

RULES AND REGULATIONS FOR ACCOMMODATING UTILITY FACILITIES
WITHIN PUBLIC FREEWAY RIGHTS-OF-WAY

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1.0 AUTHORITY

- 1.1 The following regulations are promulgated to administer the Department's policy for accommodating utility facilities within Freeway rights-of-way pursuant to 23 CFR 645.201 et seq. and RIGL Sections 24-8-34, 24-10-2 and 24-10-3.
- 1.2 The purpose of these regulations is to prescribe conditions for the regulation of utility facilities within Freeway rights-of-way.

2.0 DEFINITIONS

- 2.1 **APPLICANT**: Any individual, firm, corporation, partnership or agency, public or private, that has filed a Freeway Utility Permit Application.
- 2.2 **APPLICATION**: Freeway Utility Permit Application.
- 2.3 **DEPARTMENT**: The Rhode Island Department of Transportation.
- 2.4 **DIRECTOR**: The Director of the Rhode Island Department of Transportation, whose address is Two Capitol Hill, Room 210, Providence, Rhode Island 02903.
- 2.5 **EASEMENT**: A nonpossessing interest held by one person in land of another whereby the first person is accorded partial use of such land for a specific purpose. An easement restricts but does not abridge the rights of the fee owner to the use and enjoyment of his land.
- 2.6 **FREEWAY**: A highway, and its associated ramp system, with full control of access as defined in AASHTO Standards and as listed on the attached Exhibit A.
- 2.7 **LEASE**: A contract, written or oral, by which possession of land and/or a building is given by the owner to another person for a specified period of time and for the rent specified.
- 2.8 **LICENSE**: A personal privilege to do so some act on the land of another.
- 2.9 **MAINTAINER**: Any individual, firm, corporation, partnership or agency, public or private, that enters into an agreement with the Department to maintain a utility facility permitted under these regulations.

- 2.10 **OWNER**: Any individual, firm, corporation, partnership or agency, public or private, that owns a utility facility permitted under these regulations.
- 2.11 **PERMIT**: Freeway Utility Permit. All permits shall include temporary or permanent easements, or both, for use of State property.
- 2.12 **UTILITY FACILITY**: The term "utility facility", as used herein, is defined in 23 CFR 645.207. In general, it applies to any privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any substantially owned or controlled subsidiary. For the purposes of this part, the term includes those utility-type facilities which are owned or leased by a government agency for its own use, or otherwise dedicated solely to governmental use. The term utility includes those facilities used solely by the utility which are a part of its operating plant.

3.0 GENERAL RESTRICTIONS

- 3.1 **PERMIT**: A utility permit is required for the installation of any Utility Facility within a Freeway right-of-way, the process for which is specified in Section 4.
- 3.2 **TRANSVERSE INSTALLATIONS**: Transverse installation of utility facilities will be permitted only where there is no prudent alternative to the installation of said facility within a Freeway. Said installation shall be as close to perpendicular as possible to the Freeway alignment, and in all cases shall be limited to longitudinal distances of less than 1,000 feet. Said installation shall not endanger the safety of the motoring public and shall not adversely affect the Freeway. Any above ground structure shall be placed at a safe distance from the shoulder as determined by the Department and outside the clear zone as defined in the American Association of State Highway and Transportation Officials "Road Design Guide." Access to said installation will only be permitted as specified in Section 3.4.
- 3.3 **LONGITUDINAL INSTALLATIONS**: Longitudinal installation of utility facilities within a Freeway right-of-way are permitted only when there is no feasible or prudent alternative to the installation of said facility.

Installations are to be permitted only in close proximity to the Freeway line and outside the clear zone, as defined in The American Association of State Highway and Transportation Official "Road Design Guide". Installation in the median area will generally be discouraged. Access to said installations will be permitted as specified in Section 3.4. A utility access control permitted as specified in Section 3.4. A utility access control line will be established between the proposed utility installation and the through roadway ramps. Service connections to adjacent properties shall not be permitted from within the utility strip. Where such longitudinal installations are requested, the utility owner must in each case show to the RIDOT's satisfaction:

- (a) That the accommodation will not adversely affect highway and traffic safety.
- (b) That alternate locations are not available or cannot be implemented at reasonable cost, from the standpoint of providing efficient utility services in a manner conducive to safety, durability, and economy of maintenance and operations; that the accommodation will not adversely affect the design, construction, operation, maintenance or stability of the freeway; and that it will not interfere with or impair the present use or future expansion of the freeway.
- (c) That disapproval of the use of the State right-of-way would result in the loss of productive agricultural land, or loss of productivity of agricultural land, if any. In this case, the utility must provide information on the direct and indirect environmental and economic effects of such loss, which effects will be evaluated and considered by the RIDOT.
- (d) That the accommodation satisfies the conditions of "Access for Constructing and/or Servicing Utilities." (Policy Section 3.4)

3.4 **ACCESS:** Access for construction and/or servicing a Utility Facility within a Freeway line should be limited to access via:

- (a) frontage road, where provided
- (b) nearby or adjacent public roads and streets
- (c) trails along or near the Freeway right-of-way line connecting only to an intersecting road from any one point or all of which entry

may be made to the outer portion of the Freeway right-of-way.

