

**TITLE 17 PUBLIC UTILITIES AND FACILITIES SERVICES**  
**CHAPTER 4 FACILITIES RIGHTS-OF-WAY AND EASEMENTS**  
**PART 2 REQUIREMENTS FOR USE and OCCUPANCY OF DEPARTMENT OF**  
**TRANSPORTATION PROPERTY and RIGHT-OF-WAY**

**17.4.2.1 ISSUING AGENCY:** New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, New Mexico 87504-1149, (505) 827-5357.

[17.4.2.1 NMAC - Rp, 17 NMAC 4.2.1, xx/xx/20xx]

**17.4.2.2 SCOPE:** This facilities accommodation policy shall apply to all publicly, privately, cooperatively, municipally, tribally, or governmentally-owned facilities used for the carriage, transmission or distribution of electric power, telephone, telecommunications, data transmission, computer networking, wireless broadband and other fiber optic uses, water, gas, oil, petroleum products, surface (water, brine, and produced water) fast lines, steam, chemicals, sewage, drainage, irrigation and similar lines, that are to be accommodated, adjusted or relocated within the right-of-way of highways, roads or streets, or other property under the jurisdiction of the New Mexico department of transportation.

**A.** This facilities accommodation policy is provided for the regulation of the location, design and methods for installing, adjusting or relocating, accommodating and maintaining physical facilities on highway rights-of-way or department-owned property.

**B.** Where industry codes prescribe a higher degree of protection or construction for the traveling public and the department than provided for in this accommodation policy, such codes shall prevail. All facility construction and maintenance methods used within the highway right-of-way shall be performed in accordance with the current edition of the Standard Specifications for Highway and Bridge Construction, the Broadband and Telecomm Manual, and the provisions of this regulation. If there is a conflict between this regulation and the Standard Specifications for Highway and Bridge Construction, or the Broadband and Telecomm Manual, the more stringent shall prevail.

[17.4.2.2 NMAC - Rp, 17 NMAC 4.2.2, xx/xx/20xx]

**17.4.2.3 STATUTORY AUTHORITY:** Sections 62-1-3, 67-3-12, 67-8-15, 67-8-1, 67-8-17, 67-8-18, 67-8-19, 67-8-20, 67-8-21, 67-8-22 NMSA 1978.

[17.4.2.3 NMAC - Rp, 17 NMAC 4.2.3, xx/xx/20xx]

**17.4.2.4 DURATION:** Permanent.

[17.4.2.4 NMAC - Rp, 17 NMAC 4.2.4, xx/xx/20xx]

**17.4.2.5 EFFECTIVE DATE:** \_\_\_\_\_, unless a later date is cited at the end of a section or paragraph.

[17.4.2.5 NMAC - Rp, 17 NMAC 4.2.5, xx/xx/20xx]

**17.4.2.6 OBJECTIVE:** To prescribe conditions under which covered facilities may be accommodated on all department-owned property and rights-of-way under the jurisdiction of the New Mexico department of transportation improved by state or federal funds and to set forth the regulations covering the relocation of facilities in conflict with the construction of highways. The principal objectives of these regulations are to achieve maximum public use of department-owned property and rights-of-way, consistent with the laws of New Mexico, and to insure facility relocations on highway construction projects are accomplished in accordance with New Mexico statutes, regulations and applicable federal law. These regulations shall also provide for maximum public safety, maintenance of the roadways, and should minimize future conflicts between the public highway systems of New Mexico and facilities serving the general public in this state.

[17.4.2.6 NMAC - Rp, 17 NMAC 4.2.6, xx/xx/20xx]

**17.4.2.7 DEFINITIONS:**

**A. Definitions beginning with "A":**

(1) **AASHTO means** the American association of state highway and transportation officials.

(2) **Access means** the facility owner's right to construct, install, maintain, repair and operate a utility or facility in department ROW made available by the department pursuant to a utility permit or use and occupancy permit.

(3) **Access control means** the condition where access rights of owners or occupants of abutting land adjacent to highways are fully or partially controlled or limited by public authority, with no right to obtain a driveway permit.

(4) **Aerial facilities means** pole mounted facilities, lines or other above ground structures for the transmission or distribution of electric power, communications, traffic control lights and street lighting.

(5) **Agreement means** the New Mexico department of transportation facilities agreement or other specifically written agreements pertaining to the installation or relocation of facilities within highway construction, but not limited only for these purposes.

(6) **Antenna or antennas means** communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

(7) **Applicable engineering standards means** all engineering or safety standards governing the installation, maintenance and operation of facilities covered by this regulation, and the performance of all work on or around department-owned property or rights-of-way, including without limitation the department's (or other relevant authorities') clearance standards, the National Electric Safety Code ("NESC"), and the National Electric Code ("NEC").

(8) **As-builts means** detailed engineering drawings with a plan and profile view that reflect horizontal and vertical location information of the final location of facilities installed in department ROW. As-built information shall be tied to department monuments and reference highway mileposts.

(9) **Applicant means** any public, private, cooperative, municipal, tribal, or other governmental entity that seeks a utility permit or a use and occupancy permit to occupy department-owned property or rights-of-way pursuant to the terms of this regulation.

(10) **Authorization to construct means** a written authorization issued by the department's utility bureau for a facility owner to install or relocate facilities prior to or concurrent with a department highway construction project.

(11) **Average daily traffic means** the average 24 hour vehicular traffic volume, derived from the total volume divided by the number of days in a one year (usually) period. Commonly abbreviated as ADT.

**B. Definitions beginning with "B":**

(1) **Backfill means** the placement and compaction of material around and over a structure such as a pipe, conduit, casing or gallery.

(2) **Barrier means** a device which provides a physical limitation through which a vehicle could not normally pass. It is intended to contain or redirect the movement of an errant vehicle away from roadside or median obstacles, ravines, ditches, etc.

(3) **Bored or boring means** a construction procedure for pushing or jacking a pipe or conduit under the highway, without disturbance to the highway structure or prism.

(4) **Breakaway means** a design feature which allows a device such as a facilities pole, sign post, luminaire, or traffic signal support to yield or separate upon impact. The release mechanism may be slip planes, planes hinges, fracture elements, or a combination thereof.

**C. Definitions beginning with "C":**

(1) **Carrier means** pipe that directly contains a transmitted fluid (liquid or gas).

(2) **Catch point means** the point on the undisturbed ground surface where highway backslopes and foreslopes terminate after being cut or filled by construction equipment; usually established by a slope stake.

(3) **CBC means** concrete box culvert.

(4) **Clear roadside area or clear zone means** that roadside border area, starting at the edge of the traveled way, available for use by errant vehicles, wherein no fixed obstruction or above ground facility may be placed unless protected by a barrier, or by incorporating a department approved breakaway feature.

(5) **CMC means** corrugated metal culvert.

(6) **CME means** construction and maintenance easement, which is a document providing for use of non-department owned land on which to construct and maintain permanent facilities.

(7) **Coating means** protective material applied to, or wrapped around a pipe.

(8) **Collocation means** the installation, mounting, maintenance, modification, operation, or replacement of facilities on existing or shared facilities in public right-of-way.

(9) **Communication facilities means** telephone, microwave, fiber optics to enable communication between user equipment and a communications network, and includes, but is not limited to, equipment associated with wireless communications, a radio transceiver, an antenna, a battery-only backup power

supply, comparable equipment, regardless of technological configuration, coaxial or fiber optic cable that is immediately adjacent to an directly associated with a particular collocation.

(10) **Compaction means** a measure of the density of soil, achieved by mechanical means on highway surfaces and on backfill in trenches to harden the material to a predetermined density. Density is the soil weight maximum, in a measured (modified proctor method "C" T-99) volume, with a pre-determined water content, plus a uniform compaction effort.

(11) **Condemnation means** the process by which private property is acquired for public purposes through legal proceedings, under the power of eminent domain.

(12) **Conduit or duct means** an enclosed tubular runway for protecting wires or cables.

(13) **Control number or CN means** the number assigned to specific highway projects used for identification and tracking purposes.

(14) **Cover means** depth to the top of a pipe, conduit, casing or gallery below the ground surface.

(15) **Cultural resource certification means** a legally required documented finding to ensure the protection of cultural resources including, but not limited to, archaeological sites, historic properties, and areas of traditional cultural significance. A cultural resource certification shall be obtained prior to any activity (clearing, surface ground disturbance, excavation, etc.) undertaken in the accommodation of utilities or other facilities within public highway rights-of-way. No utility permit or use and occupancy permit shall be issued without a cultural resources certification from the nmdot environmental bureau.

**D. Definitions beginning with "D":**

(1) **Density means** the compaction of soil by mechanical means on highway surfaces and for backfill in trenches to harden the fill material to a predetermined density. Density is the soil weight maximum, in a measured volume, with a pre-determined water content, plus a uniform compaction effort.

(2) **Department means** the New Mexico department of transportation, its successors and assigns, and its authorized agents, representatives, employees, or contractors. The New Mexico department of transportation, is sometimes identified herein as NMDOT, department, and state.

(3) **Department facilities means** and includes department-owned or managed property of all kinds, including without limitation department-owned service structures, and appurtenances the department may place in its ROW.

(4) **Direct burial means** installing a facility underground without encasement in which the material must be designed to tolerate from one percent to three percent (semi-rigid) diametric deflection or less than one percent (rigid).

(5) **Distribution lines means** intermediate facilities lines or arterials that supply services to local customers. These systems do not include the service connections.

(6) **District engineer means** the engineer in charge of one of the department's six construction and maintenance districts.

**E. Definitions beginning with "E":**

(1) **Easement means** the document that grants the right to use land owned by others, and that defines the conditions of such use.

(2) **Encasement means** a carrier pipe installed freely inside in a larger diameter pipe, it may also be complete or partial, designed to protect the carrier pipe, lighten its burden, facilitate its insertion and withdrawal and guarantee the integrity of the roadway structure or prism. Common types of encasements are those carriers cased or sleeved inside a larger pipe, cradled by a continuous concrete seat fitting the pipe (cradling), walled by a continuous concrete sidefill (walling), boxed or jacketed by concrete completely surrounding the pipe (boxing), capped by a continuous concrete topping or slab (capping), coated or wrapped by a substantial girdling cover (wrapping), grouted by mortar filling borehole annulus and overbreak (grouting), or tunneled by installation in a facility subway.

(3) **Eminent domain means** the right of government, utilities and other public entities to take land for public use (upon the payment of just compensation) from land owners unwilling to sell the land after a negotiation for purchase has failed.

(4) **Encroachment means** unauthorized and illegal use of highway right-of-way or other lands owned or administered by the department, state or other public agencies.

(5) **Estimate means** an itemized list of materials, labor and all related expenses to determine the preliminary cost for an installation or relocation of a facility.

(6) **Environmental certification means** a legally required documented finding to ensure the protection of natural resources. An environmental certification shall be obtained prior to any activity (clearing,

surface ground disturbance, excavation, etc.) undertaken in the accommodation of utilities or other facilities within public highway rights-of-way. No utility permit or use and occupancy permit shall be issued without an environmental certification from the NMDOT environmental bureau.

**F. Definitions beginning with “F”:**

(1) **Facility or facilities means** all publicly, privately, cooperatively, municipally, tribally, or governmentally-owned facilities used for the carriage, transmission or distribution of electric power, telephone, telecommunications, data transmission, computer networking, wireless broadband and other fiber optic uses, water, gas, oil, petroleum products, surface (water, brine, and produced water) fast lines, steam, chemicals, sewage, drainage, irrigation and similar lines, that are to be accommodated, adjusted or relocated within the right-of-way of highways, roads or streets, or other property under the jurisdiction of the New Mexico department of transportation.

(2) **FHWA means** the Federal highway administration.

(3) **Frontage road means** a local street or road auxiliary to, and located on the side of, an arterial highway for service to abutting property, adjacent areas, and to aid in maintaining access control of the adjoining arterial highway.

**G. Definitions beginning with “G”:** **Grout means** a cement mortar or a slurry of fine sand or clay. (see NM Standard Specification for Highway and Bridge Design, current edition).

**H. Definitions beginning with “H”:** [RESERVED]

**I. Definitions beginning with “I”:** **Invoice means** an itemized list of materials, labor and all related expense for the cost of an installation or relocation of a facility.

