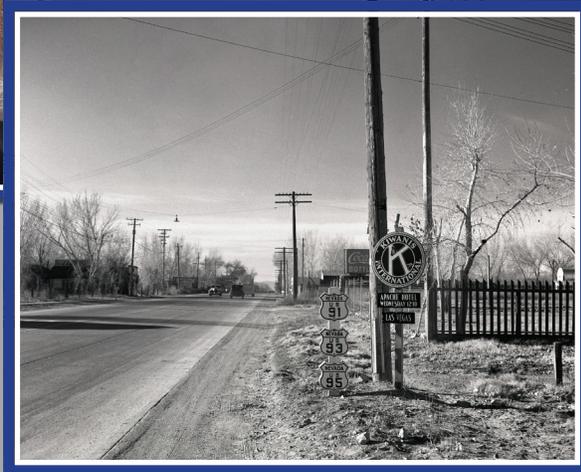
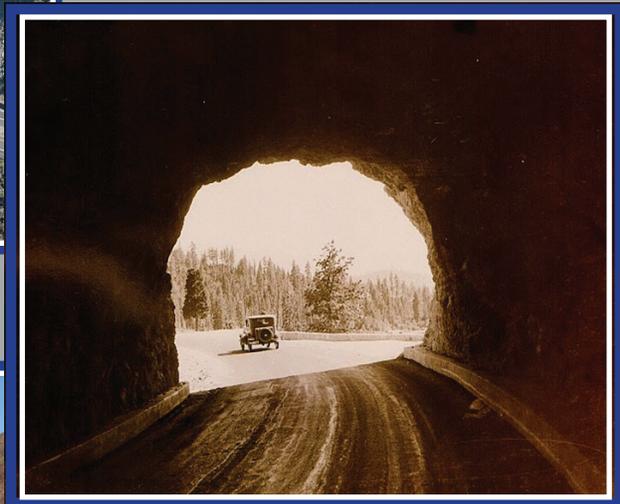
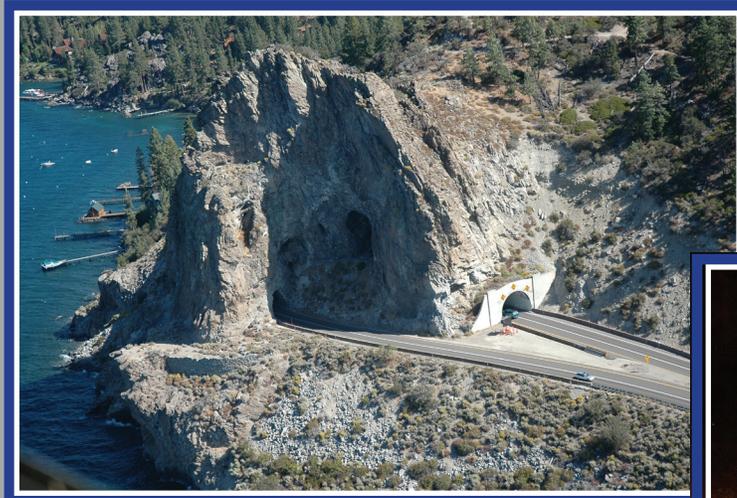


Right-of-Way Manual

2019

Section 7.500 Occupancy Permits





STEVE SISOLAK
Governor

STATE OF NEVADA
DEPARTMENT OF TRANSPORTATION

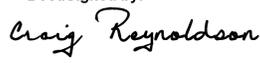
Right-of-Way Division
1263 S Stewart ST
Carson City, NV 89712

KRISTINA SWALLOW, P.E., *Director*
In Reply Refer to:

June 21, 2022

The following section 7.500 on Right-of-Way Occupancy Permits is intended to be a supplemental to the Nevada Department of Transportation Right-of-Way Manual 2019 edition. This supplemental to the Right-of-Way Manual has been approved by the FHWA and supersedes any previous version.

Sincerely,

DocuSigned by:

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Craig Reynoldson
Chief, Right-of-Way Agent

7.500 RIGHT-OF-WAY OCCUPANCY PERMITS

7.501 Purpose

To establish procedures for the control, preparation and issuance of permits for the occupancy of state highway right-of-way.

