



RIGHT-OF-WAY OPERATIONS MANUAL

Chapter Seven Encroachments

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7-1 ENCROACHMENT POLICY

7-1.1 General

Real property that is within the right-of-way boundaries of Montana highways is intended to be devoted to public highway purposes. Right-of-way includes the property rights necessary to meet the needs of construction, operation and maintenance of the highway. The Montana Department of Transportation (MDT) is responsible for preserving the right-of-way free of public and private installations or facilities that are not a part of the highway facility and are not consistent with its safe operation, maintenance, and use.

The purpose of this encroachment policy is to ensure safe conditions on the highway facility, to allow for efficient and effective maintenance, and to protect the public investment in the original cost of the right-of-way and of the highway facility.

Upon proper review and authorization, as further described in this Chapter, certain encroachments may be permitted to remain in the right-of-way. These must be under agreement with the Department and are subject to removal if they subsequently interfere with the safe operation and maintenance of the highway.

7-1.2 Encroachment Definition

An encroachment is any installation, device, object or occupancy that is located at, above or below the grade line of the highway and within the right-of-way limits, and that is not installed as part of the highway facility by MDT.

Encroachments include, but are not limited to the following items within the right-of-way:

- overhanging projections of signs, where the base is installed off the right-of-way;
- fences, walls and gates;
- blockage to hydraulic openings;
- abandoned vehicles and equipment;
- trails or pathways for use by off-road vehicles (e.g., ATV's, snowmobiles);
- advertising devices, including political banners;
- buildings or structures;
- projections from buildings (e.g., stoops, decks, porches, and overhangs);
- tree plantings or landscaping;
- grazing livestock;
- approaches in violation of MDT Access Control Policy;
- excavations or fill material; and
- private signs, emblems, symbols, posters, monuments, etc.

The following installations are not encroachments:

- utility facilities that were installed pursuant to Montana's Utility Accommodation Policy;
- private approaches that were installed in compliance with Montana's Access Management Policy; and
- private temporary public service facilities in rest areas that have been authorized by the MDT Traffic Engineering Section or the Maintenance Division.

MDT reserves the authority to remove any public or private installation in the public right-of-way without notice if it presents a hazard to public safety or interferes with traffic operations.

7-1.3 Legal Authority

In establishing and enforcing its encroachment policy, MDT acts in conformity with the legal authorities summarized below. The full text of legislative enactments and regulations should be read for a complete understanding of the provisions. These legal authorities include:

1. 23 CFR 1.23 Rights-of-Way
2. MCA 60-6-101 - 60-6-106 Highway Encroachments
3. MCA 60-3-101, Assent to Federal Law
4. ARM 18.7.101 - 18.7.110 Right of Way Encroachments

7-1.4 Roles and Responsibilities

Following are MDT organizational units that may be involved in the control of encroachments and their primary role in the process:

- Maintenance Division – Identifying, monitoring, and enforcing encroachments. Approving/denying encroachment applications. For more information, reference the Maintenance Encroachment Manual.
- Right-of-Way Bureau – Researching ownership and right of way limits.
- Legal Services - Landowner notification letter and legal support.

7-1.5 Locked Gate Policy

It is MDT general policy to minimize the presence and use of locked gates in controlled access highways. Locked gates may be approved only for infrequent use and if they are determined to be the only feasible means for servicing utilities and performing highway maintenance or other approved noncommercial purposes. All unauthorized gates, or gates for which a permit has lapsed or been revoked, are considered encroachments.

7-2.3 Decorative Lighting Policy

Decorative lighting in MDT's ROW has been included in MDT Construction/Maintenance Agreements under MDT's previous Highway State Special Revenue Account (HSSRA) policy and the more recent Surface Transportation Resource Policy (STRP) and STRP's Maintenance Procedure for many years.

MDT should continue to permit decorative lighting in MDT ROW as part of its Construction/Maintenance Agreements as Maintenance encroachments, as required under its Surface Transportation Resource Policy (STRP). MDT should not issue permits for MDT ROW decorative lighting under Utility Permits, as this would be contrary to the STRP, and create inconsistency across the State. Based on MDT Legal Opinion, MDT does not consider decorative lighting to be a public utility lighting source requiring a Utility Permit, but rather a ROW feature requiring a Maintenance Agreement and/or Maintenance Encroachment permit.