**J. Definitions beginning with “J”:** **Joint use agreement means** an agreement between the department and a facility owner that provides for one future facility relocation and replacement right-of-way payment when a facility that occupies a private easement (corridor or strip of land) is taken for new highway right-of-way but no facility relocation is immediately necessary. The facility remains in place since there is no conflict with the highway features.

**K. Definitions beginning with “K”:** [RESERVED]

**L. Definitions beginning with “L”:**

(1) **Longitudinal barrier means** a barrier primarily to prevent penetration and safely redirect errant vehicles away from a roadside or median hazards, such as above ground facilities structures.

(2) **Longitudinal installation means** a facility or system located within or out of the right-of-way limits of a highway, where the facility runs parallel to the highway.

**M. Definitions beginning with “M”:**

(1) **Monopole means** a freestanding pole installation for the primary purpose of supporting a cell antenna or small cell facility. May be suited for lighting or signage as required by the department.

(2) **MUTCD means** manual on uniform traffic control devices. the standard highway, street or road traffic marking and signing directive implemented by the U.S. department of transportation, for standard use throughout the United States.

**N. Definitions beginning with “N”:** **Non-project means** any public utility or private facility installation that is independent of any department federal aid or state funded construction or maintenance project.

**O. Definitions beginning with “O”:** [RESERVED]

**P. Definitions beginning with “P”:**

(1) **Partial control of access means** the condition where access rights of owners or occupants of abutting land adjacent to highways are partially controlled or limited by the public authorities.

(2) **Permitting agent means** the department representative at each district responsible for the review and processing of permit applications.

(3) **Pre construction means** any activity performed prior to a highway construction project contract awarded to a department contractor to begin construction.

(4) **Preliminary field review means** the department's initial highway project inspection to insure agreement on design items and to furnish any additional design criteria.

(5) **Private facilities means** a non-governmental facility system owned by an individual, corporation, company or others which may install and maintain facilities in the department ROW under the terms and conditions of a use and occupancy permit.

(6) **Project means** any federal aid or state funded construction or maintenance activity managed by the Department.

(7) **Project development engineer means** the lead engineer responsible for meeting the design.

(8) **Project milestones means** the different stages of project design: preliminary design (thirty percent), post drain and grade (sixty percent), plan-in-hand (ninety percent), PSE Review (final review) and production (submitted for project letting).

(9) **Public utility means** a system owned by an individual, corporation, company or others whose rates are regulated by the New Mexico public regulation commission and are allowed to install facilities in the department ROW under the terms and conditions of a public utility permit.

**Q. Definitions beginning with “Q”: [RESERVED]**

**R. Definitions beginning with “R”:**

(1) **Regulated substance means** any hazardous, extremely hazardous, or toxic substance or chemical, or waste as those terms are used in CERCLA (42 USC 9601 (14)) or SWDA (42 USC 6901), CAA (42 USC 7401), TSCA (15 USC 2601), EPCRTKA (42 USC 11001) or any similar federal or state law, or any pesticide, oil petroleum product or fuel; except only materials packaged and purchased for consumer use in containers not to exceed one gallon of fuel in a vehicle fuel tank.

(2) **Reimbursement means** the payment by the department for eligible costs properly attributable to the highway construction, pursuant to state and federal regulations.

(3) **Relocation means** and includes any horizontal or vertical movement of facilities.

(4) **Right-of-way, rights-of-way or ROW means** land, property or interest therein referring to a strip or corridor acquired for transportation within the system of state highways and interstate highway that is open or may be open for public travel or use or both in New Mexico. This definition includes those public rights-of-way in which the state of New Mexico has a prescriptive easement for maintenance and public travel.

(5) **Roadway prism means** a road bed section from toe of slope to toe of slope, or borrow ditch bottom, that includes the compacted subgrade, subbase and the paved surface of the highway.

**S. Definitions beginning with “S”:**

(1) **Service structure means** a department-owned or operated, vertical, wood, metal, or other approved materials, support structure located in department ROW, including a similar structure that is owned or operated by department and that department specifies is available for the support of permittee’s facilities.

(2) **Site means** the physical location within department ROW or department owned property where permittee shall install, operate and maintain its facilities, and is more particularly identified on Exhibit “A” hereto, which shall be amended from time to time to include new physical locations for permittee’s facilities.

(3) **Specification means** the New Mexico Standard Specifications for Highway and Bridge Construction, current edition.

(4) **Special district means** any single or multipurpose district organized as a local public body of the state for the purpose of constructing and furnishing any urban-oriented service which another political subdivision of the state is authorized to perform, including but not limited to the services of water, sewage, garbage, refuse collection and recreation, but excluding the functions or services of drainage, irrigation, recreation, reclamation, soil and water conservation or flood control.

(5) **Structure means** a highway feature including but not limited to a bridge, retaining wall, drainage culvert or irrigation structure where a utility may be attached.

(6) **Subsurface utility engineering or SUE means** an engineering discipline, whereby records research, geophysical techniques and soft digging methods are used to accurately locate subsurface utilities. The process is intended to collect data early in project development so as to mitigate conflicts between highway construction features and utilities.

**T. Definitions beginning with “T”:**

(1) **Telecommunication facilities means** permittee’s equipment at a fixed location that enables wireless communications between user equipment and a communications network.

(a) The term includes:

(i) equipment associated with wireless communications;

(ii) a radio transceiver, an antenna, a battery-only backup power supply,

and comparable equipment, regardless of technological configuration; and

(iii) coaxial or fiber-optic cable that is immediately adjacent to and directly

associated with a particular collocation.

(b) The term does not include:

(i) an electric generator;

(ii) a service structure;

(iii) a pole; or

(iv) a macro tower.

(2) **Temporary construction permit (TCP) means** a land use agreement that terminates when the construction work within the permitted area is completed.

(3) **Temporary traffic control plan (TTCP) means** a plan designed to guide drivers safely through a construction area; such plan must meet MUTCD minimum requirements and may require a New Mexico professional engineer stamp.

(4) **Terminus means** the beginning and ending of a highway project.

(5) **Third party use fee means** the annual flat fee paid to department per antennae, per tower or pole, placed within the site and department ROW by a third party, which permits third party to utilize the site.

(6) **Traffic control roadway work permit (work permit) means** a permit issued from the department's district office once the facility owner's temporary traffic control plan is approved by the district traffic engineer to install or relocate facilities in department right of way.

**U. Definitions beginning with "U":**

(1) **Utility permit means** a license issued to a public utility to install facilitiesmakig in the deapartment ROW under the specific terms and conditions.

(2) **Use and occupancy permit means** a license issued to a private facility owner to install facilities in the department ROW under the terms and conditions of a use and occupancy permit and the special provisions of the permit.

(3) **Utility coordinator means** the department representative assigned to each district responsible for coordinating with public and private owners to assist with identifying and documenting relocations and reimbursements during highway construction projects.

**V. Definitions beginning with "V": Vent means** ppurtenance to discharge liquid or gaseous contaminants from a pipe casing.

**W. Definitions beginning with "W": Work permit means** traffic control roadway work permit.

**X. Definitions beginning with "X": [RESERVED]**

**Y. Definitions beginning with "Y": [RESERVED]**

**Z. Definitions beginning with "Z": [RESERVED]**

[17.4.2.7 NMAC - Rp, 17 NMAC 4.2.7, xx/xx/20xx]

**17.4.2.8 ORGANIZATION:** The utility bureau of the New Mexico department of transportation is managed by the utility bureau manager who is directly responsible to the state utility engineer, headed by the state chief engineer. The utility bureau manager is responsible for the direction of all work undertaken by the utility bureau, and for the supervision of the various relocation agents and other personnel who may be assigned to perform designated functions of the section.

[17.4.2.8 NMAC - Rp, 17 NMAC 4.2.8, xx/xx/20xx]

**17.4.2.9 FUNCTION:** The utility bureau of the New Mexico department of transportation is managed by the utility bureau manager who is directly responsible to the state utilities engineer. The utility bureau manager is responsible for the direction of all work undertaken by the utility bureau, and for the supervision of the various utilities coordinator and other personnel who may be assigned to perform designated functions of the utility bureau. The utility bureau is responsible for the coordination and functional control of all aspects of utility related construction considerations, accommodations, and installations affecting the department. These functions include, but are not limited to:

**A.** The relocation of utilities in conflict with the construction of department projects.

**B.** The control of utility occupation of public highway right-of-way, including utility permits and use and occupancy permits, coordination, regulation, and central administration.

**C.** General liaison with all facility owners, public or private, and others who may be affected by utility infrastructure issues related to the department controlled highway system.

**D.** Assistance to department functionaries concerning matters pertaining to the administration of facility accommodation in department-owned property and rights-of-way and facility relocations on highway construction, maintenance and other appropriate highway projects, and other related matters.

[17.4.2.9 NMAC - Rp, 17 NMAC 4.2.9, xx/xx/20xx]

**17.4.2.10 GENERAL POLICY:** It is the general policy of the department to define certain rights for the accommodation of public utilities and private facilities in rights-of-way or department-owned property as outlined below:

**A.** It is in the public interest for facilities to be accommodated within the public right-of-way of highways and, under limited conditions, within access controlled freeways, including interstates under the jurisdiction of the New Mexico department of transportation when such use does not adversely affect the highway features, environmental concerns, aesthetic quality, public use, or safety of the traveling public. Section 67-8-15 NMSA 1978.

**B.** Public utilities have the power of eminent domain, which gives them a quasi-public status. In addition, a public utility operating in New Mexico has a legal right to install its facilities within highway right-of-way, subject to the regulations of this department. PRC regulated utilities acting in compliance with this regulation and the applicable permit issued by the department are not right-of-way encroachments, nor may they be treated as such. Therefore, the administrative intent of the utility bureau is to provide reasonable, efficient and economic solutions to conflicts between the requirements of highway design, construction operations and safety and the location of public utilities within department ROW.

**C.** Private facilities do not have the power of eminent domain and do not have a legal right to install facilities on department-owned property or within rights-of-way under the jurisdiction of the department. Therefore, the administrative intent of the utility bureau is to provide reasonable, efficient and economic solutions to accommodate private facilities subject to this rule.

**D.** The location or the relocation of facilities within existing New Mexico public highway right-of-way, or right-of-way to be acquired for highway construction purposes, shall be governed by all applicable state laws, rules and regulations, federal codes and the department policy set forth herein. In accordance with this policy, the design and location of all construction for installations and relocations affecting highways shall be reviewed and subject to approval by the department.

[17.4.2.10 NMAC - Rp, 17 NMAC 4.2.10, xx/xx/20xx]

#### **17.4.2.11 ACCOMMODATION POLICY – NON-PROJECT:**

**A. Application:** This accommodation policy shall apply to all public utilities and private facilities that are to be accommodated or relocated and are non-project activities within department-owned property and rights-of-way of highways, roads or streets under the jurisdiction of the New Mexico department of transportation.

**(1)** This facilities accommodation policy regulates the location, design, methods for installing, accommodating and maintaining physical facilities within public highway rights-of-way while ensuring safety for the traveling public.

**(2)** This section provides for the continuation of past regulations, state law and modifies and adds new regulations where necessary to comply with new state laws and federal codes pertaining to the accommodation and relocation of facilities on state and federal aid projects.

**(3)** The department does not provide right-of-way acquisition or relocation assistance for non-project activities.

#### **B. General design requirements:**

**(1)** The facility owner shall be responsible for compliance with all applicable engineering standards, the conditions and special provisions specified in the use and occupancy permit or utility permit, applicable statutes and regulations of the state of New Mexico, regulations of the U.S. department of transportation and Federal highway administration. Unapproved or unsatisfactory utility work performed by the facility owner or the facility owner's contractor or subcontractor shall be corrected or reconstructed upon written notification by the department to the facility owner.

**(2)** Facility owners shall be responsible for the design, construction, and maintenance of all facilities installed within department property and rights-of-way. All elements of these facilities are subject to review and approval by the department, particularly the materials, location and method of installation.

**(3)** Facility owners are responsible for, and will provide all measures as required to preserve the safe and free flow of traffic, structural integrity of the roadway or highway structure, ease of highway maintenance and appearance of the highway, resulting from their installation. temporary traffic control plans shall be approved by the district traffic engineer prior to any facility work within the department-owned property and highway rights-of-way. The district traffic engineer may require that the TTCP be stamped by a New Mexico professional engineer.