7.502 Authority, Rules and Regulations

The authority, rules and regulations governing Right-of-Way Occupancy Permits are delineated below:

- A. [Title 23, Code of Federal Regulations \(CFR\), Part 645 Utilities, Subpart A](#)
- B. [Title 23, Code of Federal Regulations \(CFR\), Part 645 Utilities, Subpart B](#)
- C. [Title 23, Code of Federal Regulations \(CFR\), Part 710 Right-of-Way and Real Estate](#)
- D. Nevada Revised Statutes (NRS) [408.210](#) and [408.423](#)
- E. Nevada Administrative Code (NAC) [408.403](#) through [408.557](#)
- F. Transportation Policies [TP 1-10-1](#) and [1-10-3](#)

7.503 Definitions

Encroachment:

Pursuant to [NRS 408.050](#), any tower, pole, pole line, wire, pipe, pipeline, fence, billboard, approach road, driveway, stand or building, crop or crops, flora, discharge of any kind or character or any structure which is placed in, upon, under or over any portion of highway rights-of-way.

Non-Revocable Permit:

Permits that are issued for utility relocations and/or adjustments under a prior right and for Line Extension and Service Agreements for NDOT projects that require power, telephone, water and/or gas services for a highway purpose.

Permittee:

The corporation(s), person(s), entities(s), or their Agent(s) to whom the permit may be issued.

Occupancy Permit:

Pursuant to [NAC 408.200](#), an agreement in which the director, pursuant to NRS 408.423, authorizes and approves the use by a utility of a specified portion of a highway or right-of-way.

Revocable Permit:

Right-of-Way Occupancy Permit issued pursuant to the provisions of [NRS 408.423](#), [NRS 408.210](#) and [NAC 408](#).

Right-of-Way Use:

Use of real property interests for non-highway purposes where the use is in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use will not impair the highway or interfere with the free and safe flow of traffic.

Temporary Occupancy Permit:

Permits which authorize activities within highway right-of-way on a temporary or intermittent basis for the commemoration of holidays, local celebrations, conducting sporting or special interest events that promote tourism or economic development, i.e., foot races; bicycle, motorcycle or automobile races; parades; film making; or any activities that may temporarily affect traffic; and do not meet the definition of *Encroachment* defined in NRS 408. The Traffic Engineer at the discretion of the District Engineer may issue these permits.

Terms and Conditions Booklet:

Current edition of the Terms and Conditions (relating to this section only) relating to Right-of-Way Occupancy Permits.

NDOT:

Nevada Department of Transportation.

Utility Facilities and/or Utilities:

Includes all privately, publicly or cooperatively owned lines and all connections thereto for facilities and systems for producing, transmitting or distribution of communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including fire and police signal systems, street lighting systems and television cable systems, which directly or indirectly serve the public or any part thereof. The term "utility" means the utility company, i.e., any person or private or public entity owning and/or operating utility facilities as defined in this paragraph, including any wholly owned or controlled subsidiary.

7.504 Policy

It is NDOT policy to limit the occupancy of state highway rights-of-way to only permittees specifically authorized by [NRS 408.423](#) and [NRS 408.210](#). [NRS 408.423](#) states in part, "No state highway or right-of-way shall be disturbed, dug up, crossed, encroached upon or otherwise used for the laying or re-laying of pipelines, ditches, flumes, sewers, poles, wires, approach roads, driveways, railways or for any other purpose, without the written permit of the director." [NRS 408.210](#) states the manner in which encroachments are to be removed. All approvals and installations shall be in accordance with [NAC 408](#) and all pertinent sections of the Utility, Right-of-Way Manual, and [Title CFR 23](#). All approved users of the right-of-way shall be covered by a permit or other form of written agreement, prepared by the Department.

7.505 Scope

Occupancy Permits shall only be issued for those utilities defined in Additional Requirements, [Section 7.506](#) below, including sidewalks, curbs, gutters, approaches and landscaping, or any other aesthetic type improvements upon application.

7.506 Additional Requirements

Permits for non-highway uses not exempted by [23 CFR §710.405\(a\)\(2\)\(i\) through \(iii\)](#) are subject to a Right-of-Way Use Agreement. Fair market value charges may be exempted by [23CFR §710.403\(e\)\(1\) through \(6\)](#).

