state highway system. The request to place a marker should be submitted by the victim's family. The request may be submitted by someone other than a family member as long as the request includes written permission from the family. No more than one marker will be allowed per victim.

Placement

The marker should be located in such a way that it does not distract motorists. Overly ornate markers may tend to draw motorists' attention from the road, which could present a safety hazard. The marker should be located as near the right of way line as possible, preferably near a utility pole or at the edge of a non-mow area. The marker may not be placed in medians or between the main lanes and frontage road of a controlled access highway. The marker should not be located in front of developed property unless the adjacent property owner has given written permission to the requestor. Markers should not be affixed to traffic control devices such as signs, signals, etc., or their supports. Requestors should meet with TxDOT to determine the exact placement of the marker to ensure proper and safe placement.

Fabrication and Materials

The markers may incorporate various types of symbols. The marker should be no more than 30 inches high and no wider than 18 inches. This height limitation will help prevent debris from hitting a windshield should a vehicle impact the marker. In addition, concrete footings should not be allowed.

The marker's components should be fabricated from wood no larger than a 2"x 4". Small plaques are allowed. The plaque may contain the victim's name, date of birth and date of death. The plaque MAY NOT state that the death was the result of intoxicated driving unless the request is accompanied by proof of a DWI CONVICTION. Photographs are not allowed. The photographs may encourage drivers to stop and view the victim's photo. Vehicles inappropriately parking on the

roadside may create a safety hazard. The marker is primarily intended to remind passing motorists of the dangers of unsafe driving.

Hazardous or Non-Conforming Markers

The placement of non-conforming markers should be discouraged. If a marker presents a potential safety hazard to the public or an operational problem, the marker should be removed immediately or relocated on the right of way. If a marker is placed within the right of way without approval and/or does not meet the criteria stated here, TxDOT should attempt to locate the victim's family and encourage them to replace the marker with one that meets the standard requirements. If the marker is not made to meet department criteria, or if the family cannot be contacted, the marker may be removed. Markers removed from the right of way should be kept 30 days before final disposal. Attempts should be made to determine the markers' owner prior to disposal.

Sketch of Typical Marker

The following sketch illustrates the size and construction limitations for right of way markers.

MEMORIAL MARKERS WITHIN THE RIGHT OF WAY
 Texas Department of Transportation
 January 2001

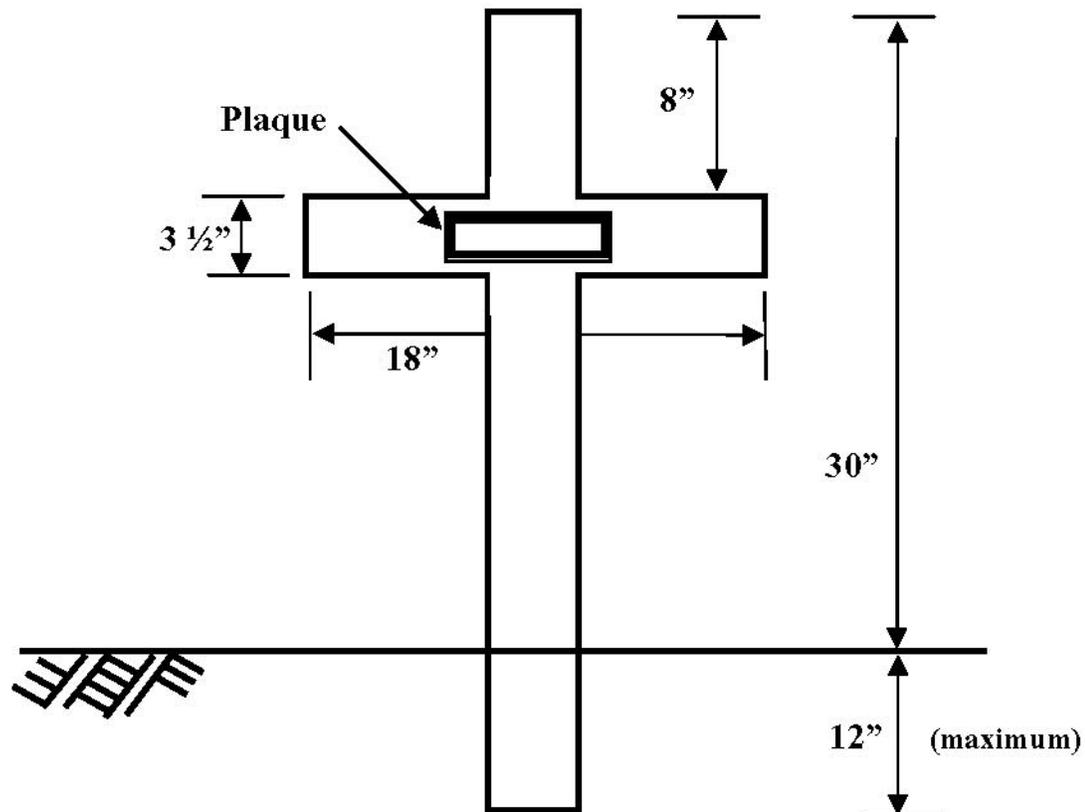


Figure 3-1. Example of a conforming marker

Vertical and horizontal members may be only of 2" X 4" construction. The use of concrete footings should not be allowed.