[17.4.2.11 NMAC - Rp, 17 NMAC 4.2.11, xx/xx/20xx]

**17.4.2.12 GENERAL INSTALLATION REQUIREMENTS:** Disturbance of areas within highway rights-of-way by facility operations shall be kept to a minimum and restored to the satisfaction of the department. All facility construction methods used within department property and highway rights-of-way shall be performed in

accordance with current *Standard Specifications for Highway and Bridge Construction*, the provisions of this regulation, Applicable engineering standards and requirements of the utility permit or use and occupancy permit. Any installation or construction work deemed unsatisfactory by the district inspector or designee, performed by the facility owner within highway rights-of-way shall be corrected, adjusted or reconstructed upon written notification by the department identifying deficiencies. The facility owner shall work to remedy any deficiencies within a time frame required by the department until the installation or relocation meets with the department's satisfaction. If the restoration is not performed within the time specified by the department, the department may perform the restoration work and the facility owner shall be responsible for all costs incurred.

**A.** The facility owner shall avoid disturbing or damaging existing highway drainage facilities and shall be responsible for repairs and restoration of any damage, including restoration of ditch flow lines, as determined by the department. Wherever necessary, the facility owner shall provide drainage away from its own facilities to avoid damage to the highway and shall protect the highway right-of-way. Construction or compaction by means of jetting, puddling, or water flooding is prohibited within all highway rights-of-way.

**B. Landscaping:** The facility owner is prohibited from spraying, cutting or trimming trees or other landscaping elements, unless specific written permission is given by the department. The approval of a utility permit or use and occupancy permit does not include approval of such work, unless the cutting, spraying and trimming is clearly indicated on the permit application, and permission is given in the permit. In general, when permission is given, only light trimming will be permitted. When tree removal is approved, the stump shall be removed and the hole properly backfilled to natural ground density, and/or other department approved landscape elements provided. The contractor is liable for any unpermitted removal or pruning of trees and will be required to replace in the same species and size any trees unnecessarily damaged or removed as part of the work. The work site shall be left in a clean and trash free condition and all debris shall be removed.

**C. Traffic Control:** Traffic control for facility construction and maintenance operations shall conform with the MUTCD. All facility construction and maintenance operations shall be planned to keep interference with traffic to an absolute minimum. On heavily traveled highways, facility operations interfering with traffic shall not be conducted during periods of peak traffic flow. All such work shall be planned so that closure of intersecting streets, road approaches or other access points is held to a minimum. Temporary traffic control plans for each installation are mandatory and must be attached to each utility permit or use and occupancy permit application. No facility installation work shall commence without approval by the district engineer or designee.

**D. Maintenance:** Facilities located on department property and within public rights-of-way shall be maintained in accordance with this regulation and applicable engineering standards. Any physical revisions, relocations, additions, adjustments, or excavations to the facility that cause the impedance of traffic or other disturbances within the right-of-way, shall require the applicant to submit a new facility accommodation permit package. No remedial work may commence until the new facilities accommodation permit package is approved by the district. Repairs of an emergency nature including repairs necessary for the safety of the traveling public, may be immediately performed without prior approval, to be followed by formal written notification to the appropriate district engineer or their representative. When emergency repairs constitute a traffic hazard, the proper NMDOT district office and the New Mexico state police shall be notified by the facility owner to coordinate safety measures.

**E. Facilities retired or out of service:** A facility that is retired or no longer in service may be allowed to remain in the right-of-way, provided the facility owner obtains a permit documenting the approval of the Department. Otherwise the owner shall remove retired or out of service facilities, both above and below ground, from highway right-of-way. See Section 17.4.2.17, below regarding abandoned and out-of-use facilities.

**F. Restoration:** Restoration of the highway right-of-way disturbed by excavations or grading work performed by the facility owner shall include revegetation as specified in the NMDOT *Standard Specifications for Highway and Bridge Construction* Section 632 'Seeding'. This work shall consist of reseeded all areas which are denuded of vegetation during the facility's construction operations. The reseeded work by the facility owner will be subject to prior approval, inspection and acceptance by the NMDOT district permitting agent or staff. The permitting agent duties shall include but not be limited to: pre-approval of submittal for seeding, pre-seeding meeting, inspections, and acceptance. NMDOT permit agents shall be certified in Section 632 Seeding as per NMDOT training.

**G. Environmental Certification:** It shall be the facility owner's responsibility to comply with all federal, state, and local laws and regulations protecting the natural environment. The NMDOT environmental bureau will determine if a categorical exclusion checklist shall be completed. No use and occupancy permit shall be issued without an environmental certification from the NMDOT environmental bureau.

**H. Cultural Resource Certification:** It shall be the utility's responsibility to comply with all federal, state, and local laws and regulations protecting cultural resources. The NMDOT environmental bureau will



determine if a cultural resource survey shall be required. No use and occupancy permit shall be issued without a cultural resource certification from the NMDOT environmental bureau.

**I. NPDES Requirement:** It shall be the responsibility of the utility owner under the US Clean Water Act and the National pollution discharge elimination system (NPDES) that for all utility work within highway right-of-way where any ground disturbance involves areas exceeding 1 acre that a Notice of Intent (NOI) must be e-filed with the US environmental protection agency (EPA) before the utility work can begin. A storm water pollution prevention plan (SWPPP) as per NPDES must be maintained on the project and a copy provided to the district permitting agent before work commences. A notice of termination (NOT) for the project may not be filed until the district engineer concurs in writing that the required vegetative cover has been obtained.

**J. Irrigation ditches and water canals:** Except for necessary crossings, irrigation ditches and water canals shall be excluded from the ROW. Crossings may be made by underground siphon or through culverts or on bridges as appropriate to the size of the canal, topographic condition and highway safety aspects. Locations and structure are to be selected and designed in the same manner as are facilities for natural transverse drainage. All maintenance of irrigation inlet and outlet facilities are the responsibility of the irrigation ditch and water canal owner. All ingress and egress for maintaining or patrolling such irrigation facilities shall be from outside ROW. Under appropriate traffic control arrangements, ditch cleaning equipment may be permitted and ditch-walkers or ditch-riders may be permitted to cross the ROW in those cases where considerable travel distance would otherwise be required.

[17.4.2.12 NMAC - Rp, 17 NMAC 4.2.12, xx/xx/20xx]

#### **17.4.2.13 NEW MEXICO PUBLIC UTILITY PERMIT OR USE AND OCCUPANCY PERMIT:**

**A. General requirements:** Prior to commencing any work on department-owned property or ROW, the facility owner shall have applied for and obtained an approved utility permit or use and occupancy permit from the department's district engineer. The utility permit or use and occupancy permit will allow the facility owner to construct and maintain facilities within the limits of a highway row or over and across the state highway. Each utility permit or use and occupancy permit will be in accordance with this accommodation policy and any applicable manuals issued by the department. The applicant shall apply for the use and occupancy permit using the department's POSSE LMS E-permitting available on the NMDOT web-site. Applicant shall apply for a use and occupancy permit for each separate location for which the applicant desires to locate its equipment and abide by the terms of the permit.

(1) The facility owner applying to place facilities within the right-of-way of public highways must determine in which highway district the installation will be constructed. Completed utility permit or use and occupancy permit forms will be routed to the appropriate district engineer by POSSE LMS E-PERMITTING PLATFORM, to the attention of the district permit agent. The boundaries of each district may be obtained from the appropriate district permit agent.

(2) The facility owner seeking a utility permit or use and occupancy permit from the department will provide the department with comprehensive plans that depict the proposed facilities installation by plan view and profiles. Details that clarify complicated features of the installation shall be added as appropriate. In addition to the detailed plans, the facility owner shall provide all the information required on the permit form.

(3) Facility owner shall obtain a surety or performance bond ensuring the timely and workmanlike performance of any work undertaken pursuant to this regulation. Such bond must be in a form and in a principal amount satisfactory to the department. All fees and costs associated with the procurement of said bond shall be the responsibility of the facility owner. Special districts, municipalities and counties may be exempt from this requirement upon written request from the facility owner, subject to department approval as determined by the district engineer.

(4) After a traffic control roadway work permit has been approved by the applicable district office, facility owners shall notify the department in writing, no less than five days in advance of the date their installation or relocation construction will commence.

(5) The facility owner who has received an approved traffic control roadway work permit from the district office for their installation/relocation shall strictly adhere to performing the work in accordance to the approved plans. No deviation from the plans, without prior written approval from the department, shall be allowed.

(6) Facility work shall commence within six months of the date of issuance of the traffic control roadway work permit; otherwise the permit shall become null and void. Any work not started within this six month period shall require new permit applications and associated documentation, as well as department approval of the new submittal before construction can commence.

(7) The facility owner seeking an utility permit or use and occupancy permit must provide As-built plans within 30 days of completion of the installation pertaining to the location of the facility installed. The location must be tied by a survey, performed and certified by a registered New Mexico land surveyor, to the department's monuments and referenced to department's mileposts or latitude and longitude coordinates. The applicant shall provide a map to the department detailing location and elevation of each break point along the facility. where a facility owner fails to provide documentation and survey maps to the department, and department maintenance crews damage utilities, the facility owner shall be responsible for all costs associated with repair.

(8) Information on the horizontal and vertical survey ties may be obtained from the department's aerial and lands survey section, monumentation unit, located in the department's general office (G.O.); mailing address: NMDOT, Aerial and Lands Survey Section, Monumentation Unit, P.O. Box 1149, Santa Fe, NM 87504-1149.

(9) Survey monumentation and project stationing survey information may also be obtained from the appropriate district engineer, the New Mexico public highway utility or use and occupancy permit forms and instructions available on the NMDOT website. The addresses and phone numbers of the department's six district offices are:

NMDOT District One Office P.O. Box 231 Deming, NM 88031-0231 (575) 313-3860	NMDOT District Two Office P.O. Box 1457 Roswell, NM 88202-1457 (575) 840-3035
NMDOT District Three Office P.O. Box 91750 Albuquerque, NM 87109 (505) 934-0354	NMDOT District Four Office 28 Bibb Industrial Las Vegas, NM 87701 (505) 660-3751
NMDOT District Five Office PO Box 4127 Santa Fe, NM 87502 (505) 795-0533	NMDOT District Six Office P.O. Box 2160 Milan, NM 87021 (505) 285-3200

(10) It shall be the responsibility of the facility owner to renew each utility permit or use and occupancy permit prior to its expiration. The facility owner shall submit a renewal permit application using the POSSE LMS application system available on the NMDOT web-site, along with plans that reflect the current location of the facilities relative to existing roadway features. If the plans are As-built and reflect the actual current condition, a certification stating that this is the case shall accompany the as-built plans. Any costs to repair damage to facilities by highway maintenance crews due to inconsistencies between the as-built plans and the actual location of facilities shall be borne by the facility owner.

(11) All changes in ownership of the facility, including between a parent corporation and its subsidiaries, shall require the new owner to submit fully executed and approved assignment documents between the parties involved to the department within 30 days of transfer of ownership. The facilities owner shall also submit new utility or use and occupancy permit applications and as-built plans of the facility to be assigned within 90 days of notification to the department. If the plans are As-built and reflect the actual current location of the facility, a certification stating that this is the case shall be required; otherwise new plans that reflect the actual location relative to existing roadway features shall be provided. Any requirements stipulated by the underlying fee owner in cases where a change of ownership occurs shall be the sole responsibility of the new facility owner and may require the new owner to obtain appropriate approvals from the fee owner. Any costs to repair damage to facilities by highway maintenance crews due to inconsistencies in the as-built plans and the actual facilities location shall be borne by the facility owner.

**B. Other required documentation for permits:** In areas where highways pass through land controlled by the U.S. forest service, bureau of land management, U.S. military bases, Indian lands and other designated federally controlled lands, and certain New Mexico state lands under the jurisdiction of the New Mexico state land office, or other state agencies, the facility owner must also obtain a permit, written permission, or other documented authorization from these agencies for facility installations. This written authorization is required in

addition to the department's utility permit or use and occupancy permit, and shall accompany the facility owner's permit application for new installations, or as determined by the department.

**C. Temporary Traffic Control Plans:** Facility owners shall provide a TTCP in accordance with the MUTCD, and shall comply with the approved TTCP during the facility installation, relocation or maintenance work within the highway right-of-way. Temporary traffic control plans shall be site specific and approved by the district traffic engineer prior to any work. The district traffic engineer may require the TTCP be stamped by a New Mexico professional engineer. The TTCP must be accompanied by an approved utility permit or use and occupancy permit and district work permit.