Permits for non-highway use subject to a Right-of-Way Use Agreement include but are not limited to:

- Photography or filming for movies or commercials and not associated with photogrammetry, surveying or other engineering related activities.
- Permits for special events that do not include some aspect of travel in the right-of-way.
- Parking lots.
- Recreation and picnic areas.
- Commercial and private roadside stands.
- Vending operations.

These Right-of-Way Use Agreements must be coordinated with the appropriate Right-of-Way Section.

Access encroachments e.g., driveways on non-control of access highways are exempt from a Right-of-Way Use Agreement for the purposes of outlining an established right.

The determination whether locked gate access is highway use or not, and thus requires a Right-of-Way Use Agreement, shall be made by the Assistant Chief Right-of-Way for Permits on a case-by-case basis.

7.507 Responsibility

- A. The Right-of-Way Division is responsible for the initiation and revision of the policy and procedures relating to any occupancy of interstate and state highway right-of-way.
- B. The District Permit Coordinator is responsible for the control and processing of the “Application and Permit for Occupancy of Nevada Department of Transportation Right-of-Way” form (Form 725), the review of the application and

permit, and the Terms and Conditions Relating to Right-of-Way Occupancy Permits Manual. It is also the Permit Coordinator's responsibility to send the permit to the appropriate division for review and recommendation and to ensure that the Permittee receives a copy of the Terms and Conditions Relating to Right-of-Way Occupancy Permits booklet.

- C. The District Permit Coordinator is designated by the respective District Engineer and whose responsibility it is to receive and review permit applications for completeness of the applications in their respective District and may, at the discretion of the District Engineer, complete all those tasks, duties and responsibilities as directed. The responsibilities of the Permit Coordinator also apply to the Headquarters Permit Coordinator.
- D. The Headquarters Permit Coordinator is a representative assigned to the Right-of-Way Utilities Section in Carson City and responsible for the content of the "Terms and Conditions" booklet. The current booklet is made available on the NDOT website and shall be provided as a hard copy to the public upon request. Also, the Headquarters Permit Coordinator will review permits from Districts that require a specialized review, all permits on the Interstate and obtain [Federal Highway Administration \(FHWA\)](#) approval for those permits. The Headquarters Permit Coordinator is also responsible for informing applicants of the state's interest in the right-of-way and responsibilities of the applicant upon receiving underlying fee ownership (UFO) requests in accordance with [NAC 408.403](#).
- E. It shall be the responsibility of the District Engineer to review and approve or deny all permits within their District. Shall a permit be denied, the District Engineer will send the applicant a letter of explanation as to why the permit is denied.
- F. The Staff Specialist – Utilities, will be responsible for updating the "Application and Permit," and the "Terms and Conditions Relating to Right-of-Way Occupancy Permits" booklet as required.
- G. The District Encroachment Committee is personnel at the District level who have separate responsibilities to review the permits for roadway design, traffic engineering, cultural resources protection, maintenance, right-of-way and utility. The District Engineer in each District shall be responsible for designating personnel in their District who shall assume responsibility in each of these areas.

7.508 Procedures

- A. All applications and permits must be applied for at the appropriate District Office in which the encroachment is to take place. The District Permit Coordinator will schedule a desk audit appointment with the applicant within ten (10) working days from receipt of a permit request from the applicant. Prior to accepting the

application and permit the District Permit Coordinator will ensure that the following items are included in the permit packet, if applicable:

