

**ADOPTED REGULATION OF THE
DEPARTMENT OF TRANSPORTATION**

LCB File No. R135-98

Effective October 3, 2000

EXPLANATION – Matter in *italics* is new; matter in brackets ~~{omitted material}~~ is material to be omitted.

AUTHORITY: §§1-30, NRS 408.215.

Section 1. NAC 408.057 is hereby amended to read as follows:

408.057 “Clear ~~{recovery area} means that~~ *zone*” *means the* area of ~~{the}~~ *a* roadside within the right of way of the highway which must be kept clear of obstructions which are above the ground or mounted on the ground to allow a person to regain control of ~~{the}~~ *a* motor vehicle after it leaves the highway because the ~~{driver}~~ *person has* lost control of the *motor* vehicle.

Sec. 2. NAC 408.087 is hereby amended to read as follows:

408.087 “Cost of removal” means the money spent to remove a facility, including the cost of demolishing, dismantling, removing, transporting or otherwise disposing of ~~{that}~~ *the* facility and of cleaning the site so as to leave it in a safe, neat, *clean* and presentable condition.

Sec. 3. NAC 408.247 is hereby amended to read as follows:

408.247 “Salvage value” means:

1. The money received from the sale of ~~{a utility's}~~ *the* property *of a utility* because of and at the expense of a project; or
2. The value of the recovered material which is charged to the account of the utility if the material is retained for reuse ~~{}~~ *or recycling.*

Sec. 4. NAC 408.309 is hereby amended to read as follows:

408.309 1. A utility may be reimbursed for the costs of relocation if the facility was in place when the highway became a state highway. The reimbursement must include the costs related to any subsequent relocation ~~[or betterment]~~ of the ~~[original]~~ facility.

2. The costs related to any addition or betterment to the ~~[original]~~ facility are not eligible for reimbursement.

3. A claim for reimbursement must include a statement signed by an officer of the utility under penalty of perjury that the information set forth in the claim is accurate and complete and:

(a) Proof that the ~~[utility's]~~ facility was in place on or before the date the highway became a state highway; *or*

(b) Proof that the facility was located pursuant to *the provisions of* NRS, a franchise agreement or other agreement with the appropriate city or county before the highway became a state highway ~~;~~ *or*

~~—(c) A]~~ *and a* copy of ~~[any agreement referred to in responding to paragraph (b).]~~ *that agreement.*

Sec. 5. NAC 408.311 is hereby amended to read as follows:

408.311 Money received from ~~[the]~~ *this* state or *the* Federal Government and administered by the department may not be used to reimburse a utility for the costs of relocation if the utility occupies:

1. A highway or right of way for a highway granted pursuant to ~~[NRS 408.210 or]~~ an occupancy permit;

2. *An encroachment licensed pursuant to NRS 408.210;*

3. A highway, street or road pursuant to a franchise agreement or any other agreement with a local government which requires the utility to relocate because a project is funded solely with money received from ~~the~~ *this* state; or

~~3.~~ 4. A highway, street or road pursuant to a franchise agreement or any other agreement with a local government and the local government requires the utility to relocate its facility at the ~~utility's~~ expense *of the utility* even though ~~the remainder~~ *a portion* of the project is administered by the department.

Sec. 6. NAC 408.317 is hereby amended to read as follows:

408.317 1. Preliminary engineering activities relating to the relocation of a utility's facility which is eligible for reimbursement may be carried out by:

- (a) The ~~utility's engineers;~~ *engineers of the utility;*
- (b) An engineering consultant chosen by the utility, pursuant to a written contract administered by the utility, if the utility obtains the prior written approval of the department;
- (c) An engineering consultant, chosen by the department, at the request of and in consultation with the utility, if the department administers the contract; or
- (d) The department, if the utility requests the department to perform the engineering activities and the department determines that it can adequately perform the work.

2. If a utility does not have a sufficient number of qualified employees to carry out the purchase of the right of way, engineering or any other work relating to the relocation of its facility, any money which is received from ~~the~~ *this* state or *the* Federal Government for the project and administered by the department may be used to reimburse the utility for the money paid to engineers, architects and any other persons for engineering and other related services if the money for reimbursement is not based on a percentage of the cost of the relocation.

3. The utility and its engineering consultant shall enter into a written contract concerning the services to be provided and the fees and arrangements for those services. Money received from ~~the~~ *this* state or *the* Federal Government for projects may be used to pay the reasonable costs of those services provided pursuant to a written continuing contract if the work is performed regularly for the utility.

4. If the utility wishes to obtain the engineering services pursuant to a written continuing contract, it must first submit to the department:

- (a) The appropriate justification and information concerning the fees for those services; and
- (b) A copy of the contract.

5. If federal money is available for the project, the department will obtain the written approval from the Federal Highway Administration for any contract which is expected to exceed ~~[\$10,000.]~~ *\$25,000.*

Sec. 7. NAC 408.329 is hereby amended to read as follows:

408.329 1. The method used to determine the cost of relocation must:

- (a) Be approved by the department; and
- (b) Ensure accurate and complete billings of the reimbursable costs of relocation.

2. If the estimated reimbursable cost of relocation is:

(a) ~~[Less than \$25,000,]~~ *Not more than \$100,000*, the department and the utility may enter into an agreement for a payment in a lump sum upon the completion of the work without a verification of the cost by an audit; or

(b) ~~[Twenty five thousand dollars or more,]~~ *More than \$100,000*, the cost of relocation must, if possible, be determined on the basis of direct costs and related indirect costs accumulated in

accordance with an accounting system for work orders prescribed by the federal or state agency which regulates the utility.

3. If an accounting system for work orders is not prescribed by a federal or state agency, the department will review the ~~utility's~~ accounting system *of the utility* and, if necessary, assist the utility in establishing an accounting system for work orders.

Sec. 8. NAC 408.407 is hereby amended to read as follows:

408.407 1. The department may allow the transverse crossing and longitudinal encroachment of a state highway by a line of a private utility if the length of the crossing or encroachment is less than 1/2 mile ~~or~~ *(0.8 kilometer)*. A longitudinal encroachment of a state highway by a line of a private utility ~~which~~ *if the length of the crossing or encroachment* is more than 1/2-mile ~~long~~ *(0.8 kilometer)* must be proven by the owner of the utility to be in the public interest. The department will allow such an encroachment if the private line provides service to the general public or a significant segment thereof.