A locked gate in the freeway fence line may be utilized to meet periodic service access needs pursuant to 23 USC 111. A gated point of access installed in an interstate highway freeway fence line will require the approval of the FHWA.

Access to the Utility Facility from the through roadways or connecting ramp shall not be permitted except for special cases where alternate locations and/or means of access are unavailable or impractical due to terrain and other environmental constraints and said use shall not adversely affect the safety of the motoring public or impair the Freeway.

- 3.5 **MAINTENANCE OF TRAFFIC**: The Permittee shall maintain any road affected by its work open to traffic and keep such road in a condition that shall safely and adequately accommodate such traffic. The Permittee shall furnish, erect and maintain all traffic control including barricades, warning signs, delineators, flaggers and pilot car in accordance with the "Manual on Uniform Traffic Control Devices for Streets and Highways", as amended, subject to monitoring by the Department. The Permittee shall submit for the RIDOT approval, a Traffic Control Plan for all utility work which would have any effect upon freeway traffic.

This protection will be maintained until the project has been completed.

- 3.6 **PROTECTION FROM SUITS**: As a condition of receipt of a permit, the Permittee shall defend, indemnify, protect and save harmless the State and its agents, servants and employees from and against any and all suits, claims, losses, demands or damages of whatever kind or nature arising out of the issuance of said permit or claimed to arise out of any act, error or omission of the Permittee, its agents, servants and employees in the performance of work covered by the permit. A performance bond and certificates of insurance shall be required. The performance bond shall be obtained by the Permittee and submitted to the RIDOT prior to the Permittee initiating utility work.
- 3.7 **RELOCATION**: It will be the responsibility of the Maintainer to accomplish any relocation of the Utility Facility at its expense. Any such relocation shall be subject to review and approval by the Department. If a relocation is required by the Department, the Maintainer will receive due notice and must comply with the relocation with all deliberate speed.
- 3.8 **MAINTENANCE**: The Maintainer shall maintain the Utility Facility in a condition satisfactory to the Department which does not endanger the

safety of the motoring public and does not adversely affect the Freeway. The Department may perform emergency maintenance on the Utility Facility for which it shall be reimbursed by the Maintainer. In the event the Maintainer needs to perform routine emergency maintenance on the facility, the Department will be notified as soon as reasonably possible. Full coverage will be in place to cover liability claims against the Department and a new permit will be required. Should the Maintainer need to replace all or a portion of an existing utility, a new easement will be required only in the event that the work should extend beyond the limits of the original easement. Otherwise the Maintainer will be vested with the right to complete all work under the original grant of easement.

4.0 PERMIT PROCESS

- 4.1 **FILING**: Any Applicant seeking to install a Utility Facility within a Freeway shall do so by filing a Freeway Utility Permit Application with the Department's Division of Maintenance. At the time of such Application, the Applicant shall pay to the Department any fee required by statute. All Applications must also be signed by the Owner and Maintainer.
- 4.2 **COPIES**: Completed Applications must be accompanied by four copies of a preliminary plan showing the plan and profile view of the proposed facility as well a traffic control plan, both stamped by a registered professional engineer, and two (2) copies of a detailed discussion of all possible alternatives to the Freeway installation proposal. The profile plan shall be developed in accordance with the RIDOT Design Policy Memo 2.1.
- 4.3 **REVIEW**: After the Applicant has submitted the required documentation, the Application will be reviewed by the Department's staff.
- 4.4 **EASEMENT/LEASE/LICENSE AGREEMENTS**: During the review process, the Applicant must, at its own expense, provide any additional information relevant to the Application requested by the Department. In addition, the Owner must enter into either temporary and permanent easement agreements or a lease or license with the Department, in reference to its use of State property, unless such use is in reference to maintenance, repair, testing, operation, replacement, reconducturing, or upgrading that does not have an adverse impact on, or increase the area of the use of, the State right-of-way, or is a relocation required by the Department of existing Utility Facilities within Freeway right-of-way. In

no case shall this exception allow the use of an easement, lease or license by any entity other than the Owner without the prior written agreement of the State.