1. Fee – The appropriate fee will be collected based on the permit type outlined in the “Terms and Conditions Booklet” and in accordance with NRS 408.423. The fee outlined in the booklet is a minimum fee and is non-refundable. Any permit, regardless of the category, requiring a greater than normal amount of engineering, technical review or inspection may be charged actual cost based on the Department’s direct and related indirect costs. Local governmental entities (including general improvement districts, water districts, etc. when incorporated by an act of the State legislature) and other state agencies, when working on their own systems, and not performing work necessitated by or on behalf of a private development, are exempt from the fees. It is the responsibility of the PERMITTEE to demonstrate its qualification for exemption when questions arise.
2. Plans – The PERMITTEE must provide a detailed plan, drawings or maps to each permit application. Telecommunications facilities are subject to NAC 408.4398 and require four (4) sets of plans. No permits (except, residential driveways and minor improvements, at the discretion of the District Engineer) will be processed without detailed plans reviewed and stamped by a licensed engineer in the State of Nevada. Pursuant to NRS 625.095, licensure requirements of NRS 625 (Professional Engineers and Land Surveyors) do not apply to employees of private utility companies while they are engaged in work for those companies. The criteria for the submitted plans can be found in the “Terms and Conditions Booklet” and [NAC 408.427](#).
3. Traffic Control Plan – At the discretion of the District Engineer, a traffic control plan may be required for a permit. An approved traffic control plan must be submitted prior to commencement of work when one is required.
4. Traffic Impact Study – A Traffic Impact Study is required for all driveway and/or street permits, which serve major traffic generators, in accordance with the Department’s Access Management System and Standards. The traffic impact study for major traffic generators (100 or more vehicles per hour generated during peak hours) will be required and will contain the requirements set forth in the [Traffic Impact Study Requirements, Appendix “A” of the “Terms and Conditions Booklet”](#).
5. Drainage Impact Study – The Drainage Information Form in Appendix “B” of the “Terms and Conditions Booklet” must be submitted with the permit. A Drainage Impact Study may at the discretion of the District Engineer be required for any development or construction impacting drainage within

letter to address issues and return the revisions to the District Permit Coordinator. During this time, the forty-five (45) working day processing period will be suspended. Failure on the part of the applicant to respond within this timeframe will constitute a cancellation of the permit application.

- F. Once the revisions have been received from the applicant, the District Permit Coordinator shall have five (5) working days to compile, reconcile and notify the appropriate Divisions for re-review.
- G. The reviewers shall have ten (10) working days to re-review the application and provide the District Permit Coordinator with comments by the tenth day. An additional fifteen (15) working days will be added to the original forty-five (45) working day processing period.
- H. If FHWA review is required of the permit application, after Environmental Division approval is received, the Headquarters Permit Coordinator will prepare the permit package and transmittal letter to be signed by the Chief Right-of-Way Agent. The transmittal letter will include a request for either approval or denial of the permit application within ten (10) working days. Permits submitted to FHWA cannot be subject to the forty-five (45) working day processing period as NDOT can only request a ten (10) working day review from FHWA, not require it.
- I. Once the permit has gone through the review process and all the approvals have been obtained, the District Engineer or Assistant Director shall sign the permit for issuance or a denial letter within five (5) working days of presentation.
- J. The District Permit Coordinator will prepare the permit or letter for release within two (2) working days of the final signature. The applicant/permittee shall have forty-five (45) calendar days from receipt of the letter to return to NDOT any required bond or traffic control plan.
- K. All deviations from the proposed method of installation must have the written concurrence of the District Engineer and plans submitted to show the as-built condition. Any such deviation without said approval and plans would subject the permit to revocation.
- L. Should a conflict arise between NDOT and the applicant that appears intractable, the issue as written and agreed to by both parties shall be introduced into an established Conflict Resolution Process. The timeline requirements shall be suspended at that point and will resume upon conflict resolution.

7.509 Temporary Occupancy Permit

- A. Temporary occupancy permits are issued for traffic control issues associated to a special event, emergency repair work/access to a facility, surveying, potholing, exploratory soil bore, monitoring wells, movie/commercial filming. The duration

of these permits can range from 1 day to 1 year, but shall not exceed beyond 1 year without requesting FHWA approval for a permit extension. Activity that disturbs, excavates any soil or highway improvement shall be routed for appropriate division staff for review and include appropriate terms and conditions or other protections for the safe operation and highway facilities. Further, activity subject to environmental or stormwater review pursuant to the Terms and Conditions Relating to Right-of-Way Occupancy Permits must also be satisfied.