2. The owner of a private utility who wishes to place a longitudinal encroachment which is more than 1/2-mile *(0.8 kilometer)* long in the right of way of a state highway must file an application with the department. The application must include:

- (a) The service which will be provided by the utility;
- (b) The specific market or segment of the public which will be served;
- (c) The location or distribution of the segment of the public which will be served;
- (d) The basis for marketing the commodity or service conveyed; and
- (e) Any economic benefits which will accrue to this state or ~~its~~ *the* residents *of this state* if the application is approved.

Sec. 9. NAC 408.409 is hereby amended to read as follows:

408.409 1. A longitudinal installation of a utility's facility upon a state highway or right of way of a state highway must be made as far from the traveled way as possible.

2. The department hereby adopts by reference : ~~[the following publications of the American Association of State Highway and Transportation Officials:]~~

(a) "A Guide for Accommodating Utilities Within Highway ~~[Right of Way,]~~ *Right-of-Way,*" 1994 edition, ~~[which may be obtained from]~~ *and any subsequent edition issued by the American Association of State Highway and Transportation Officials, [444 N. Capitol Street, N.W., Suite 225, Washington, D.C. 20001,] which has been approved by the department for use in this state. Each new edition shall be deemed approved by the department unless the edition is disapproved by the department within 60 days after the date of publication by the American Association of State Highway and Transportation Officials. The department will review each edition issued after the 1994 edition to ensure its suitability for this state. The most recent edition that has been approved by the department may be obtained from the Department of Transportation, 1263 South Stewart Street, Carson City, Nevada 89712,* for the price of \$6. ~~[plus \$1.50 for shipping and handling.~~

~~—(b) "Roadside]~~

(b) *The "Roadside Design Guide," [1989 edition, which may be obtained from], 1996 edition, and any subsequent edition issued by the American Association of State Highway and Transportation Officials, [444 N. Capitol Street, N.W., Suite 225, Washington, D.C. 20001,] which has been approved by the department for use in this state. Each new edition shall be deemed approved by the department unless the edition is disapproved by the department within 60 days after the date of publication by the American Association of State Highway and Transportation Officials. The department will review each edition issued after the 1996 edition*

to ensure its suitability for this state. The most recent edition that has been approved by the department may be obtained from the Department of Transportation, 1263 South Stewart Street, Carson City, Nevada 89712, for the price of ~~[\$49.25.]~~ \$55.

3. The department will use the publications described in subsection 2 to determine whether the placement of a utility's facility which is mounted on the ground or an encroachment which is above the ground is acceptable or must be altered, or, if it cannot be altered, what measures must be taken to ensure highway safety.

4. If a utility's facility or other authorized encroachment is placed within any state highway, the utility or the owner of the encroachment shall restore all highway facilities, appurtenances, natural features and vegetation disturbed in the placement of the encroachment to a condition which is at least comparable to the condition which existed before the placement of the encroachment.

Sec. 10. NAC 408.411 is hereby amended to read as follows:

408.411 1. The department hereby adopts by reference the ~~following publications:~~

~~—(a) “Standard Specifications for Road and Bridge Construction,” 1986 edition, which may be obtained from the Department of Transportation, 1263 South Stewart Street, Carson City, Nevada 89712, for the price of \$20.~~

~~—(b) “Standard Plans for Road and Bridge Construction,” 1994 edition, which may be obtained from the Department of Transportation, 1263 South Stewart Street, Carson City, Nevada 89712, for the price of \$3.~~

~~—(c) “Manual on Uniform Traffic Control Devices,” 1988 edition, ~~[which]~~ and any subsequent edition issued by the Federal Highway Administration of the United States Department of Transportation which has been approved by the department for use in this~~

state. Each new edition shall be deemed approved by the department within 60 days after the date of publication by the Federal Highway Administration. The department will review each edition issued after the 1988 edition to ensure its suitability for this state. The most recent edition that has been approved by the department may be obtained from the ~~[Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402,]~~ *Department of Transportation, 1263 South Stewart Street, Carson City, Nevada 89712,* for the price of ~~[\$30.]~~ \$57.

2. All construction upon a state highway or within a right of way for a state highway must comply with the requirements set forth in the ~~[publications described in subsection 1.]~~ *“Manual on Uniform Traffic Control Devices,” adopted by reference pursuant to subsection 1.*

3. The department may approve a longitudinal installation of a utility’s facility upon the part of a freeway where access is controlled if:

(a) The placement of the ~~[utility’s]~~ facility outside that part of the freeway where access is controlled would damage or disrupt wetlands or remove agricultural lands used for the production of crops, or if no practical alternative is available and the right of way for the highway upon which the facility is located is not expected to be used for expansion of the ~~[facility;]~~ *highway;* or

(b) A private right of way is not available or the ~~[right of way or the costs]~~ *cost* of construction *of a private right of way* would be prohibitively expensive.

4. A utility which wishes to make a longitudinal placement of a facility upon the part of a freeway where access is controlled must:

(a) Submit a written request and evaluation, including the alternatives considered and the cost ~~estimates.~~ *estimate for each alternative.* The estimates must clearly demonstrate that the longitudinal encroachment is the most practicable and feasible of the available alternatives.

(b) Demonstrate that the longitudinal encroachment upon that part of the freeway would:

(1) Benefit the ~~utility's customers~~ *public* and the users of the highway; and

(2) Not adversely affect the use, operation, maintenance or expansion of the ~~facility.~~ *highway.*

5. The department will not approve a longitudinal placement of a facility upon the part of a freeway where access is controlled unless the facility will:

(a) Be located at or as near as possible to the limits of the control and as far from the roadway as practicable;

(b) Not be placed within the clear ~~recovery area~~ *zone* without taking appropriate measures to protect the users of the highway;

(c) Be constructed and maintained without allowing access from the main traveled way or connecting ramps of the freeway, if possible; and

(d) Be constructed and maintained in such a manner as to reduce significantly the hazard to or provide the maximum safety of the facility and the users of the highway if the facility fails.