Other symbols may also be allowed. All types of markers should conform to the height, width, below ground depth and member (2x4) limitations shown above.

Memorial Sign Program for Victims of Impaired Driving

Transportation Code, Section [§201.909](#), requires the department to establish and administer a memorial sign program to publicly memorialize the victims of alcohol or controlled substance-related crashes. A person is not eligible for a memorial sign if the victim was operating a vehicle involved in the crash and was documented to be impaired at the time of the crash. The guidelines for the program are in Texas Administrative Code, Title 43, [Chapter 25, Subchapter N](#).

This program is administered by the Traffic Operations Division. For more information about this program, see the webpage discussing the [Memorial Sign Program](#).

Memorial Sign Program for Victims of Motorcycle Crashes

Transportation Code, Section [§201.911](#), requires the department to establish and administer a memorial sign program to publicly memorialize the victims of motorcycle crashes. To be eligible the victim must have been operating or riding on a motorcycle. The guidelines for the program are in Texas Administrative Code, Title 43, Chapter 25, Subchapter N.

This program is administered by the Traffic Operations Division. For more information about this program, see the webpage discussing the [Memorial Signs](#).

Memorial Marker for Peace Officers

Texas Administrative Code, Title 43, [Rule §22.17](#) authorizes the department to allow the placement of privately funded memorials honoring peace officers killed in the line of duty.

The department may execute an agreement with a non-profit corporation to fund, install, and maintain memorials honoring peace officers. Form [2372](#) is used for this purpose and contains terms and conditions the department deems necessary to protect the privacy of the deceased peace officer and to protect the public safety. These agreements are processed by the Maintenance Division.

Once a corporation has entered into an agreement, it may request to install a memorial in a specific location on the state right of way. The request for department approval should be submitted in writing to the district in which the right of way is located and include, at a minimum, the following information:

- ◆ memorial's size (not to exceed four and one-half feet in height, two feet in width, and six inches in depth) and materials
- ◆ wording on the memorial
- ◆ proposed location details
- ◆ written concurrence from the family of the deceased peace officer
- ◆ whether or not the requestor will provide any roadside signage
- ◆ written certification from the governmental entity that employed the peace officer that the officer in question was killed in the line of duty.

The district engineer will review the request and approve the installation and location, if in compliance with the rule, subject to any additional terms and conditions deemed necessary to protect the safety of the traveling public. The district engineer will send written notice describing necessary

modifications if the request is not approved. The requestor may file a notice of appeal of a district engineer's disapproval by mail or facsimile to the executive director.

The department may require the relocation or removal of a memorial determined to not be installed according to the rules, agreement or without approval. If the memorial is not relocated or removed within 30 days, the department may remove or relocate the memorial. The department may immediately relocate or remove a memorial determined to pose a potential hazard.

Agreements may canceled by either party for any reason with 30 days written notice. Termination of the agreement will cancel any department approval to install a memorial not yet installed.

Section 11 — Mowing and Baling Hay on Highway Right of Way

Overview

Transportation Code, Section [§202.059](#) grants the authority to district engineers to permit a person to mow, bale, shred or hoe the right of way of any designated portion of a highway that is in the state highway system within the district. However, the district engineer must provide the adjacent property owner the option of mowing, baling, shredding or hoeing the right of way before allowing any other person to perform these operations, except in cases where the property is located in a county of 10,000 or fewer inhabitants. The district engineer has the authority to deny any request.

Permission to Mow or Bale

The person granted permission to mow, bale, shred or hoe may not receive compensation for performing the operations but is entitled to use or dispose of the hay or other materials produced. The department is not liable for any personal injuries, property damage or death resulting from the performance of these operations.

Before granting permission, the department should provide written notification to the person making the request that certain conditions must be met. Permission is granted provided that:

- ◆ no mowing or other operations will be allowed when the ground is wet
- ◆ operations should be stopped immediately if necessary to avoid damage to shoulders, slopes etc.
- ◆ the department will determine when mowing can commence in order to preserve wildflowers
- ◆ the department will be harmless in the event of an accident due to this operation
- ◆ the department is not liable for the quality of the hay or for injury or death of any animals caused by debris in the hay
- ◆ all operations will cease should the department determine that the operations are creating an undue traffic hazard
- ◆ the department will be reimbursed for repair of any damages caused by this operation.

Grazing Restrictions

Persons wishing to bale hay on the highway right of way should be aware that some vegetation could have been treated with herbicides with grazing restrictions. Mowing and baling in medians should normally be prohibited.