- B. The District Permit Coordinator will review the application to ensure that it is complete and that the application includes the event dates, appropriate law enforcement approvals and when applicable, the appropriate amount of Liability Insurance has been provided. An advanced planning meeting may be required for events such as film shoots and big bike events that have major impacts to the highway.
- C. The hours of work for the event and/or activity will be reviewed for approval by the District Permit Coordinator, taking into account the impacts on the flow of traffic.
- D. The traffic control plans will be reviewed by the District Permit Coordinator and may be reviewed by the Traffic Engineer if necessary.
- E. If the temporary permit impacts the Interstate system, the Environmental Services Division must provide an environmental clearance document and the Headquarters Permit Coordinator will be required to verify the necessary permit documents for completeness and provide notice to FHWA. Permits submitted to FHWA include adequate information to identify the location of the activity.
- F. Once the reviews have been completed and the application approved, the temporary permit will be issued to the permittee. The review and approval process shall take no more than ten (10) business days to complete.

7.510 Revocation of Permit

- A. Any installation of work performed under the terms of the permit must be completed within one year from date of approval by the Department. Only under special circumstances may an exception to the above completion date requirements be granted. Failure to comply with the above restrictions will further subject the permit to revocation. The Department of Transportation Headquarters Permit Coordinator and/or District Engineer shall diligently monitor the permittee to determine if the permit's terms have been violated and if revocation is warranted.
- B. Any member of the Department who is involved in the processing or inspection of the permit or permittee's work may initiate revocation procedures by a memorandum to the Director, attention: District Engineer. The memorandum

should contain all pertinent facts and documentation (photos if applicable) supporting the revocation charges. The District Engineer will review the facts and circumstances and submit their recommendations to the Director for a final determination.

7.511 Accounts Receivable

- A. Should it be determined that the permittee be required to reimburse the Department for inspection services, engineering assistance, work performed by the Maintenance Division or any other costs incurred by the Department relative to the permit, the Permit Coordinator will contact Right-of-Way Control for a unique work order number specific to the permit.
- B. Right-of-Way Control will contact the Accounting Division as soon as possible after the determination is made in order to set up the proper billing procedures and accounting records.
- C. The Accounting Division will be furnished a copy of the permit, pertinent correspondence and all necessary documentation to establish the basis of any charges assessed the permittee by the Department.

7.512 Illegal Encroachments

- A. When it has been identified that there is an illegal encroachment within the right-of-way, a 5-day notice (Form 703) shall be served in accordance with NRS 408.210. If the illegal encroachment still exists after the 5 days, then the Department may remove the illegal encroachment and bill the owner for the removal costs.

7.513 Block Wall Agreements

- A. When a property owner or company desires to construct a block wall instead of using the control of access fencing on the property line, upon approval from the Department, the property owner or company will be required to enter into a block wall agreement (Form 929 (company) or Form 929 (owner)) with the Department. The property owner or company will be responsible for the maintenance and or any repairs to the block wall.
 - 1. The District Permit Coordinator will draft the Block Wall Agreement using milepost station and offset reflected in the permit.
 - 2. The District Permit Coordinator will send the draft Block Wall Agreement, any exhibits, and a copy of the associated permit to the Staff Specialist - Utilities for accuracy verification of the draft agreement in relation to the permit.

3. Upon Staff Specialist review and approval, the Block Wall Agreement will be sent to OAG Transportation Division for draft review. Should the Staff Specialist require any corrections, the District Permit Coordinator will make the corrections and return the Block Wall Agreement to the Staff Specialist for another review prior to the agreement being sent to OAG Transportation Division.
4. Should OAG Transportation Division require any corrections, the District Permit Coordinator will make the corrections and forward the Block Wall Agreement to the Staff Specialist for a final draft review.
5. The draft Block Wall Agreement will be sent by the District Permit Coordinator to the Permittee for signature.
6. Upon receipt of the signed Block Wall Agreement from the Permittee, the District Permit Coordinator will send the Agreement to the District Engineer for signature.
7. Then the Agreement will be sent to OAG Transportation Division for signature.
8. Upon the OAG Transportation Division's signature, the Agreement will be sent to Staff Specialist for execution by Right-of-Way and the Director's Office.
9. Once the Agreement is fully executed with an agreement number, the Staff Specialist will send the Agreement to the District Permit Coordinator for recording.
10. After the Block Wall Agreement has been recorded, the original recorded agreement will be sent to the Staff Specialist for records retention. The District Permit Coordinator will provide a copy of the recorded agreement to the Permittee and upload the final agreement in IRWIN.