6. The utility must submit to the department a plan for controlling traffic which:

(a) Allows access for construction and maintenance activities; and

(b) Protects the traffic on the freeway during those construction and maintenance activities.

7. The department will:

(a) Approve only facilities which require limited and infrequent maintenance for placement upon the area of a freeway where access is controlled.

(b) Not approve the placement of any facility from which service connections will be made except for a facility which is used exclusively for the highways.

(c) Except for aerial lines for communications, not approve the longitudinal placement of a facility located above the ground upon an area of the freeway where access is controlled. Such aerial facilities must be limited to the construction of a single pole which includes a vertical arrangement of conductors and cables.

8. As used in this section, “main traveled way” has the meaning ascribed to it in NAC 408.722.

Sec. 11. NAC 408.413 is hereby amended to read as follows:

408.413 1. Adequate warning signs and devices to control traffic must be installed ~~in the facility~~ *along the highway* and in the areas where construction or maintenance of the encroachment is performed in accordance with the “Manual on Uniform Traffic Control Devices,” ~~[1988 edition.]~~ *adopted by reference pursuant to subsection 1 of NAC 408.411.*

2. If the flow of traffic will be disrupted or other conditions at the site require, the utility shall submit a written plan for controlling traffic to the department for approval by the district engineer before any work may begin upon the right of way of the highway.

Sec. 12. NAC 408.427 is hereby amended to read as follows:

408.427 1. An application for an occupancy permit to place a facility or other encroachment on a state highway or within a right of way of a state highway must include:

(a) The highway alignment, *including the* centerline and right of way lines, mileposts ~~or~~ *and* highway engineering stationing ~~or~~ *in relation to the proposed facility or other encroachment;*

(b) Color coding, with a legend which indicates ~~the~~ :

- (1) *The facility to be installed ~~[]~~ in red;*
 - (2) *The facility to be removed, abandoned or adjusted ~~[]~~ in green; and*
 - (3) *The location of each existing facility in blue;*
- (c) Directional orientation, including arrows pointing north and tangent bearings which are drawn to engineering or architectural scale;
- (d) ~~[Widths,]~~ *The widths*, boundaries, property lines and significant topographic features of the right of way of the highway;
- (e) Profile or cross-section drawings indicating ~~[an elevation view of]~~ the proposed overhead or underground utility or drainage installations in relation to the highway; ~~[and]~~
- (f) The location of any existing facility if any change, extension or addition to the existing facility is proposed ~~[]~~; *and*
- (g) A map of the area where the proposed facility or encroachment will be located.*
2. The department will not authorize:
- (a) The placement of any encroachment which is not necessary for the development, use or enjoyment of the property adjacent to the highway or which is not otherwise clearly in the public interest; or
- (b) The placement of a monument within the right of way of a highway at the entrance of a subdivision or other development . ~~[, including any appurtenant signs which identify or advertise the subdivision or development.]~~
3. The department may require a change in the prior approval of the placement of a facility or other encroachment within a right of way of a state highway if the change is necessary to protect the users of the highway or the facility. If the department has issued an occupancy permit

for the facility or encroachment, ~~[any such]~~ *the* required change must be made at the expense of the owner of the facility or encroachment.

4. A person who is issued an occupancy permit that authorizes the placement of an encroachment within the right of way of a highway shall obtain the approval required by a local government for the proposed improvement. If the approval of a local government differs from the approval granted by the department, the holder of the permit shall coordinate the resolution of all differences between the department and the local government.

5. As used in this section, “monument” means an object or structure that identifies or advertises a development or subdivision.

Sec. 13. NAC 408.429 is hereby amended to read as follows:

408.429 1. An applicant for an occupancy permit must submit to the department a report concerning the impact of traffic for all driveways and street intersections which serve major ~~[areas of traffic.]~~ *traffic generators*. The report must be prepared by a professional engineer who *is licensed in this state and* possesses experience in transportation planning and *traffic* engineering . ~~[traffic.]~~

2. The report must contain:

(a) The type and extent of the proposed development, including any planned expansion.

(b) A scaled plan of the site of proposed development. The plan must:

(1) Indicate the location of streets and highways adjoining the proposed development including the proposed points of access from the site to the adjoining streets and highways;

(2) Indicate the location of the proposed buildings, driveways and parking areas within the development; and

(3) Include a diagram of the proposed pattern of traffic within the development.

(c) A detailed description of current conditions of the flow of traffic on the highways and adjoining streets and intersections, including *the* existing points of access, patterns of traffic and posted speed limits for those highways and streets, without a consideration of the additional traffic that is anticipated to be generated by the proposed development.

(d) The projected amount of traffic to be generated by the proposed development, at the completion of the initial development and, if the development is to be completed in phases, for each year before the additional phase of development is completed.

(e) An analysis of the impact of traffic on the existing highways and adjoining areas by the additional traffic anticipated to be generated by the proposed development, at the completion of the initial development and, if the development is to be completed in phases, for each year before the additional phase of development is completed. Any projections for future conditions must also include increases in traffic expected on the highways and streets studied separately from traffic attributable to the development that is the subject of the report.

(f) Recommendations to mitigate any adverse effect on existing or anticipated future flows of traffic on the highways and streets assessed which is attributable to the proposed development. Measures to mitigate anticipated adverse effects may include, without limitation, the:

- (1) Installation of traffic signals at key intersections identified in the report;
- (2) Widening of the highways or streets to accommodate adequately additional volumes of traffic attributable to the proposed development; and
- (3) Construction of street medians or islands to control the movement of traffic in and around the proposed development.

(g) A detailed description of the:

- (1) Methods used to prepare the report;

(2) Source of information used in the report for existing volumes of traffic and projected future increases in volumes of traffic; and

(3) Procedures used for an analysis of the data included in the report.

3. The department will include in the permit authorizing access from the state highway to the proposed development, specific conditions that must be complied with by the developer of the proposed site, including the installation of improvements to the highway which may include, without limitation, the recommendations set forth in paragraph (f) of subsection 2.