**D. Indemnification:** The facility owner shall indemnify and hold harmless the department from loss or injury due to any negligent act of the facility owner, the facility owner's employees, any agent acting on the facility owner's behalf, and anyone else engaged by the facility owner to work on the facility owner's installations, maintenance or relocations of their facilities. Any contractor or subcontractor engaged by the facility owner to perform facility installation or relocation in conjunction with or prior to highway construction must also indemnify and hold harmless the department from loss or injury due to any negligent act of the facility owner's contractor or subcontractor.

**E. Insurance requirements:** Facility owners shall carry insurance in amounts not less than those specified below and as outlined in the specifications. In the event of conflict between the specifications and this regulation, owner shall carry the larger amount of insurance. If a facility owner is self-insured, the facility owner shall provide an owner's protective liability insurance policy, in favor of the department, in the amounts specified below.

**(1) General liability:** Bodily injury liability and property damage liability insurance applicable to the facility installation or relocation work shall be provided as follows, which amounts may be changed by the department from time to time: Insurance coverage in the amount of \$1,000,000.00 for each occurrence; \$1,000,000.00 aggregate for bodily injury liability and \$500,000.00 each occurrence; \$1,000,000.00 aggregate for property damage liability, written on a comprehensive general liability form or commercial general liability form which must include the following:

- (a)** coverage for liability arising out of the operation of independent contractors;
- (b)** completed operations coverage;
- (c)** attachment of the broad form comprehensive general liability endorsement.

**(2) Explosives:** In the event that any use of explosives is required during the installation or relocation, the insurance shall include coverage for injury to or destruction of property arising out of: the collapse of, or structural injury to any building or structure due to excavation, including borrowing, filling or backfilling in connection therewith, or to tunneling cofferdam work or caisson work, or to moving or shoring, underpinning, raising or demolition of any building or structural support thereof.

**(3) Damage to mechanical equipment:** Coverage must be included for injury to or destruction of any property arising from injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property or any other apparatus in connection therewith below the ground. If such injury or destruction is caused by or during the use of mechanical equipment for the purpose of excavating, digging or injury to or destruction of property at any time resulting therefrom.

**(4) Automobile liability insurance:** Coverage for the facility owner, its contractor or subcontractor (whether included in the policy providing general liability insurance or in a separate policy) must provide liability for the ownership, operation and maintenance of owned, non-owned, and hired cars. The limits of liability for automobile liability insurance shall be provided in the following amounts, which amounts may be changed from time to time:

- (a)** bodily injury liability \$500,000 each person; \$1,000,000 each occurrence;
- (b)** property damage liability \$1,000,000 each occurrence.

**(6) Department as additional named insured:** The facility owner, its contractor or subcontractor shall have the New Mexico department of transportation added as an additional named insured on the comprehensive general liability form or commercial general liability form furnished by the facility owner.

**(6) Proof of insurance:** The facility owner shall provide to the appropriate department district engineer a certified copy of the facility owner's insurance policy and certificate of insurance, or in the event the facility owner is self-insured, a copy of the owner's protective liability insurance policy or a certificate of insurance at the time the original facility owner's utility permit or use and occupancy permit application is submitted for approval. The facility owner shall also be responsible for and require that any contractor or subcontractor engaged by them shall provide the department with a certified copy of their insurance policy or certificate of

insurance in the amounts and with the provisions as herein provided. The facility owner shall provide proof of a surety bond to the appropriate department district engineer.

(7) **Worker's compensation insurance:** The facility owner, its contractor or subcontractor shall also carry worker's compensation insurance or otherwise comply with the provisions of the New Mexico Workmen's Compensation Act and Occupational Disease Disablement Law.

(8) **Liability insurance, automobile liability insurance and worker's compensation insurance:** For the facility owner, its contractor or subcontractor shall be kept in force for the duration of the facility installation, relocation, remedial or clean up work required due to department authorized facility relocation or facility installation.

(9) **Insurance required during facility relocation:** The insurance listed herein shall be provided by the facility owner, its contractor or subcontractor on all facility relocation work authorized by the department. If the facility owner is otherwise eligible for relocation reimbursement, the premium cost can be added to the facility owner's cost estimate; if not eligible for reimbursement, the premium(s) shall be paid by the facility owner. A certified copy of the facility owner's insurance policy(s), or a certificate of insurance for and covering the facilities relocation work, shall be provided to the Utility Bureau, NMDOT, P.O. Box 1149, Santa Fe, NM 87504-1149.

**M. Compliance with regulations:** Violation or non-compliance by a utility or private facility with any regulation herein may result, at the discretion of the department, in the department taking any of the following measures:

(1) issuance of a written order requiring the facility owner to make prompt corrections or take the appropriate remedial action as directed in writing by the department; or

(2) issuance of a written order declaring the facility owner's public utility permit, use and occupancy permit, or work permit, whichever is applicable to the violation, null and void; or

(3) issuance of a written order requiring the facility owner to vacate the public highway right-of-way if prompt remedial action is not completed by the facility owner; or

(4) such written order may also provide that all costs as a consequence of a vacation order, including the total cost of removal of the permitted facility, plus all administrative costs, shall be at the expense of the facility owner;

(5) execution of surety bond as appropriate to permit the department to recover all related costs caused by the facility owner's noncompliance with these regulations;

(6) immediate and permanent stay on the issuance of additional public utility permits or use and occupancy permits statewide until such time as the facility owner is in compliance;

(7) any other remedy as provided by law.

[17.4.2.13 NMAC - Rp, 17 NMAC 4.2.13, xx/xx/20xx]

**17.4.2.14 PHYSICAL LOCATION OF FACILITIES:** The following requirements apply to the physical location of facilities on non access-controlled highways; additional requirements for access-controlled highway facilities are set-out in 17.4.2.18 NMAC, "the accommodation of facilities within interstate right-of-way." Facility owners shall obtain prior approval from the department before the facility owner is allowed to change an existing facility vertically or horizontally from the location indicated in the utility permit or use and occupancy permit. Non-compliance by the facility owner with any of the provisions of this regulation shall be grounds for rejection of the facility owner's utility permit or use and occupancy permit application and may include the revocation of an existing permit in which case facilities shall be treated as an encroachment.

**A. Surface facilities:** The following requirements apply to temporary surface lines:

(1) Surface line permits are subject to fees identified in the surface line permits which may be obtained through the POSSE LMS permitting system available on the NMDOT web-site.

(2) Any surface line facility installed in department right-of-way will require a surface line permit (one year or more) issued by the district.

(3) Any surface line facility installed in department right-of-way will require a temporary surface line permit (one year or less) issued by the district.

(4) The location of surface lines must be defined and temporary surface lines are not allowed to be installed through any drainage structure, cattleguards, or attached to bridges.

(5) Surface lines will be permitted in one thousand foot lengths.

**B. Aerial facilities:** The proposed installation of aerial facilities parallel to a state highway shall be located no more than one foot within the right-of-way line on a uniform alignment, wherever practical. Down guys and anchors shall not project into the cut or fill slopes. Minor variations will be considered on an individual basis

upon substantiation submitted by the facility owner. Proposed installations of aerial facilities crossing a highway shall cross the highway at an angle near 90 degrees whenever practical. Poles, anchors and other appurtenances shall be located, near the edge of highway rights-of-way as approved by the district engineer. No crossing components shall obtrude upon the roadway prism unless approved by the department, and all vertical clearances shall conform to the NESC as a minimum, but shall not be less than 20 feet. The district engineer may consider minor variations on an individual basis.

(1) Anchors, down guy wires and braces shall be located outside of the toe of slope.

(2) Facility owners shall obtain prior approval from the department before the facility owner is allowed to change an existing facility vertically or horizontally from the location indicated in the utility permit or use and occupancy permit.

**C. Buried facilities:** The proposed installation of buried facilities parallel to a highway shall be located no more than five feet within the right-of-way line, whenever practical. Surface components of buried facilities, i.e., valves, manholes, vents, etc., shall be located as close as possible to the right-of-way line. The high point of structural elements such as manholes, vaults and anchor blocks shall be at or below the grade of the right-of-way surface. The district engineer may consider minor variations on an individual basis. The proposed installation of buried facilities crossing a highway shall cross the highway at an angle of 90 degrees, wherever practical. All surface components or proposed buried facility crossings shall be located within five feet of the right-of-way line. Minor variations will be considered on an individual basis, as approved by the district engineer or designee.

**D. Depth of cover:**

(1) The minimum depth of cover for longitudinally placed underground facilities is four feet within the right of way.

(2) The minimum depth of cover for transversally placed underground facilities crossing must be at four feet at the flow line of the ditch.

(3) Existing underground facilities that are compliant with industry standards and specifications may remain in place so long as there is no risk to safety or conflict with highway use.

**E. Backfill and compaction:** Specifications shall specify the requirements for all trenches and ditches backfilled and compacted within the roadway prism. All excavations outside the roadway prism shall be compacted to a density equal to the surrounding undisturbed soil. Parallel trenches shall be backfilled and compacted during the same day in which they are excavated. Excavations on or near the traveled way shall not remain open overnight.

(1) Unless otherwise permitted, installation of buried facilities crossing a state highway shall be performed by boring or jacking under the roadway. Installations by open cut of the pavement structure may be permitted only where boring or jacking is not feasible due to soil conditions, or where the pavement structure is aged, deteriorated or in generally poor condition. Open cut installations will be considered on an individual basis, by the district engineer or designee.

(2) In cases where the facility owner is allowed an open cut installation, the facility owner shall be responsible for the restoration and maintenance of the pavement structure, until such time that the section of roadway is improved by resurfacing, as approved by the department.

(3) All proposed buried carrier pipes crossing a state highway shall be constructed of steel, cast iron, or reinforced concrete and shall be cased (or encased), and shall be of such materials and design as may be approved by the district engineer. Each question of carrier pipe material or encasement pipe requirements shall be considered on an individual basis, on design data submitted by the facility owner. As a minimum, the encasement shall extend across the entire roadway prism.

(4) The facility owner shall be responsible for the backfill, compaction and surface restoration of facilities trenches outside the roadway prism, and for the restoration and protection of the pavement structure if open cut trenching across the existing roadway is approved by the engineer, district engineer or designee. The facility owner is also responsible for the safety of the traveling public. Any portion of the pavement structure which is broken, disturbed, cut or otherwise damaged in any way, shall be removed and replaced to a design equal to or better than the condition that existed prior to the damage to the pavement structure, as determined by the department.

(5) Where the party making the installation either is not equipped or fails to properly repair any damage to the pavement structure, the department will repair the damage and shall bill the facility owner the actual cost of restorations, plus administrative costs incurred. The department may execute the surety bond referenced in Paragraph 3 of Subsection A of 17.4.2.13 to cover the costs related to the damage repairs.

**F. Facilities in vehicular tunnels:** Facilities shall not be permitted to occupy vehicular tunnels at new locations, except in special cases as covered in this regulation and as approved by the district engineer or designee. Facilities that transmit a hazardous commodity shall not be allowed in a vehicular tunnel under any circumstances.

**G. Acequias and irrigation ditches:** Acequias and irrigation ditches with prior rights that cross the ROW are responsible for all maintenance of inlet and outlet facilities. Under appropriate traffic control arrangements, special ditch cleaning by ditch-walkers or ditch-riders shall be permitted to cross the ROW. [17.4.2.14 NMAC - Rp, 17 NMAC 4.2.13, xx/xx/20xx]

#### 17.4.2.15 DEFINITIVE DESIGN REQUIREMENTS:

**A. Pipeline installations; location and alignment:** Any facility owner applying for a permit must disclose the product being carried in the pipeline on the permit application. All pipeline crossings shall be at or near ninety degrees. Minor variations will only be considered on a case by case basis, upon justification submitted to the department by the facility owner. Conditions which are generally unsuitable for pipeline crossings should be avoided, such as locations in deep cuts, across cuts and fills on steep slopes, near the footings of bridge piers, abutments, retaining walls and other structures, across intersections at grade or entrance and exit ramp terminals, at cross drains (transverse drop inlets) where flow may be obstructed, or in locations requiring extensive rock excavations to provide the minimum bury.