- 4.5 **NEPA:** Any Application within the jurisdiction of the National Environmental Policy Act, as amended, shall be reviewed by the Federal Highway Administration. The approval of utility installations along or across Freeway right-of-way meets the criteria for a categorical exclusion under 23 CFR 771.117; however, any action which normally would be classified as a categorical exclusion but may involve unusual circumstances will be evaluated on a case-by-case basis per 23 CFR 771.117(b).
- 4.6 (a) **TRANSVERSE FREEWAY CROSSING:** In the case of an Application for a transverse Freeway crossing the Chief Engineer of the Department may grant or deny the Application after considering the recommendations of the Departmental staff personnel.
- (b) **LONGITUDINAL UTILITY INSTALLATION:** In the case of any Application for a longitudinal utility installation, the proposal shall be forwarded to the Department Utility Advisory Committee for consideration. A majority vote from committee members in favor of the installation will be required in order for the committee to recommend approval. Upon written recommendation from the Utility Advisory Committee, the Chief Engineer may authorize approval or denial of the requested utility permit.
- 4.7 **DECISION:** A decision by the Chief Engineer will be rendered within forty (40) days of receipt of a completed Application by the Maintenance Division, and any additional information requested by the Department.
- 4.8 **CONDITIONS AND BOND:** As a result of the Departmental staff review and the action of the Chief Engineer, the Application will be either approved as submitted with standard conditions, approved with additional conditions or denied as submitted. The Applicant will be notified, by mail, of the decision. A performance bond issued by a company licensed to conduct business in the State of Rhode Island and in an amount sufficient to assure that all the terms and conditions of the permit granted by the Department of Transportation shall be obtained by the Applicant

and submitted to the RIDOT prior to the Maintainer initiating any utility work.

4.9 **APPEAL:** An Applicant dissatisfied with the decision of the Chief Engineer, may appeal to the Director. The appeal must be in writing and include a copy of the original decision and be submitted to the Director within fifteen (15) days of the rendering of the decision. The Director's decision will be made within thirty-five (35) days of receipt of the appeal. The Director's decision may be appealed to the Superior Court in accordance with the Administrative Procedures Act, RIGL Section 42-35-24.

4.10 **STATE PROPERTIES COMMITTEE:** All easements, leases or licenses are subject to the approval of the State Properties Committee pursuant to RIGL Sections 37-7-8 and 37-7-9 and therefore all permits are contingent on that approval.

5.0 COMPENSATION

5.1 Compensation for the installation of a utility facility will be determined by the Department of Transportation based upon the fair market value of the property utilized. In reference to municipalities and non-profit, Public Utilities Commission regulated utilities, it shall be the Department's recommendation to the State Properties Committee that fair market value be waived and no compensation be due.

5.2 Payment must be in the form of a certified check or money order made payable to the Rhode Island Department of Transportation. Cash will not be accepted.

6.0 SEVERABILITY

6.1 If any provisions of these rules and regulations or the Application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or Application of the rules and regulations which can be given effect, and to this end the provisions of these rules and regulations are declared to be severable.

7.0 EFFECTIVE DATE

7.1 These rules and regulations shall become effective twenty days (20) days after filing with the Office of the Secretary of State.

RHODE ISLAND DEPARTMENT OF TRANSPORTATION

I hereby certify the above is a true copy,

William D. Ankner, Ph.D.
DIRECTOR

EXHIBIT A

LIMITED ACCESS HIGHWAYS

I-95	CT S/L TO MA S/L
I -195	I-95 TO MA S/L
I-295	I-95 TO MA S/L
ROUTE 1	PROSSER TRAIL TO WAKEFIELD CUT-OFF
ROUTE 4	ROUTE 138 TO I-95
ROUTE 6	ROUTE 102 TO ROUTE 101
ROUTE 6	I-295 TO I-95
ROUTE 10	PARK AVENUE TO ROUTE 6
ROUTE 24	ROUTE 114 TO MA S/L
ROUTE 37	NATICK AVENUE TO POST ROAD
ROUTE 78	ROUTE 1 TO CT S/L
ROUTE 99	ROUTE 146 TO MENDON ROAD
ROUTE 114	I-195 TO FORBES STREET
ROUTE 138	ROUTE 1 TO ADMIRAL KALBFUS ROAD
ROUTE 146	I-95 TO RESERVOIR ROAD
ROUTE 146	ROUTE 146A TO MA S/L
AIRPORT CONNECTOR	I-95 TO POST ROAD
RED BRIDGE EXTENSION	WATERMAN STREET TO TAUNTAIN AVENUE