4. Additional information concerning the preparation of reports on the impact of traffic from proposed developments on existing highways and streets is available at no cost from the Traffic Engineer of the Department of Transportation, 1263 ~~[S.]~~ *South* Stewart Street, Carson City, Nevada 89712, or from ~~[any]~~ *one* of the following district offices of the department located at 123 ~~[E.]~~ *East* Washington Avenue (P.O. Box 170), Las Vegas, Nevada 89101, 310 Galletti Way (P.O. Box 930), Reno, Nevada 89504, or 1951 Idaho Street, ~~[(P.O. Box 111),]~~ Elko, Nevada 89801.

5. As used in this section, “major ~~[area of traffic]~~ *traffic generator*” means the site of a proposed development with an anticipated volume of traffic ingressing and egressing the site through ~~[any of its vehicular points of access at]~~ *a vehicular point of access:*

(a) *At* a rate of 100 or more vehicles during the anticipated peak hour of flow of traffic ~~[.];~~
or

(b) *That contributes to areas of traffic congestion or areas with high rates of accidents.*

Sec. 14. NAC 408.431 is hereby amended to read as follows:

408.431 1. Landscaping within a right of way of a highway may be allowed pursuant to the provisions of an occupancy permit if the permit is submitted only for landscaping or if the

landscaping is requested in connection with the required development of the site, including approaches, curbs, gutters and sidewalks.

2. Each request for a permit for landscaping must contain specific plans for the landscaping, including:

- (a) The type of plants and the botanical name of each species;
- (b) The type of planters;
- (c) The type of system for irrigation; and
- (d) The method for grading the landscape.

3. If factors relating to sight distance or *the* clear ~~recovery area~~ zone are applicable, all plants proposed for use must ~~not exceed 2 feet in height at maturity.~~ *be approved by the department before the permit for landscaping will be issued by the department.* Solid objects may not be used in landscaping ~~within a clear zone.~~

Sec. 15. NAC 408.433 is hereby amended to read as follows:

408.433 1. Shelters or benches used by persons waiting for public buses placed by or pursuant to the authority of a local government or public transportation authority ~~may~~ be placed within the right of way of a state highway pursuant to an occupancy permit:

- (a) Granted for each shelter or bench; or
- (b) Which includes the jurisdictional area of the local government or public transportation authority.

FLUSH The permit must be issued to the local government or public transportation authority even if the shelter or bench is placed and owned by a private contractor or provider.

2. A shelter used by persons waiting for public buses must:

(a) Except for the support framework and roof, be constructed of durable and transparent materials;

(b) Not create a safety hazard;

(c) Not obstruct the sight of motorists; or

(d) Not create an unreasonable impediment to pedestrian traffic.

3. A shelter must not be longer than 18 feet (*5.5 meters*) or deeper than 6 feet ~~1.8~~ (*1.8 meters*).

4. Shelters and benches must be regularly maintained by the owners of the shelters and benches.

5. Shelters and benches which are financed or supported by displays for advertising placed thereon or appurtenant thereto may be allowed if the advertising is not greater than 48 square feet (*4.5 square meters*) per shelter or 32 square feet (*3 square meters*) per bench. The local government or public transportation authority shall ensure that shelters or benches are placed only to serve the members of the public and that additional shelters or benches are not placed primarily to accommodate displays for advertising.

6. A shelter and any appurtenant displays for advertising may be lighted. Flashing or moving lights are prohibited. The lighting must not be so bright or misdirected as to blind or distract motorists. Any appurtenant lighted display for advertising must not be lighted in greater intensity than other parts of the shelter.

7. Any shelter or bench which does not comply with the provisions of this section or is otherwise determined by the district engineer to create a traffic or pedestrian hazard must be corrected *or removed* immediately by the holder of the occupancy permit.

Sec. 16. NAC 408.437 is hereby amended to read as follows:

408.437 1. The district engineer may require a performance or cash bond in an amount ~~[sufficient]~~ *equal to 110 percent of the estimate of the district engineer for the costs of the improvements authorized pursuant to an occupancy permit* to ensure the successful and timely completion of ~~[any improvements authorized pursuant to an occupancy permit.]~~ *the improvements.*

2. The district engineer shall, in determining whether a bond is necessary, consider:

(a) The ~~[department's]~~ *experience of the department* with the holder of the permit;

(b) The potential disruption to the maintenance or operation of the highway if the placement of the authorized improvements is approved; and

(c) The potential for increased hazards to the users of the highway if the proposed improvement is not placed in a timely manner or is placed in a manner inconsistent with the provisions of the permit.

~~[3.—A person who is issued an occupancy permit which authorizes the placement of an encroachment within the right of way of a highway shall obtain any approval required by a local government for the proposed improvement. If the approval of a local government differs from the approval granted by the department, the holder of the permit shall coordinate the resolution of any difference between the department and the local government.]~~

Sec. 17. NAC 408.447 is hereby amended to read as follows:

408.447 1. Utilities or pipes placed under a state highway must:

(a) Be jacked or otherwise forced underneath the pavement without disturbing the pavement.

(b) Not be placed inside culverts used for drainage.

2. Pavement or roadway must not be cut unless prior approval from the department is obtained.

3. The ~~[department will]~~ *district engineer shall* authorize trenching across a paved highway if:

(a) The roadway is scheduled for overlay or reconstruction within 2 years after the trenching is scheduled to begin;

(b) The roadway is in such poor condition that a permanent patch of the pavement will not adversely affect the condition of the surface of the roadway;

(c) The area is so congested with other underground facilities that boring is impractical; or

(d) The installation has been attempted by jacking or boring and is impractical because of the conditions below the ground.

4. ~~[A paved area which is trenched must be patched pursuant to the requirements set forth in “Standard Pavement Patching,” 1993 edition, published by the department. A copy of the publication may be obtained, free of charge, from the Department of Transportation, 1263 S. Stewart Street, Carson City, Nevada 89712, or from any of the following district offices of the department located at 123 E. Washington Avenue (P.O. Box 170), Las Vegas, Nevada 89101, 310 Galletti Way (P.O. Box 930), Reno, Nevada 89504, or 1951 Idaho Street (P.O. Box 111), Elko, Nevada 89801.~~

~~—5.]~~ Except as otherwise authorized by the department:

(a) No excavation within the right of way of a highway may be made which is less than 6 feet *(1.8 meters)* from the edge of the pavement.

(b) There must be, within the right of way of a highway, at least 36 inches *(915 millimeters)* of cover over all underground utilities, pipes or conduits, including at ditch or wash flowlines.