Letter of Agreement for Mowing and/or Baling Hay

The department produces a Letter of Agreement for Mowing and/or Baling Hay (Form [2041](#)) according to the following guidelines:

- ◆ This letter agreement may be finally executed (signed) by the district engineer or his/her designated representative.
- ◆ Districts may establish effective dates for the letter agreements at their discretion. A 6-month time frame is recommended. An open-ended agreement (without a termination date) is not recommended.

Section 12 — Agricultural Use Agreements

Policy

Transportation Code, [Section §202.058](#) grants the department the authority to enter into an agreement with the owner of property abutting or adjoining the highway system for agricultural uses. The agreement allows the owner to use or cultivate a portion of the right of way not required for immediate use by the department.

Terms of Agreement

The Agricultural Use Agreement must be in writing and may provide for:

- ◆ use or cultivation of the property
- ◆ construction of improvements on the property
- ◆ placement of fences on the property
- ◆ other matters.

Execution of Form 2047

The owner of the abutting property must sign Form 2047 "Agricultural Use Agreement". The district engineer or his/her designee will indicate their approval by signature. The district engineer will execute the agreement for temporary use of highway right of way.

Section 13 — Debris on Private Property

General Overview

Dumping of materials from TxDOT projects on private property is prohibited as it raises concerns about environmental implications and proper disposal of debris. Utilization of private property as spoil sites shall not be allowed on TxDOT construction projects or routine maintenance.

Exceptions

In cases where no practical options exist, the District Engineer may enter into an agreement with an adjacent property owner to deposit soils; the use must be limited to soil, concrete and other inert materials. Items such as sweeping debris, limbs, brush, stumps or other work related waste, if not properly disposed of on TxDOT right of way must be taken to landfills authorized to accept the material. Please see example agreement template ([Permission For Deposit of Silt From Right of Way](#)).

Section 14 — Temporary Utility Installations

Temporary Utility Installation Form 1082-T

Activities in construction and land development can require temporary above ground utility lines. All temporary above ground installations in TxDOT Right of Way are required to be reviewed and approved via [Form 1082-T](#) and General Special Provisions for Temporary Utility Installation. Along with the form 1082-T, the utility must also submit plans accurately depicting location and type of utility facility occupying TxDOT Right of Way. This agreement must include an adjustment schedule and any special requirement by TxDOT and/or the Utility. This agreement must be executed by the District Engineer or designee.

Temporary Saltwater Pipelines or temporary lines for oil and gas exploration cannot be permitted under form 1082-T. Right of Way Division processes these facilities via lease agreements. Contact Right of Way Division for additional information.

Section 15 — Geophysical Surveys

Background

The department may authorize the use of highway rights of way for geophysical surveys. These surveys should conform to the following requirements in order to protect the highway facility and the traveling public.

Requirements

In order to safeguard the highway against damage, avoid interference in maintenance operations and preserve the safe and efficient flow of traffic, the following requirements have been established:

- ◆ No blasting should be performed.
- ◆ No operations should be conducted in an area that may result in damage to the pavement or shoulder or other highway facilities, and impact or vibration equipment should not be used on traffic lanes or paved shoulders.
- ◆ Access for conducting any surveys on controlled access highways should not be allowed from the main lanes or ramps.
- ◆ On controlled access highways, cables should not be placed across the pavement. All cable crossings must be made using existing drainage facilities.
- ◆ On non-controlled access highways, cables placed on the pavement should be arranged so they do not create a hazardous condition or rumble strip effect. All cables should be securely anchored to the roadway with materials that will not damage and/or puncture the pavement. Nails, spikes and similar materials used for anchors should be placed beyond the pavement edge.
- ◆ Adequate signs, barricades, flags, etc. should be maintained as necessary to protect the traveling public. Compliance with the *Texas Manual on Uniform Traffic Controlled Devices* is mandatory.
- ◆ The operations should not interfere with the flow of traffic. All equipment should be parked and/or operated on one side of the roadway only, as far from the shoulder as practical and should not be parked in the clear zone as defined by the *Highway Design Manual*.
- ◆ Operations will not be allowed when the ground conditions are such that work within the right of way would cause rutting and/or tracking of mud onto the roadway surface.
- ◆ The geophysical survey company should restore the right of way to its original condition, free of any damage, including ruts or any injury to vegetation. Any costs incurred by the department for necessary restoration work will be billed to the company at cost.

- ◆ The firm making the request should understand any actions of the geophysical survey company that create any liability or affect the rights of the holders of any property and/or mineral ownerships involved should be solely their concern and responsibility.
- ◆ The requestor will meet any additional requirements deemed necessary by the districts.

A letter, not a permit, should be used when responding to requests to perform geophysical surveys on highway right of way. The Form [2049](#) Letter for Use of Highway Rights of Way for Geophysical Survey may be used to authorize this activity.