(1) Encasement methods provide the complete independence of the carrier pipe from the surrounding roadway structure, and adequate protection to the roadway from leakage of the pipeline. Encasement methods also provide means for insertion and replacement of carriers without access or disturbance to through-traffic roadways.

(2) The following encasement methods do not provide all of the above benefits, but may be utilized subject to individual approvals by the district engineer or designee. Concrete cradling enhances the load supporting capability of rigid pipes. Walling does the same for semi-rigid and flexible pipes. Capping strengthens both rigid and flexible pipes, and protects from highway operations penetrating the overfill. When applied, concrete boxing or jacketing provides protection to weak or brittle pipes from earth loads, leakage, corrosion or abrasion. Adequate coating or wrapping prevents contact with corrosive water, soil or vapors. Grouting aids in restoring the continuity and integrity of the earth supporting the pavement structure.

**B. Uncased carriers:** An uncased carrier crossing a highway becomes an integral part of the embankment supporting the pavement structure. Just as for a culvert, the department must be assured of adequate structural design. All uncased carriers shall be designed to withstand all combinations of earth and live load, internal pressure, earth and live load plus internal pressure, and earth and live load plus alterations to full and zero internal pressure. Rigid carriers will generally be satisfactory if they meet culvert design criteria and withstand the internal pressure. Semi-rigid and flexible carrier pipes shall be cased within a rigid pipe encasement.

**C. Hazardous transmittants:** Transmittants which are flammable, corrosive, expansive, unstable, at high pressure, and/or possibly hazardous to the traveling public or the roadway itself, shall be encased on all highway crossings of carrier pipes over 2 inches in diameter. Uncased crossings of welded steel pipelines may be permitted, provided additional protective measures are taken in lieu of encasement. Such measures may include higher safety factors in design, materials and construction, coating, and wrapping of carriers in accordance with industry standards, and cathodic protection, subject to the approval District engineer or designee.

(1) **Requirements for uncased carriers:** Uncased hazardous or corrosive product pipeline crossings on state highways will be allowed provided they are:

- (a) welded steel pipelines;
- (b) cathodically protected;
- (c) coated in accordance with industry standards;
- (d) meet requirements of the pipeline safety regulations - 49 Code of Federal Regulations, Parts 191 and 192, or Parts 191 and 195 with respect to wall thickness;
- (e) designed for operating stress levels in accordance with federal pipeline safety regulations;
- (f) appropriately marked with permanent signs at each right-of-way line indicating ownership, type of facility, and an emergency telephone number; and
- (g) owner provides an official signed written statement certifying that the facility complies with the conditions provisions required in this regulation.

(2) It should be noted that each request for waiver of casing will be considered on an individual basis and will be based on approval of the district engineer or designee.

**E. Restriction against varied use:** Subject to the safety requirements of the various regulatory bodies, the following precautionary measures are required for pipeline crossings:

(1) Utility or use and occupancy permit applications for pipeline crossing shall specify the class of transmittants, the maximum working or test pressure, and the design standards for the carrier pipe.

(2) Facility owner shall obtain prior approval from the department before the facility owner is allowed to change the type of transmittant or raise the working or potential pressures beyond those indicated in the utility permit or use and occupancy permit. Non-compliance by the facility owner with any of the provisions of this regulation shall be grounds for rejection or revocation of the facility owner's utility permit or use and occupancy permit.

**F. Trenchless construction and grout:** Approved methods for installing a facility under a highway or roadway without disturbing the pavement surface shall be pursuant to the NMDOT *Specifications for Roadway and Bridge Construction*, current edition unless approved by the district engineer or their representative. Wet boring is absolutely forbidden on all highways and roads under the jurisdiction of the department.

(1) Untrenched installations (boring, coring or driving) will be required for all pipeline crossings of access controlled and other major highways. Open trench installations on other highways and roads will be permitted only where bad soil conditions or extremely difficult rocky conditions preclude untrenched construction, or where older pavement is severely deteriorated. All untrenched pipeline installations should extend under and across the entire roadway prism to a point four feet beyond roadway prism or borrow ditch bottom or across the access control lines, or as otherwise required by the district engineer or designee.

(2) The oversize of boring operations is restricted to the minimum size necessary for the pipeline installation. The boring hole shall not exceed the pipe installation diameter by more than five percent oversize. The oversize excavation shall be approved by the district engineer or designee.

(3) All overbreaks, unused holes or larger diameter casings or pipes taken out of service shall be backfilled with grout. The composition of the grout shall be cement mortar, a slurry of fine sand, or other fine granular materials, as local conditions dictate, and subject to the approval of the district engineer or their representative.

(4) The department reserves its authority to use and maintain any casing or pipe taken out of service, which the district engineer or state utility engineer determines is suitable for future use.

**G. Relocation of existing pipelines:** Highway design and construction requirements generally preclude compromise of proposed highway alignment or grade for new construction projects in order to avoid conflict with the line and grade of an existing pipeline. The feasibility of adjustments in the highway design to avoid conflicts with existing facilities will be investigated, but in most instances a facility relocation or added pipeline protection will be required. A facility owner with an existing pipeline, inadequate to support highway loadings, shall be responsible for remediation.

**H. Other design requirements:**

(1) The department may require certain details of the method and manner of relocation in order to accommodate environmental and cultural resource considerations or in order to obtain consistency with local zoning, codes or ordinances.

(2) Locations of aerial facilities on highways with exceptionally narrow rights-of-way, or on urban streets with abutting improvements are special cases that must be resolved in a manner consistent with prevailing limitations and conditions. Locations behind sidewalks are required where feasible. Before a facility owner requests department approval of a location other than near the right-of-way line, consideration shall be given to designs consistent with industry or governmental standards or codes that are also conducive to a safe traffic environment. Exceptions to these clearances may be made where poles and guys may be placed behind existing barriers, guardrails, beyond deep drainage ditches, the toe or top of steep slopes, retaining walls and other similar protected locations, or when poles are of a breakaway type manufacture.

(3) Where irregularly shaped portions of the right-of-way lines extend beyond the normal right-of-way limits, individual consideration will be given to requests for variations to maintain a reasonably uniform alignment for parallel, aerial or underground facility installations.

(4) Longitudinal installations of facilities shall not be permitted in the highway median except in instances where the department has previously entered into a fair exchange agreement. In rare instances, aerial components of facilities crossings may be permitted in a highway median in excess of eighty feet in width, if the highway is not access controlled.

[17.4.2.15 NMAC - Rp, 17 NMAC 4.2.14, xx/xx/20xx]

**17.4.2.16 INSTALLATIONS ON HIGHWAY STRUCTURES:** This section covers the attachment of facilities to structures. All costs associated with attaching to a structure including engineering, materials, and construction costs are the responsibility of the facility owner. The department shall require the facility owner to apply for and obtain a permit to attach to any structure. All engineering, materials, and methods of the installation must be reviewed and approved by the NMDOT bridge engineer or designee, which approval shall be indicated by the issuance of a permit.

**A.** Attachments to structures should be avoided if feasible alternative locations are available. When avoidance is not possible, the NMDOT will consider attachment of facilities to structures following the procedures discussed herein.

**(1)** Attachment of pipelines carrying hazardous materials to a structure shall be avoided whenever possible. When such an attachment is permitted, the attachment design shall ensure a high level of safety.

**(2)** Attachments of pipelines carrying gas or liquid under pressure shall have additional safety measures to prevent property and personal damage. Refer to detailed requirements given in the references in Subpart (6) of Paragraph D of this section.

**B.** Proposed attachments shall not substantially degrade the integrity, function, safety, maintenance, or appearance of structures to which they are attached.

**C.** All costs associated with attaching to a structure including engineering, materials, and construction costs are the responsibility of the facility owner.

**D.** The applicant is required to obtain a permit to attach to a department-owned structure from the NMDOT bridge bureau. The following are general guidelines for obtaining a permit:

**(1)** The applicant shall submit a permit request using the department's e-permitting system justifying the need for attachment and demonstrating that there is no viable alternative.

**(2)** The applicant shall submit engineering data that addresses the attachment design and details, including provisions for temperature expansion; materials; methods of installation; effects on structure load capacity; and for existing structures, as assessment of the existing structure physical conditions and its ability to support the additional loads in the areas of the proposed attachments. Refer to the NMDOT Bridge Procedures and Design Guide for detailed engineering requirements.

**(3)** The applicant shall submit all required items through the department's e-permitting system to the NMDOT state bridge engineer or appointed designee.

**(4)** The engineering design for facility attachments to structures shall be performed by a New Mexico registered professional engineer experienced in structural design. All engineering documents including calculations and structural plans shall be engineer-sealed.

**(5)** All submitted items will be reviewed by the NMDOT bridge engineer or designee. A permit will be issued once full compliance with all applicable requirements is demonstrated.

**(6)** All design and installation of facilities on structures shall comply with the following:

**(a)** NMDOT Standard Specifications for Highway and Bridge Construction, current edition.

**(b)** NMDOT Bridge Procedures and Design Guide, current edition.

**(c)** All applicable NMDOT Standard Drawings, current editions.

**(7)** The NMDOT bridge engineer or designee will issue a permit to attach facilities to a department owned structure once all design requirements have been approved.

**E.** Installation on new structures on NMDOT construction projects. A new facility may be permitted to be installed by the departments contractor on a structure at the time the highway route is improved at the facility owner's cost. The requestor shall coordinate the permit request and engineering data submission with the district engineer.

**B.** The NMDOT utility bureau and bridge bureau shall be notified by the applicant of any conflicts between the requirements of this section and other sections of this regulation.

**C.** Facility maintenance and inspection: The facility owner shall be responsible for maintaining their attached facilities on structures as set forth in this regulation. The facility owner shall inspect their facilities periodically. For certain facilities, such as heavy water and sewage lines and those conveying hazardous materials, the owner shall be required to jointly inspect the facility with NMDOT inspectors during regularly scheduled National Bridge Inspection Standards inspections. The inspection requirements will be stated in the bridge permit.

**D.** Compliance and resolution of maintenance conflicts - Resolution of maintenance issues, conflicts or issues of non-compliance will be handled in accordance with Paragraph M of Section 17.4.2.13 of this regulation. [17.4.2.16 NMAC - Rp, 17 NMAC 4.2.15, xx/xx/20xx]



**17.4.2.17 ASSESSMENT AND REMOVAL OF ABANDONED OR UNCLAIMED FACILITIES WITHIN THE RIGHT-OF-WAY:** The following procedures shall be used to assess and subsequently remove abandoned or unclaimed facilities from the right-of-way.

**A. Notification:** the department will advertise in a publication of general circulation that the department is withdrawing any assumed consent and the facility will be considered a criminal trespass subject to immediate removal.

**(1) Removal or relocation:**

**(a)** All unclaimed facilities will not be relocated, they will be cut and capped at the ROW line.

**(b)** If a facility can safely be relocated, the department will relocate the facility and all costs associated with the relocation will be assessed to the owner of the facility.

**(2) Facility Assessment:** Verify from the owner or records that the facility is abandoned and out-of-use.

**(3) Excavate and expose facility:**

**(a)** If the facility has a coating, sample the coating to determine if the coating contains asbestos-containing materials.

**(b)** Conduct a non-destructive evaluation to determine if the facility is active and conveying fluid (e.g., determine if the facility is being protected from corrosion (induced current) or contains flowing fluids (e.g., liquid ultrasonic flow meter).

**C. Assessment and removal of abandoned or unclaimed pipelines within the right-of-way:** Procedures: The following procedures shall be used to assess and subsequently remove abandoned or unclaimed pipelines from the right-of-way:

**(1) Coordination:** Coordinate the assessment and abandonment activities with the ROW division (map, survey and utility bureau).

**(2) Preliminary Site Visit:** If necessary, a preliminary site visit shall be performed prior to preparing the scope of work, health and safety plan, and traffic control plan.

**(3) Health and safety plan:** A health and safety plan shall be prepared prior to initiating field work activities.

**(4) Field logbook:** All field work activities shall be recorded in a Field logbook.

**(5) Notification:** the department will advertise a publication of circulation that the department is withdrawing any assumed consent and the facility will be considered a criminal trespass subject to immediate removal.

**(6) Pipeline removal or relocation:**

**(a)** All unclaimed pipelines will not be relocated, they will be cut and capped.

**(b)** Perform pipeline cutting at the ROW line / cleaning (residual fluid removal) / capping of the pipeline ends at the ROW line.