(c) Underground pipes and cables must be placed at least 12 inches *(300 millimeters)* below culverts or drainage boxes.

~~[6.]~~ 5. Each trench must be filled with granular backfill or any other material approved by the district engineer to the elevation of the bottom of the existing base and surfacing or subgrade in accordance with the requirements set forth in the ~~[“Standard Specifications for Road and Bridge Construction,” 1986 edition.~~

~~—7.]~~ *occupancy permit.*

6. As used in this section:

(a) “Base” means the layer of material of a designated type and thickness which is placed on a subbase or subgrade to support a surface.

(b) “Culvert” means any structure which is not a bridge which provides an opening under a roadway.

Sec. 18. NAC 408.449 is hereby amended to read as follows:

408.449 All installations of underground utilities, pipes and conduits in the right of way of a highway must be marked and designated as set forth in NAC 408.451 ~~[, 408.453]~~ and 408.457.

Sec. 19. NAC 408.451 is hereby amended to read as follows:

408.451 1. If an underground facility of a utility is installed along a highway which does not have curbs and gutters:

(a) A standard utility marker or 4-inch by 4-inch *(100-millimeter by 100-millimeter)* timber must be installed and maintained by the utility outside the ditch line at each location where the facility crosses the highway. The timber or marker must extend 30 inches *(750 millimeters)* above the ground and have painted indelibly thereon the nature of the underground obstruction and the name or identifying symbol of the owner.

(b) If a facility of a utility is placed longitudinally along a highway, a standard utility marker or 4-inch by 4-inch *(100-millimeter by 100-millimeter)* timber must be placed adjacent to the

offset at such a distance as may be specified by the district engineer and at intervals of not more than 1,000 feet ~~[]~~ (305 meters) at each angle point, or , if nonconcentric with the highway, at least every 300 feet ~~[]~~

~~—2.— If an underground facility of a utility is installed within a highway which has curbs and gutters, each crossing must be identified by the utility with a description and the name of the utility stenciled on the curb in black letters on white background in a compact and legible manner.~~

~~—3.] (91.5 meters).~~

2. All installations described in this section must be placed or constructed in such a manner as not to create a hazard to the users of the highway.

~~[4.]~~ 3. The provisions of this section do not apply to installations in incorporated cities if the installation is completed in accordance with the ordinances or established practices of the incorporated city.

Sec. 20. NAC 408.459 is hereby amended to read as follows:

408.459 1. A bore hole or pit may be placed within ~~[35 feet of the edge of the shoulder of the pavement of a highway]~~ *a right of way* if:

- (a) The bore hole or pit area is completely fenced.
- (b) The utility or its contractor does not use any part of the right of way for the installation of the facility, except in the fenced areas or as otherwise authorized by the district engineer.
- (c) Entrance to the bore hole or pit area is not allowed from the traveled portion of the highway.

2. A bore hole or pit is not allowed within the median area of a highway except as authorized by the district engineer. Extreme care must be used to prevent the impairment of the ground under the pavement and shoulders of the pavement.

3. Hydraulic or wet boring is prohibited, except that a small amount of water may be used to cool the boring bit if water pressure is not used to drill the bore or displace and wash out the material to be removed.

4. Any void created by boring outside the casing must be filled with pressure-treated grout.

5. As used in this section, “grout” means a cement mortar or a slurry of fine sand , *bentonite* or clay.

Sec. 21. NAC 408.461 is hereby amended to read as follows:

408.461 1. The owner of an underground facility may ~~[-]~~, *pursuant to a plan for traffic control approved by the district engineer:*

(a) Inspect and repair the underground facility, including manholes, conduits, cables and pipelines;

(b) Open manholes to repair the underground utility and uncover not more than 50 feet (*15 meters*) of cables or lines buried in the ground of the right of way of the highway.

2. If a manhole lies within the improved surface of the highway, the utility shall provide adequate protection of traffic in accordance with its occupancy permit or, as otherwise required by the district engineer, for the installation and use of the manhole. An excavation must not be made in improved surfaces, landscaped areas or less than 6 feet (*1.8 meters*) from the edge of *the* pavement without the prior approval of the district engineer.

3. The utility may make an emergency repair by excavating through an improved surface if a break in a line, conduit or cable under the pavement causes a hazard to traffic or a serious

interruption of essential service. The utility shall notify the district engineer of the emergency ~~[as soon as possible.]~~ *within 24 hours after beginning the excavation.* Backfilling and the replacement of the pavement must be performed pursuant to the ~~[provisions]~~ *requirements* set forth in the ~~[“Standard Specifications for Road and Bridge Construction,” 1986 edition.]~~ *occupancy permit.* Any landscaped area which is disturbed must be relandscaped.

4. If trenching across the pavement of the highway is approved, the district engineer may require rotomilling and repaving with an open-graded course of pavement beyond the trenched area to reestablish and maintain the quality of the roadway. The district engineer shall determine the requirements for rotomilling and repaving of the highway.

Sec. 22. NAC 408.469 is hereby amended to read as follows:

408.469 1. Except as otherwise provided in this section, the owner of a utility facility shall, when it installs aerial electrical or communication lines, including television cable, ensure that the clearances and method of construction are in accordance with the rules for the installation and maintenance of electrical supply and communication lines set forth in the “National Electrical Safety Code,” ~~[1993]~~ *1997* edition, *and any subsequent edition issued by the Institute of Electrical and Electronics Engineers which has been approved by the department for use in this state and* which is hereby adopted by reference. ~~[A copy of the publication]~~ *Each new edition shall be deemed approved by the department unless the edition is disapproved by the department within 60 days after the date of publication by the Institute of Electrical and Electronics Engineers. The department will review each edition issued after the 1997 edition to ensure its suitability for this state. The most recent edition* may be obtained from the ~~[Institute of Electrical and Electronics Engineers, 345 East 47th Street, New York, New~~

~~York 10017, for a~~ *Department of Transportation, 1263 South Stewart Street, Carson City, Nevada 89712, for the* price of ~~[\$47.50 plus \$4 for shipping.]~~ \$79.

2. An aerial electrical line must not be placed less than 22 feet (*6.7 meters*) above the ground. An aerial telephone or television cable line must not be placed less than 18 feet (*5.5 meters*) above the ground.

3. Guy wires must:

(a) Not be attached to trees; and

(b) Be kept at a minimum elevation above the ground pursuant to the requirements of the “National Electrical Safety Code,” ~~[1993 edition,]~~ *adopted by reference pursuant to subsection 1,* unless the district engineer establishes requirements which exceed that code.

4. Aerial crossings must conform to the requirements of the “National Electrical Safety Code,” ~~[1993 edition,]~~ *adopted by reference pursuant to subsection 1.*

5. Aerial crossings must be made at or as near to 90 degrees as possible across the roadway. Poles supporting crossings must be located outside the clear ~~[recovery area]~~ *zone* and, if possible, located at or outside the line of the right of way. If a highway is divided, poles must not be placed within the median strip unless the median strip is at least 80 feet (*24.4 meters*) wide and the median pole is necessary to support the crossing. If the poles cannot be located outside the clear ~~[recovery area,]~~ *zone*, appropriate measures must be taken to protect the users of the highway, including, if possible, the installation of impact attenuators, breakaway poles ~~[, guy wires]~~ or guardrails.

6. Poles used for a longitudinal installation must be placed outside the clear ~~[recovery area]~~ *zone* and at or as near to the right of way as possible. If the poles cannot be located outside the clear ~~[recovery area,]~~ *zone*, appropriate measures must be taken, including, if possible, the

installation of guardrails, impact attenuators or breakaway poles. In those areas where curbs, gutters and sidewalks have been installed, the poles must be located behind or at the back edge of the sidewalk, if possible. A pole must not be located closer than 2 feet (*0.6 meter*) behind the face of the curb.

Sec. 23. NAC 408.523 is hereby amended to read as follows:

408.523 1. The installation of a privately owned line or conduit on a state highway or within the right of way of a state highway to drain adjacent wetlands onto the highway or right of way is prohibited.

2. A person who develops property adjacent to an area for the drainage of a highway shall ensure that the existing flow patterns are continued. Any proposed change to a drainage system by an adjoining developer must be supported by calculations for drainage.

3. A plan for drainage and the calculations relating to the runoff of water must be submitted to the department for any development or construction which affects the right of way for the highway. The plan must include calculations for peak runoff for existing and proposed developments if the use of the land is substantially altered. *Each drainage system must be constructed pursuant to the requirements set forth in the operating permit.*

4. The department ~~hereby adopts by reference “Urban Hydrology for Small Watersheds, Test SCS TR-55,” June 1986. A copy of the publication may be obtained from the National Technical Information Center, United States Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, for a price of \$27, plus \$3 for shipping and handling.~~

~~—5— Test SCS TR-55 or computer programs of equal or greater standards may be used to develop a plan for drainage by the adjoining developer. Peak flows into highway storm drains must not increase for the 10-year flood event because of the development of the adjoining~~

~~property. Peak flows through the crossdrains of a highway must not increase for the 25-year flood event because of the development of adjoining property.~~

~~—6.—~~ ~~The department~~ may authorize an improvement of its drainage structures to provide for increased flows if there is no adverse effect on any property located downstream.

Sec. 24. NAC 408.527 is hereby amended to read as follows:

408.527 1. The owner of property which is adjacent to a highway shall, if constructing asphalt approaches, place the paving at least 25 feet (*7.6 meters*) from the edge of the existing pavement or to the edge of the right of way if there is less than 25 feet (*7.6 meters*) available.

The type of paving must be approved by the district engineer.

2. Except as otherwise authorized by the district engineer, driveways, approaches and intersections of streets must be constructed pursuant to the ~~[provisions]~~ *requirements* set forth in the ~~[“Standard Plans for Road and Bridge Construction,” 1994 edition or the “Standard Specifications for Road and Bridge Construction,” 1986 edition.]~~ *occupancy permit*.

3. If an approach adjoins existing roadway paving, the roadway paving must be sawcut in a neat straight line the entire length of the approach , including any required taper lengths. The width of the sawcut must be at least 1 foot (*300 millimeters*) or as otherwise specified by the district engineer.

Sec. 25. NAC 408.533 is hereby amended to read as follows:

408.533 1. The construction of a left-turn storage lane is required if:

(a) The development which is served by the access generates 100 or more left-turn movements at the peak hour;

(b) It is proposed by a traffic impact study; or

(c) It is required because of the physical conditions necessary to maintain safety on the highway.

2. One foot (*300 millimeters*) of the pavement edge must be sawcut and removed within the limits of the widening of the pavement.

3. The ~~owner's~~ representative *of the owner* shall conduct ~~a test~~ *tests* for compaction in the manner prescribed by the district engineer.

4. The improvement of the gravel and pavement must comply with ~~the~~ *the* plans or additional terms and conditions set forth in the occupancy permit. ~~the~~ *and*
~~The requirements set forth in "Standard Specifications for Road and Bridge Construction," 1986 edition.~~

~~5. A licensed engineering firm shall place striping tape on the pavement which reflects light at intervals of 25 feet with an appropriate color immediately after the open grade overlay is completed. The striping tape must be applied on the roadway in strips 4 inches wide by 12 inches long pursuant to a plan approved by the department.~~

~~6.]~~ 5. Permanent signals for traffic must be installed ~~as specified by the district engineer.]~~ *if the signals are required by a traffic analysis prepared by an engineer selected by the owner and approved by the district engineer.*

~~7.]~~ 6. As used in this section, "compaction" means the forcing or compressing together of particles of soil by a mechanical device to ~~determine the required~~ *increase the* density of the materials used ~~so as to comply with the requirements set forth in the occupancy permit.~~

Sec. 26. NAC 408.537 is hereby amended to read as follows:

408.537 1. Curbs and gutters which are placed within the right of way of a highway must be constructed in accordance with the requirements set forth in the ~~["Standard Plans for Road and Bridge Construction," 1994 edition.]~~ *occupancy permit.*

2. Except as otherwise authorized by the district engineer, each sidewalk must be at least 4 inches (*100 millimeters*) deep and constructed pursuant to the requirements:

(a) Adopted by the local government where the construction is located; *and*

(b) Set forth in the ~~["Standard Plans for Road and Bridge Construction," 1994 edition; or~~
~~—(c) Set forth in the "Standard Specifications for Road and Bridge Construction," 1986~~
~~edition.]~~ *occupancy permit.*

3. Except as otherwise authorized by the district engineer, a ramp for wheelchairs must be constructed on all curb and gutter radii on streets and approaches and constructed pursuant to the requirements:

(a) Adopted by the local government where the construction is performed;

(b) Set forth in the ~~["Standard Plans for Road and Bridge Construction," 1994 edition;]~~
occupancy permit; and

(c) Set forth in ~~[the "Standard Specifications for Road and Bridge Construction," 1986~~
~~edition.]~~ *Appendix A of 28 C.F.R. Part 36.*

4. If the opposing existing curb and gutter radii do not have ramps for wheelchairs, the developer shall reconstruct the existing curb and gutter radii with ramps for wheelchairs.