**(c)** Dispose of investigation derived wastes, excavation wastes, and pipeline wastes (residual fluids, etc.) in accordance with applicable state and federal laws and regulations.

**(d)** Remove the pipeline that is within the ROW and transport it for disposal or recycling in accordance with applicable state and federal laws and regulations.

**(e)** If pipeline can safely be relocated, the department will relocate the pipeline and all costs associated with the relocation will be assessed to the owner of the facility.

**(7) Pipeline assessment (The steps required shall be outlined within the SOW):**

**(a)** Verify from the owner or records that the pipeline is abandoned and out-of-use.

**(b)** Notify local emergency personnel and complete above listed pre-field work activities and notifications.

**(8) Excavate and expose pipeline:**

**(a)** If the pipeline has a coating, sample the coating to determine if the coating contains asbestos containing materials.

**(b)** Conduct a non-destructive evaluation to determine if the pipeline is active and conveying fluid (e.g., determine if the pipeline is being protected from corrosion (induced current) or contains flowing fluids (e.g., liquid ultrasonic flow meter).

**(c)** Determine pipeline wall thickness (ultrasonic wall thickness determination).

**(d)** Conduct intrusive evaluation (pipeline hot tap) to determine contents of the

pipeline.

[17.4.2.17 NMAC - Rp, 17 NMAC 4.2.17, xx/xx/20xx]

**17.4.2.18 CLEAR ROADSIDE POLICY:** The department discourages the installation or relocation of any facility within the designated clear zones of highways.

**A. Specific installation guidelines:** Facilities may be permitted to install within the clear zones of highways only if the installation design:

(1) provides for the installation of the facilities, including all supporting appurtenances, below the ground surface of the clear zone area involved; and

(2) provides for the protection of the above ground facility by the installation of an intervening barrier or barriers, crash cushions, impact attenuators or longitudinal barriers; and

(3) protects errant vehicles from collision with poles, luminaire standards or masts, or any other above ground structures supported by poles, by the incorporation of break-away features in the structure design; and

(4) the facility owner is in compliance with the design standards set forth in the AASHTO designs and specifications; and

(5) is approved by the department.

**B. General requirements:** Facility owners must provide the department with justification to allow facilities in the clear zone including:

(1) comprehensive information to support the facility owner's contention that no other viable location is available;

(2) that an installation on nearby adjacent right-of-way would be prohibitively expensive;

(3) that a right-of-way corridor nearby would adversely affect wetlands, agricultural lands, or cultural resources;

(4) The facility owner must provide the department with completed and comprehensive plans and specifications, including:

(a) grades and elevations tied by survey to the design grade of the highway segment involved; and

(b) a clearly defined clear zone, shown on the facility's plans, along with details and elevation views; and

(c) plan, profile and details of underground facility installations; and

(d) any additional information in support of the design.

[17.4.2.18 NMAC - Rp, 17 NMAC 4.2.16, xx/xx/20xx]

**17.4.2.19 THE ACCOMMODATION OF FACILITIES WITHIN INTERSTATE RIGHTS-OF-WAY:**

Pursuant to federal highway administration (FHWA) regulations regarding the accommodation of parallel facilities within the access control limits of interstate highway rights-of-way, the department will allow under controlled circumstances and as approved by the district engineer on a case-by-case basis, the placement of parallel facilities within the access control limits of the interstate system or other fully access controlled freeways. These regulations do not apply to lines for servicing facilities required for the operation of the freeway.

**A. Term and cost of permit:** Permits for parallel facilities within the access controlled freeways highways shall have a term as set by the department, but in no event shall the term exceed 20 years. The department shall impose charges or fair exchange for use and occupancy permits for the use of the right-of-way by the facility owner. The permit shall be subject to any other conditions deemed appropriate by the department under the circumstances. Even though payment may be made by the facility owner to the department, no permit shall be exclusive, meaning the department may issue additional permits to other facilities within the same interstate right-of-way.

**B. Physical location of new parallel facilities along interstate highways:** New facilities to be installed parallel within the controlled access lines of any interstate shall be subject to the following requirements:

(1) The accommodation shall not adversely affect the safety, design, construction, maintenance or stability (integrity) of the freeway.

(2) The accommodation shall not interfere with or impair the present or future use, or future expansion of the interstate.

(3) The accommodation of any alternative location must include an evaluation of the direct and indirect environmental, cultural resource, and economic impacts resulting from disapproval of the use of such right-of-way for the accommodation of the facility.

(4) If by reason of any change in the location, construction, grade or by any other matter affecting the highway upon which any facility is located because of changing traffic conditions or otherwise, it shall

become advisable in the opinion of the engineer that said facility be removed, relocated or otherwise modified, the facilities, upon written notice from the engineer, shall provide all horizontal and vertical data including pothole information, size and type of material, condition of material and transmitants during the preliminary design phase. If necessary the facilities shall remove, relocate or modify such facility without undue delay in such manner as the engineer may direct or approve, at the facility's expense and at no cost to the department. All facilities located on public right-of-way under the dual jurisdiction of the state and a subordinate governmental entity shall comply with all applicable rules and regulations of such entity properly and lawfully in force and including but not limited to provisions of local franchises not in conflict with the rules and regulations of the department. The department makes no warranty, either express or implied, as to the continued existence of any highway in any particular location and expressly assumes no obligation with regard to the facility upon change, vacation or abandonment of any highway or portions thereof.

(5) All trenching operations must be approved by the district engineer or designee; any and all facility installations and components associated thereto shall be buried parallel to the interstate, and shall be located within five feet of the ROW line, wherever practicable. Surface components of buried facilities, i.e., valves, manholes, vents, etc., shall be located as close as possible to the ROW line. The high point of structural elements such as manholes, vaults, and anchor blocks, shall be at or below the natural ground line of the right-of-way surface. All buried facilities will be installed at a minimum depth of 48 inches or more from the lowest point of right-of-way surface to the top of the facility. All trenches and ditches shall be backfilled and compacted by the facility installer to the satisfaction of the district engineer. All future relocations or adjustments shall be the responsibility of the facility owner and shall be at the sole expense of the facility owner.

(6) No service connections shall be allowed from within access controlled facilities.

**C. Existing facilities along proposed interstates:** Where a facility already exists within the proposed right-of-way of an interstate and it can be serviced, maintained and operated without access from the roadways or ramps, it may remain as long as the work is permitted by the district traffic engineer and it does not adversely affect the safety, design, construction, operation, maintenance or stability of the interstate; otherwise it must be relocated.

**D. Major valley crossings, grade separation structures:** Where an interstate crosses a major valley or river, any facility attached to an existing structure at the time the highway route is improved may remain attached when relocation of the facility is not feasible, and provided that the facility could be serviced without interfering with the flow of traffic. All such approvals must be first cleared by the department's bridge engineer.

(1) The expansion of a facility carried by an existing structure may be permitted provided the facility installed on the existing structure fulfills the methods of installation required by the department's bridge engineer, and that any such installation can be serviced without interfering with the traveling public.

(2) A new facility may be installed by the department's contractor on a structure at the time the highway route is improved at the facility owner's cost.

**E. Facilities crossing interstate highways:** New facility installations or the relocations of existing facilities may be permitted to cross interstates. Facilities shall cross on a line generally normal (crossing at ninety degrees) to the highway alignment and preferably under the interstate, to the extent feasible and practical.

**F. Facilities along roads or streets crossing interstates:** Provision shall be made for the facility to cross the interstate at the location of the crossroad or street in such a manner that the facility can be serviced without access from the roadways or ramps of the interstate. The facilities are to be located within the right-of-way of the crossroad or street (existing or relocated) and may cross over or under the interstates or be carried on a bridge or through a culvert, provided the installation and servicing thereof can be accomplished without access from the roadways or ramps of the interstate. Installations or relocations affected by locating the facility outside the right-of-way of the crossroad or street may be located and treated in the same manner as lines crossing the interstate at points removed from a bridge or culvert when feasible. All provisions above must be approved and permitted before construction by the department.

**G. Overhead facility crossings:**

(1) Supporting poles may be placed in medians of sufficient width to provide for the previous mentioned clear zones from the edges of both roadways. Where control of access and right-of-way lines are not one and the same, and where frontage roads are provided, supporting poles may be located in the areas between them. Consideration may be given to conversion to underground facilities to cross the interstate right-of-way, in extraordinary cases where such spanning of the roadway is not feasible.

(2) Support for overhead facilities at interchange areas will be permitted only where all of the following conditions are met:

(a) a clear zone is provided with respect to the interstate right-of-way lanes; and

(b) the appropriate clear zone from the edge of the ramp is provided as designated for the specific condition in the AASHTO publication, "Roadside Design Guide, current edition"; and  
(c) essential sight distance is not impaired; and  
(d) the conditions of Subsection I of 17.4.2.18 NMAC "access for servicing utilities" are satisfied; and  
(e) the vertical clearance to overhead lines crossing interstate right of way shall be determined by the department, but in no case shall they be less than the vertical clearances required by all applicable engineering standards.

**H. Buried facility crossings.** The design and type of materials shall conform to standards and installations outlined in this regulation, or to the appropriate governmental or industry codes, rules and specifications, whichever is more restrictive. Manholes and other points of access to underground utilities may be permitted within the right-of-way of an interstate if;

- (1) they are located at the edge of the interstate right-of-way; and
- (2) can be serviced or maintained without access from the roadways or ramps.

**I. Access for servicing facilities:** Access for servicing facilities parallel to or crossing an interstate shall be limited to frontage roads, nearby or adjacent public roads or streets near the highway right-of-way lines.

(1) The district engineer or designee may permit, in special cases where facility manholes or other appurtenances are located in medians or interchange areas, access to them from roadways or ramps, but only by utility or use and occupancy permits issued by the district engineer or designee to the facility's owner. The work permit will set forth conditions for access to ensure safety to protect the traveling public.

(2) Permitted facilities requiring maintenance from within the interstate right-of-way must obtain an approved work permit from the district engineer or designee before accessing the facilities.

(3) A plan for emergency work shall be pre-approved by the district engineer or designee for emergency repair within the rights-of-way of interstates.

(4) Access to facilities shall at all times be in compliance with 18.31.6 NMAC and the NMDOT State Access Management Manual (SAMM).

**J. Design, construction and location details:** The department shall review the proposed design, access, construction and location of all facility installations and relocations affecting interstates and any other access controlled highways under the jurisdiction of this department, and subject to the approval of the district engineer or designee, issue a utility permit or use and occupancy permit for any proposed work on access-controlled highways. [17.4.2.19 NMAC - Rp, 17 NMAC 4.2.17, xx/xx/20xx]

#### **17.4.2.20 SAFETY MARKERS FOR IDENTIFICATION OF BURIED FACILITIES AND**

**APPURTENANCES WITHIN DEPARTMENT RIGHTS-OF-WAY:** Buried facilities located within the department ROW shall be clearly marked with the appropriate warning markers as described herein:

**A.** Buried facilities such as but not limited to pipeline valves, regulators, pad mounted transformers, telephone pedestals, junction boxes, shall be identified in compliance with the American public works association uniform color code for marking underground facilities with colored flexible fiberglass restorable blade, four feet six inches minimum height above the ground surface. It shall be color coded a minimum of six inches in height and three inches width at the top of the blade. The blade shall be visible in all directions. The color coded portion of the marker shall be at least two feet above the surrounding high grass, weed or shrubbery line.

**B.** The facility owner shall maintain the markers in good condition; color faded markers shall be replaced as necessary so that their visibility to maintenance crews and others is not impaired. The markers shall not be placed within the access control lines of interstate highways or freeways in a manner that would create a safety hazard, or by methods contrary to this regulation.

**C.** The utilities shall place markers on all buried facilities within the department ROW. The facility owners are directed to maintain these markers on a continuing basis.

**D.** The facility owner shall observe, during marker installations, all applicable regulations pertaining to the installation of facilities within department ROW.

[17.4.2.20 NMAC - Rp, 17 NMAC 4.2.18, xx/xx/20xx]

#### **17.4.2.21 ACCOMMODATION POLICY - PROJECT:**

**A. Application:** This accommodation policy shall apply to all public utilities and private facilities that are to be accommodated or relocated as part of a federal aid or state funded construction or maintenance activity within department-owned property and rights-of-way of highways, roads or streets under the jurisdiction of the New Mexico department of transportation.