Sec. 27. NAC 408.543 is hereby amended to read as follows:

408.543 1. An occupancy permit is not required for any mailbox or delivery box for newspapers installed and maintained pursuant to the provisions of this section and NAC 408.547.

2. A person shall not install a mailbox or delivery box for newspapers:

(a) Within a right of way of a highway if it interferes with the safety of the traveling public or the maintenance or operation of the highway.

(b) If access to the mailbox or delivery box for newspapers is obtained from the lanes of a freeway or is otherwise prohibited by law or regulation.

3. Except on one-way streets, each mailbox or delivery box for newspapers must be located on the right-hand side of the roadway in the direction of the delivery route.

4. The bottom of the mailbox must be set at a height established by the United States Postal Service.

5. Except as otherwise provided in NAC 408.547, the roadside face of the mailbox must be set from the edge of the traveled way at least:

(a) Eight feet ~~{ }~~ *(2.4 meters)*, if no paved shoulder exists;

(b) The width of the all-weather shoulder plus not less than 8 inches ~~{ }~~ *(200 millimeters)* **or** more than 12 inches ~~{ }~~ *(300 millimeters)*; or

(c) The width of an all-weather turnout specified by the department, plus not less than 8 inches ~~{ }~~ *(200 millimeters)* **or** more than 12 inches ~~{ }~~ *(300 millimeters)*,
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whichever is greatest.

Sec. 28. NAC 408.547 is hereby amended to read as follows:

408.547 1. The department may authorize the installation of a mailbox or delivery box for newspapers on certain residential streets or rural roads if it determines that it is in the public interest to authorize lesser clearances or to require greater clearances.

2. If a residential street has curbs, the roadside face of the mailbox or delivery box must be set back not less than 6 inches ~~{ }~~ *(150 millimeters)* **or** more than 12 inches *(300 millimeters)* from the face of the curb. If a residential street does not have curbs or all-weather shoulders and

carries a low volume of traffic operating at low speeds, the roadside face of a mailbox or delivery box must be set back not less than 8 inches ~~[not]~~ *(200 millimeters)* or more than 12 inches *(300 millimeters)* from the edge of the pavement.

3. The department will not approve the installation of a mailbox or delivery box which is less than 2 feet, 8 inches *(800 millimeters)* or more than 6 feet, 8 inches *(2 meters)* from the edge of the pavement on a rural road which has little traffic operating at low speeds.

4. If a mailbox is located at the entrance of a driveway, it must be placed on the far side of the driveway in the direction of the delivery route.

5. If a mailbox or delivery box for newspapers is located at an intersecting road whose average daily traffic:

(a) Is 400 vehicles or less, the mailbox or delivery box must be located at least 100 feet ~~[]~~ *(30.5 meters)*; or

(b) Is more than 400 vehicles, the mailbox or delivery box must be located at least 200 feet ~~[]~~ *(61 meters)*,

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beyond the center of the intersecting road in the direction of the delivery route.

6. A mailbox must be made of light sheet metal or plastic construction which conforms to the requirements of the United States Postal Service. A delivery box for newspapers must be made of light sheet metal or plastic which is suitable for holding a newspaper.

7. Not more than two mailboxes may be mounted on a structure unless the structure is installed pursuant to the requirements set forth in subsection 14. A delivery box for newspapers may be mounted below the mailbox on the side of the support for the mailbox.

8. A support for a mailbox must not be set in concrete unless the support is installed pursuant to the requirements set forth in subsection 14.

9. A 4-inch by 4-inch *(100-millimeter by 100-millimeter)* wood post or a steel pipe of standard strength which is 2 inches *(50 millimeters)* in diameter and embedded not more than 24 inches *(600 millimeters)* into the ground will be acceptable as a support for a mailbox. A metal post must not be fitted with an anchor plate, except that it may have a device to prevent twisting and which extends not more than 10 inches *(250 millimeters)* below the ground.

10. The mailbox or delivery box for newspapers must be securely attached to the structure for support in such a manner as to ensure that the mailbox or delivery box will not separate from the top of the structure if it is struck by a motor vehicle.

11. The space between the centers of the support posts must be at least 3/4 of the height of the posts above the ground.

12. Designs for supports for mailboxes which are not described in this section may not be used unless approved by the district engineer.

13. A postal patron shall notify the department of any new or existing installation of a mailbox or delivery box if the shoulder of the pavement is inadequate to allow access to the mailbox or delivery box for newspapers for motor vehicles in all conditions of weather. If widening of the shoulder of the pavement is required, the postal patron shall apply to the department for an occupancy permit.

14. The department will authorize the installation of a unit for the residential delivery of mail or boxes for the delivery of newspapers installed by the United States Postal Service within a right of way of a state highway pursuant to an occupancy permit if that installation complies with the requirements set forth in the "Guide For Erecting Mailboxes on Highways," ~~May 24, 1985, which~~ *1994 edition, and any subsequent edition issued by the American Association of State Highway and Transportation Officials which has been approved by the department for*

use in this state is hereby adopted by reference. ~~[A copy of the publication]~~ *Each new edition shall be deemed approved by the department unless the edition is disapproved by the department within 60 days after the date of publication by the American Association of State Highway and Transportation Officials. The department will review each edition issued after the 1994 edition to ensure its suitability for this state. The most recent edition that has been approved by the department* may be obtained from the ~~[American Association of State Highway and Transportation Officials, 444 N. Capitol Street, N.W., Suite 225, Washington, D.C. 20001,]~~ *Department of Transportation, 1263 South Stewart Street, Carson City, Nevada 89712,* for the price of ~~[\$5.]~~ *\$13.* There is no fee for the permit.

15. An installation of a mailbox or delivery box for newspapers which does not comply with the provisions of this section is an unauthorized encroachment.

16. The location and construction of mailboxes must conform to the regulations of the United States Postal Service and the department.

Sec. 29. NAC 408.557 is hereby amended to read as follows:

408.557 1. The department may authorize direct access from a freeway by a locked gate.

The uses for the access must be restricted to access for:

- (a) The maintenance of a railroad or *a facility of a* utility;
- (b) Communications ~~[or microwaves]~~ by a utility or governmental agency for public safety;

~~[or]~~

- (c) *Microwave stations; or*

- (d) Agricultural purposes.

2. The department will not authorize direct access from a controlled access route by a locked gate if:

- (a) Local roads, even if more circuitous or unimproved, provide access; or
 - (b) Access may be constructed from local roads at a cost which is not prohibitive and in a manner which does not unreasonably impair the environment.
3. The department may, pursuant to an agreement with the user of the locked gate, authorize direct access through a locked gate if ~~it~~ *the department* determines that:
- (a) The authorization is in the public interest;
 - (b) The safety, maintenance and use of the highway would not be affected; and
 - (c) There is no other alternate access which may be practicably obtained or developed.
4. The agreement must specify the user and the authorized uses of the access. A motor vehicle may only use right turns to gain access to the locked gate or highway. ~~It~~ *If possible, a* motor vehicle ~~must not cross the median and must be parked off the roadway if stopped to~~ *that is stopped so that an occupant of the motor vehicle may* lock or unlock the gate ~~it~~ :
- (a) Must not cross the median;*
 - (b) Must be parked off the roadway; and*
 - (c) Must be parked outside of the clear zone.*
5. The authorized user shall place his lock on the locked gate and securely lock the gate when it is not in use. The lock must be identified with the ~~user's name.~~ *name of the user.* If a user notices an unauthorized or unidentified lock on the gate or any condition which would make it impossible to lock the gate, ~~he~~ *the user* shall report that condition to the appropriate district engineer as soon as possible.
6. The department will maintain a written inventory of locked gates and authorized users and regularly review the gates to ensure that they are being properly used and secured. The

department may revoke ~~[a user's]~~ *the* authorization *of a user* if ~~[an]~~ *the* authorized user does not lock the gate or fails to identify his lock.

Sec. 30. NAC 408.610 is hereby amended to read as follows:

408.610 1. Littering is not permitted in a roadside park or safety rest area. Trash or garbage must be deposited in containers provided by the department of transportation. The disposal of waste in these containers is restricted to trash and garbage which is accumulated by persons *while the persons are* traveling in vehicles ~~[:]~~ *or bicycling*. The disposal of garbage or trash from other sources is prohibited.

2. No waste water may be disposed of in any portion of a roadside park or safety rest area except in an area designated for such a disposal.

3. A sewer hose must be used when dumping any holding tank.

4. Commercial vehicles must not dump waste in disposal areas.

NOTICE OF ADOPTION OF REGULATIONS

The Director of the Nevada Department of Transportation adopted regulations, assigned LCB File No. R135-98, which pertain to chapter 408 of the Nevada Administrative Code on June 19, 2000. The Information Statement and a copy of the Revised Proposed Regulation of the Department of Transportation as adopted are attached hereto.

DATED this 28th day of June, 2000.

INFORMATIONAL STATEMENT

The Nevada Department of Transportation held public hearings on January 25, 1999 in the Grant Sawyer Office Building, Room No. 4412E, 555 E. Washington Avenue, Las Vegas, Nevada; on January 27, 1999 at the Great Basin College, 1500 College Parkway, Elko, Nevada; and on January 29, 1999 in the conference Room, District II Headquarters, Nevada Department of Transportation, 310 Galletti Way, Sparks, Nevada; for the amendments to chapter 408 of the Nevada Administrative Code.

- (a) The public comment was solicited by publication in the written news media and by direct mailings to the local government, local utility companies and local contractors.
- (b) The following number of persons participated:
 - (1) 13 persons attended the hearing held on January 25, 1999 in Las Vegas, Nevada and no persons testified at the hearing.
 - (2) 11 persons attended the hearing held on January 27, 1999 in Elko, Nevada and 3 persons testified at the hearing.
 - (3) 5 persons attended the hearing held on January 29, 1999 in Sparks, Nevada and 2 persons testified at the hearing.
 - (4) No persons submitted written statements to the agency.
- (c) Comments from the local government, local utility companies and local contractors were solicited through the public notices published in the written news media and through direct mailings. They responded generally by attending the hearings. A copy of the summary may be obtained by contacting Paul Saucedo, Right-of-Way Utilities, Right-of-Way Division Nevada Department of Transportation, 1263 South Stewart Street, Carson City, Nevada, 89712 or by calling (775) 888-7490.

(d) The director of the Nevada Department of Transportation adopted the proposed regulation on June 19, 2000,

(e) The estimated economic effect of the regulation is as follows:

(a) Business sought to be regulated.

The estimated economic effect on the business sought to be regulated is minimal. The adverse effects are minimal. The beneficial effects are clarification to the regulations. The immediate and long-term effect is the regulation of encroachments on the state highway rights-of way.

(b) Public.

The estimated economic effect on the public is minimal. The adverse effects are minimal. The beneficial effects are improved regulation of utilities on state highways. The immediate effect is revisions to the issuance of encroachment permits. The long-term effect is the regulation of encroachments located within state rights-of-way.

(f) The cost to the agency for enforcement of the proposed amendments to the regulation is minimal.

(g) There are no other regulations and ordinances of other state or local governmental agencies which overlap or duplicate the proposed amendments. The amendments, as proposed, are in accordance with federal regulations, specifically 23 C.F.R. part 645.

(h) Except for the federal regulation referenced above, there aren't any federal regulations that overlap or duplicate the proposed amendments.

(i) The proposed amendments will establish an increase in existing fees.

DATED this 28th day of June, 2000.