**B. Facilities relocation procedures:** This section sets forth the regulations pertaining to eligibility for facility relocation reimbursement, methods and scheduling of the facility relocation work required, and the documentation and record keeping required when the expenditure of public funds is involved. The following procedures shall be followed to assure the proper completion of facility relocation necessitated by the state highway program. The following procedures provide uniformity and avoid duplication and shall be followed on all state highway projects.

(1) The department may develop a cooperative agreement for handling the relocation of utilities and facilities. The agreement shall clearly stipulate the responsibilities of the utility or facility owner for financing and accomplishing the relocation work, shall incorporate the appropriate regulation(s) by reference and designate the method to be used for performing the work. The method for payment of all relocation costs, including engineering and relocation construction, shall be acceptable to the department and to FHWA on federal aid projects. The agreement shall specify the terms and amounts of payments made or to be made by the utility or facility owner to the department under state law and federal regulations.

(2) Relocations eligible for reimbursement may be completed at the department's expense, and no reimbursement shall be due to the facility owner. A cooperative agreement shall specify the terms of the work and the cost for engineering and construction.

(a) **Location stage:** The utility bureau of the department shall become involved at the inception of each state highway project. The earliest conceptual design information available shall be reviewed to determine whether possible serious facility conflicts can be avoided by minor highway alignment revisions without undue added cost. The assigned agent should discuss the possibility of alignment changes with the assigned project development and design engineers as appropriate, and any other observations that have been made that might improve cost benefits to the project concerning the facilities. Liaison with the facility owners involved shall begin at this stage to avoid the installation of new utilities by the facility owners that could conflict to an even greater extent. Final right-of-way maps will disclose the extent of the facilities' involvement and give the agent a workable idea as to the eligibility each owner may have for relocation reimbursement. Preliminary coordination meetings with all of the affected facility owners in attendance should serve to avoid future problems concerning where each facility owner must place their relocated utilities to avoid conflict with the other utilities involved.

(b) **Locating utilities:** Utilities shall provide all horizontal and vertical data along with size, type, ownership, and condition of material, and pothole information, and their locations tied to the project center line. The locating process should meet, as a minimum, survey requirements outlined in the department's survey manual, unless otherwise specified. Locating shall be conducted early enough in the project development process so as to allow for inclusion of the facility information in the highway construction field design inspection plans (thirty percent). Failure to provide the requested information may result in the department applying Subsection M of 17.4.2.12 NMAC.

(c) **Engineering relocations procedures:** The utility bureau cannot request the facilities to provide documentation for relocations and to qualify for reimbursement until the utility bureau has access to final right-of-way maps and plans sufficiently completed to permit the utilities to design their relocations. Therefore, the plans should be in the post grade and drain or sixty percent design stage, with definite line grades, drainage features, right-of-way, access control and other major features shown before they may be sent to the utilities with the formal authorization to proceed with their preliminary engineering. Prior to this stage, any plans provided to utilities must clearly be marked as "preliminary" with a statement that they are not yet authorized to proceed on any basis.

(d) **Facility engineering:** Before a facility owner is authorized to engineer on a project, the basic eligibility for reimbursement of facility adjustment cost must be determined from the project plans. This eligibility is to be in conformity with the reimbursement policy set forth in these regulations.

(e) **Reimbursement for engineering by facility staff, or a consultant engineer:** Relocation engineering may be accomplished by any of the following methods:

(i) by utilization of the facility owner's engineering staff;  
(ii) by the utilization of a consultant engineer selected by the facility owner under a contract that shall be administered by the facility owner; or  
(iii) by utilization of the department's consultant engineer selected by the department for project design, the contract may be administered by the department with the consent of the facility owner.

(iv) If a highway project is abandoned, postponed, delayed, or substantially revised and the facility owner's engineering is determined to be ineligible for reimbursement, the

relocation design costs shall be borne by the facility owner, and on a schedule which would insure that the facilities relocation would be completed in a timely manner.

(v) If the project should be abandoned, postponed, or delayed by the department, the facility owner is entitled to be paid for actual design costs but only if the facility owner was eligible for reimbursement.

[17.4.2.21 NMAC - Rp, 17 NMAC 4.2.21, xx/xx/20xx]

#### **17.4.2.22 FACILITIES RELOCATION ESTIMATES:**

**A. Developing and recording costs:** Facility owners shall develop a cost estimate for engineering and construction of facility relocations. Engineering for relocations eligible for reimbursement using federal funding shall be stamped by a New Mexico professional engineer and in sufficient detail to permit analysis and evaluation of all anticipated costs. All such costs shall be recorded by means of invoices in accordance with an approved work order system except when another method of developing and recording costs, such as a lump-sum agreement, has been approved by the department and the FHWA.

(1) Each facility shall keep its invoicing system or other approved accounting procedure in such a manner as to show the nature of each relocation, the total costs, and the source of cost. Each facility owner shall conform to the requirements of the federal aid policy guide on federal aid projects and the department's estimate/billing guide.

(2) The facility owner who has received authorization to proceed with their installation/relocation shall strictly adhere to performing the work in accordance with the approved plan. No deviation from the plans, without prior written approval from the department, shall be allowed. If any significant revision from the approved work is performed, reimbursement therefor shall be limited to costs covered by a written change or extra work order approved by the department, FHWA or both prior to the performance of the revision.

#### **B. Betterments:**

(1) The department will not pay for the cost of any betterments to the facility being replaced or relocated, except for the following known circumstances:

- (a) required by the department; or
- (b) replacement devices or materials that are of equivalent standards although not identical; or
- (c) replacement of devices or materials no longer manufactured with next highest grade or size; or
- (d) required by law under governmental and appropriate regulatory commissions code; or
- (e) required by current design practices regularly followed by the company in its own work, and there is a direct benefit to the highway project.

(2) The total of all betterments resulting under the provisions of this regulation shall not exceed the total costs of relocation.

[17.4.2.22 NMAC - Rp, 17 NMAC 4.2.21, xx/xx/20xx]

#### **17.4.2.23 NMDOT CONSTRUCTION PROJECT FACILITY RELOCATIONS AND REIMBURSEMENT:**

**A. Invoicing and buy America requirements:** All invoicing for facility relocations eligible for reimbursement shall meet the requirements set forth in Title 23 United States Code, Section 313 and the Code of Federal Regulations (CFR), 23 CFR 635.410, and any other applicable regulations and statutes.

**B. Reimbursement eligibility:** A facility owner seeking reimbursement for relocating shall provide documentation to substantiate the right to occupy public or private land affected by proposed highway construction. The department will not reimburse a facility owner for any facility relocation occasioned by the construction of a highway project unless the facility owner demonstrates a right to compensation. Documentation shall include copies of any land use conveyances such as deeds, easements, permits, land use agreements and any other acceptable documentation providing for transfer, sale and use of land, including a claim for prescriptive rights or adverse possession. Facilities located within existing rights-of-way are not eligible for reimbursement unless the facility occupies the right-of-way under a joint use agreement, issued and approved by the department, which authorizes reimbursement issued and approved by the department.

**C. Public and private facilities:** Facilities identified for relocation or removal from the right-of-way shall be handled in accordance with the terms of the New Mexico public highway utility permit or use and occupancy permit and this regulation. The relocation of a private utility facility, situated on private land and not

dedicated to public use, is to be handled as a right-of-way taking consideration. Damages for private utility relocations shall be assessed and paid during the acquisition process. A private utility facility on public right-of-way shall be handled in accordance with terms of the applicable permit and this regulation.

**D. Other reimbursements:** Once facilities have been relocated on any highway project as authorized by the department, and a revision or change in plan on the same highway project requires an additional complete or partial relocation, and the department directs the facility to relocate all or some of their facility by written instruction, the additional complete or partial relocation costs are reimbursable to the facility owner by the department.

**E. Relocations at facility owner's cost:** Failure to reimburse the department as required will result in the department enforcing Subsection M of 17.4.2.13 NMAC. All costs associated with highway construction delay claims caused by a facility owner and paid by the department shall be reimbursed to the department by the facility owner within 90 days of receipt of a reimbursement request.

(1) Regardless of the cost responsibility for a relocation, any additional relocations required due to errors, omissions or faulty workmanship performed by the facility owner, due to failure to complete the relocation in accordance with the adjustment agreement, permit application, facility relocation plans, specifications, and contract documents, the facility owner shall make any correction required as directed in writing by the department. Remedial work will be at the sole expense of the facility owner, including administrative costs incurred by the department pertaining to the remedial work.

(2) On projects where overhead utilities that occupy public right of way have to be buried because of safety, environmental, cultural resource, or highway construction considerations, such relocation from overhead to underground shall be performed at the expense of the utility owner.

**F. Special districts, municipalities and counties:** Pursuant to Section 67-8-21 NMSA 1978, financial assistance may be provided by the department to special districts, municipalities and counties to relocate utilities if they can demonstrate they are unable to pay for the relocation costs themselves.

(1) **Request for Assistance** Special districts, municipalities and counties that do not have the necessary financial resources to perform relocations may enter into a utility cooperative agreement with the department. The request for assistance should be explicit in terms of the need to relocate utilities and the need for financial assistance. The request must also be specific as to whether the need is for engineering and design services, relocation construction or both. Such assistance may be agreed to as follows and all requests should include the following as a minimum:

(a) a written request for hardship assistance by an authorized representative of the utility;

(b) letter of transmittal, along with the following items:

(i) copies of utility permits or other instruments authorizing the placement of utilities in their present location;

(ii) resolution by the appropriate governing body regarding the need to relocate utilities and the need for financial assistance, pursuant to relevant state statutes;

(iii) financial statement that is current and sufficiently detailed for the department to perform an analysis and make an informed decision regarding the entity's financial condition;

(iv) current fiscal year budget as required by the department.

(2) Financial assistance may be approved after the provisions of this regulation have been fulfilled and after the department issues an official finding.

(3) In the event the department's project is one hundred percent state funded, the department shall then make such a determination and may at its discretion fund the relocations with state funds.

(4) the relocation will be included as part of the department's highway construction contract let by the department and as agreed to by the special districts, municipalities or counties. The facility owner's engineering staff or a consultant engineer engaged by the special districts, municipalities, counties, or the department must prepare a construction plan assembly that provides adequate location plans and profiles, structure installation details, technical specifications, and other plans and details appropriate to the type of facility being relocated.

(5) The department shall prepare a written contract which includes the administrative terms of the contract, definition of the scope of the work, clauses for liquidated damages, clauses for labor relations, materials and construction performance specifications, bidding documents with bid unit tabulation sheets, materials quality certifications, special provisions, if any, and other contractual arrangements.

[17.4.2.23 NMAC - Rp, 17 NMAC 4.2.19, xx/xx/20xx]

**17.4.2.24 RIGHT-OF-WAY DISPOSITION:**

**A. Replacement right-of-way:** The department and the FHWA may approve the acquisition of replacement right-of-way if the facility has the right of occupancy in its existing location because it holds a fee interest, an easement or other real property interest, and the damaging or taking is compensable in eminent domain, and is necessary to meet the requirements of the highway project. Such replacement right-of-way shall only be allowed where no change to the project for the facility's existing right-of-way, being transferred to the department for highway purposes, is made.

(1) Any replacement right-of-way being paid with state or federal funds shall be evaluated as to fair market value by a qualified and licensed New Mexico real estate appraiser. A written appraisal shall be approved by the department prior to acquisition.

(2) Acquisition of replacement ROW by the department on behalf of the facility owner may occur when the facility owner demonstrates that it is not staffed to accomplish the acquisition or consultant services are prohibitively expensive or unavailable. Assistance for acquisition of replacement ROW shall be in accordance with Paragraph (1) of Subsection E of 17.4.2.19 NMAC. Acquisition by the department on behalf of the facility owner shall coincide with department acquisition functions.

**B. Joint use of right-of-way:** When a facility occupies an easement or other property interest that is compensable under eminent domain laws, and the department's highway project will envelop the facility's interest, the following regulation shall apply:

(1) If the facility is in physical conflict with proposed highway construction features, the facility owner may opt to vacate the department's newly acquired ROW, obtain replacement ROW and relocate its facility to the newly acquired facilities corridor/easement. All eligible costs including engineering, relocation, and replacement easement costs incurred by the facilities in this situation are reimbursable when properly documented and supported. If the facility owner opts to relocate within the newly acquired ROW, they shall be reimbursed for the costs for relocation and obtain a permit for their facilities and will forfeit future reimbursements.

(2) If the facilities do not conflict with proposed highway construction features and no relocation is necessary and the department has acquired their property interest, they shall remain in place. When it becomes necessary to relocate the facilities, the department shall reimburse the facility owner for all eligible expenses incurred for replacement right-of-way and relocation construction. This one time future reimbursement obligation shall be documented by the issuance of a joint use agreement.

[17.4.2.24 NMAC - Rp, 17 NMAC 4.2.22, xx/xx/20xx]

**17.4.2.25 HIGHWAY CONSTRUCTION PROJECT DOCUMENTATION:**

**A.** Prior to commencing work the facility owner shall submit the following documentation to the NMDOT utility bureau:

(1) four fully executed copies of the utility adjustment agreement if eligible for reimbursement, NMDOT form A-366;

(2) four fully executed copies of the New Mexico highway utility permit application or use and occupancy permit application, NMDOT for each crossing and each longitudinal run;

(3) four fully executed copies of the joint use agreement (if applicable), NMDOT form A-421;

(4) one (1) copy of the cost estimate; and

(5) one (1) copy of land use documents.

**B.** In addition to the documents required in Subsection A above, facility relocation as part of a highway construction project shall be documented as follows: An itemized cost estimate with complete relocation construction plans stamped by a New Mexico Professional Engineer for the highway construction plan assembly must be submitted for a Utility cooperative agreement. The department will request funding from the facility owner prior to NMDOT project production submittal for the total cost of construction and program the overall facility relocation as non-participating costs. The facility owner must also provide complete installation specifications, the list of bid items must be numbered to adhere to the department's approved list. The facility construction will be incorporated into the work performed by the department's contractor as part of the complete roadway work contract.

[17.4.2.25 NMAC - Rp, 17 NMAC 4.2.23, xx/xx/20xx]

**17.4.2.26 AUTHORIZATION TO CONSTRUCT:**

**A. Authorization prior to project construction:** After review and approval of relocation documents, authorization to proceed with facility relocation or installation prior to project construction shall be provided to the facility owner by the department's state utility engineer or designee, and shall detail the specific



authorization being provided, including authorizing the facility to commence construction in accordance with the approved relocation plans. The facility owner must obtain a traffic control roadway work permit from the district office. Facility owners shall notify the department in writing no less than five days in advance of the date their installation or relocation construction will commence. All authorizations to relocate shall require close coordination between the facility owner and the department to verify placement and of facilities and start and completion dates.

**B. Utility ramp up time:** For projects that have a pre-construction utility ramp up time for relocations, the facility owner must relocate during the scheduled ramp up time. Penalties may be assessed to any facility owner that does not complete relocations during the scheduled ramp up time.

**C. Adherence to approved plans:** The facility owner who has received authorization to construct and an approved work permit from the district office for their installation/relocation shall strictly adhere to performing the work in accordance to the approved plans. No deviation from the plans, without prior written approval from the department, shall be allowed or reimbursed.

**D. Verbal authorizations permitted:** In urgent or emergency situations, verbal authorizations for facility construction to commence may be made by the department. On federal aid projects, concurrence from the FHWA shall be secured and documented by a memo to file prior to verbal authorization to proceed. The facility owner shall notify the state utility engineer in writing of a grant of verbal authorization, as undocumented authorizations may preclude reimbursement.

**E. Inspection of utility relocations:**

(1) Inspections are the sole responsibility of the facility owners for the accuracy of relocation work, including, but not limited to, surveying and staking performed by its employees or the facility owner's contractor's employees. It is also the sole responsibility of the facility owner to do all necessary inspections to ensure the integrity of facility construction, quality of materials installed, construction methods, testing, and compliance with industry standards.

(2) The department's district staff will verify that facility construction is performed in accordance to approved relocation or installation plans.

(3) Upon completion of the relocation work, the facility owner shall notify the department's utility bureau in writing and submit As-built drawings in accordance with Paragraph (7) of Subsection A of 17.4.2.13 NMAC.

**F. Preconstruction conferences:** When relocation is to be performed concurrent with highway construction, or if the relocation is not completed when the department's contractor is scheduled to begin highway construction operations, a separate utility preconstruction conference will be held. The conference shall be called by the department's highway project manager and all affected facility owners shall be invited to attend. The scheduling of the facility's relocation work shall be discussed and a sequence of construction developed to assure completion of facilities relocation work as expeditiously as possible, without delay or conflict to the department's contractor. Any highway contractor delay claims paid by the department due to unreasonable actions or omissions by the facility owner or contractor shall be reimbursed to the department by the facility owner. Any such actions or inactions shall be fully documented by department personnel so as to substantiate the department's reimbursement claims against the facility owner.

[17.4.2.26 NMAC - Rp, 17 NMAC 4.2.24, xx/xx/20xx]

**17.4.2.27 BILLING AND AUDIT REQUIREMENTS:** Payment to facility owners will be made when the facility owner's invoices comply with state and federal requirements including MAP 21 Buy America, and must be in sufficient detail so that each item is clear and its cost correlates to the cost estimate provided before for the relocation work. Invoices received prior to the department's distribution of an authorization letter will be rejected. The utility which has received authorization to proceed with their installation/relocation shall strictly adhere to performing the work in accordance with the approved plans. No deviation from the plans, without prior written approval from the department, shall be allowed. If any significant revision from the approved work is performed, reimbursement shall be limited to costs covered by a written change or extra work order approved by the department prior to the performance of the revision. It shall be within the department's discretion to audit billings prior to reimbursement. Invoices that are inadequate or inaccurate shall be returned with appropriate correspondence to the facility owner.

**A.** Facility owners may invoice every 30 days on reimbursements that exceed one hundred thousand dollars (\$100,000.00), but shall only include actual costs incurred; billings shall be identified as "first partial," "second partial," and so forth until the facility owner submits a "final" bill.

**B.** It shall be the responsibility of the facility owner to ensure that final billings are submitted for payment within 90 days of completion of the facilities relocation work. Failure to submit billings within the 90 day

period may result in a penalty being assessed against the facility owner for five hundred dollars (\$500.00) for amounts due the facility or twenty-five thousand dollars (\$25,000.00) or less, and two and one-half percent in interest for amounts due the facility owner that exceed twenty-five thousand dollars (\$25,000.00).

C. Any reimbursable amounts for facilities work that remains outstanding (unpaid) for a period of one year from the date of completion of facilities relocation work shall be forfeited by the facility owner if the facility owner has failed to submit billings as set forth herein. In such a situation, the department will dis-encumber the funds previously authorized for reimbursement and such funds may revert to the state road fund.

D. When the facility owner performs reimbursable relocation work, all records and accounts relating to the specific highway project are subject to audit by representatives of the state of New Mexico and the federal government for a period of three years from the date of final payment.

[17.4.2.27 NMAC - Rp, 17 NMAC 4.2.25, xx/xx/20xx]

**17.4.2.28 RESOLUTION OF DISPUTES:** In the event that a dispute arises between the department and the facility owner regarding reimbursement eligibility, replacement easement or construction operations, or other similar disputes, the facility owner shall first give written notice of the dispute to the state utility engineer. The parties shall then endeavor to resolve the dispute in good faith with department staff more directly involved. If such good faith efforts fail, the facility owner shall submit a written request to the state utility engineer for a formal hearing within 30 days of the state utility engineer's decision giving rise to the dispute. Within a reasonable time, taking into consideration the nature of the dispute, a public hearing shall be scheduled by the department and a hearing officer appointed to conduct the hearing. The hearing officer's decision shall be final and shall enter a written order containing findings and conclusions, which shall be served upon all parties. Any party aggrieved by an order of the hearing officer may appeal to the First Judicial District Court, Santa Fe County, for an administrative review pursuant to Section 67-8-19 NMSA 1978, as amended and Rule 1-074 NMRA. A dispute involving eligibility for reimbursement or the amount of such reimbursement shall not be grounds for a delay in making an ordered relocation. The facility owner must perform the relocation as ordered, pending the resolution of the dispute.

[17.4.2.28 NMAC - Rp, 17 NMAC 4.2.26, xx/xx/20xx]

**17.4.2.29 WAIVERS FOR THE PUBLIC GOOD:** The secretary of the department, at their discretion, may waive any regulation herein, if such waiver will not violate any state statute or federal regulation, and has been determined to be for the public good. The secretary shall appoint a three member committee, typically the district engineer and a representative from the secretary's office along with one member which must be from the department's office of general counsel, to consider the waiver and prepare an appropriate justification.

[17.4.2.29 NMAC - Rp, 17 NMAC 4.2.27, xx/xx/20xx]

**17.4.2.30 INSTALLATION OF WIRELESS TELECOMMUNICATION AND BROADBAND FACILITIES AND FIBER-OPTIC CABLE:** For guidance on the use and occupancy of telecommunications, broadband and fiber optic facilities within department-owned ROW, refer to the BROADBAND and TELECOMM MANUAL (BbTM), which is incorporated by reference into this regulation. The BbTM may be amended, deleted or added to by the department in its sole discretion. The BbTM establishes the framework for accommodating and controlling access of fiber optic, wireless telecommunications, and broadband facilities, small or micro cell facilities, wireless support structures such as vaults, pedestals, control boxes, and any other necessary equipment within department-owned ROW and state-owned property.

A. The telecomm facilities owner shall be responsible for compliance with industry code, the conditions and/or special provisions specified in the use and occupancy permit, applicable statutes and regulations of the state of New Mexico, and regulations of the U.S. department of transportation.

B. The BbTM shall apply to all publicly and privately owned facilities that are to be accommodated or relocated within the rights-of-way of highways, roads or streets under the jurisdiction of the New Mexico department of transportation.

C. Applicant will apply for a permit for each separate location for which applicant desires to locate or relocate its facilities and abide by the terms of the BbTM.

D. Prior to commencing any work on the highway right-of-way or state-owned property, the applicant shall have applied for and obtained an approved use and occupancy permit from the department and a work permit issued from the department's district traffic engineer or designee for the applicable route. Each permit shall be in accordance with the NMDOT State Access Management Manual (SAMM) and the NMDOT BbTM current edition. Applicant shall apply for permits using the department's standard electronic permitting format known as **POSSE LMS E-Permit Platform**.

**E.** The BbTM sets forth the provisions for accommodation and relocation of facilities on state and federal ROW while ensuring safety for the traveling public.

**F.** When industry codes prescribe a higher degree of protection for the traveling public and the Department than provided for in the accommodation procedures set forth in this regulation and the BbTM, the facility owner shall comply with such codes.

**G.** Laws and regulations: facility owners installing or owning facilities within the department's right-of-way shall comply with industry code and the provisions of these regulations. In addition, all construction and maintenance methods used within the highway right-of-way shall be performed in accordance with current BbTM and the *Standard Specifications for Highway and Bridge Construction*. If there is a conflict between this regulation, the BbTM, and the *Standard Specifications for Highway and Bridge Construction*, the more stringent shall prevail. Unapproved or unsatisfactory work performed by the utility or the utility's contractor or subcontractor shall be corrected or reconstructed at the facility owner's cost upon written notification by the department to the facility owner.

**H.** Entities covered by this rule shall be responsible for the design, construction, and maintenance of all facilities installed within department property and rights-of-way. All elements of these facilities are subject to review and approval by the department, particularly the materials, location and method of installation. Entities are responsible for, and will provide all measures as required to preserve the safe and free flow of traffic, structural integrity of the roadway or highway structure, ease of highway maintenance and appearance of the highway, resulting from their installation.

[17.4.2.30 NMAC - Rp, 17 NMAC 4.2.30, xx/xx/20xx]

**HISTORY OF 17.4.2 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SHC 71-1, Regulations, Policy and Procedure Governing Occupancy of State Highway Department System Right of Way by Public Utility Facilities, filed 3/10/71.

**HISTORY OF REPEALED MATERIAL:** 17 NMAC 4.2 - Requirements For Occupancy Of State Highway System Right-Of Way By Utility Facilities filed xx/xx/xxxx, Repealed xx/xx/20xx.

**OTHER:** 17 NMAC 4.2 - Requirements For Occupancy Of State Highway System Right-Of Way By Utility Facilities filed xx/xx/xxxx, Replaced by 17.4.2 NMAC - Requirements For Use And Occupancy Of Department Of Transportation Property And Right-Of-Way effective xx/xx/20xx.