



UTILITY ACCOMMODATION ON TRUNK HIGHWAY RIGHT OF WAY

POLICY OP002, EFFECTIVE 2016-03-17

POLICY STATEMENT

Federal and Minnesota statutes and rules address the accommodation of utility facilities on Minnesota trunk highway rights of way.

While highway rights of way are a finite resource, it is in the public interest to accommodate utility facilities on the rights of way of trunk highways and local roads and streets receiving federal aid, when:

- **Does not** interfere with the free and safe flow of traffic
- **Does not** impair the highway or its protected visual quality
- **Does not** conflict with any provision of federal, state, or local law, rule, or regulation, or
- **Does not** cause an unreasonable increase in the difficulty of the future cost of highway construction or maintenance

REASON FOR POLICY

The **Code of Federal Regulations (23 CFR § 645.215(a))** requires each state transportation department to submit to its Federal Highway Administration (FHWA) Division Administrator a statement on the authority of utilities:

- To use and occupy the right of way of federal-aid highways,
- The authority of the state to regulate such use, and
- The policies the state employs or proposes to employ for accommodating utilities within the right of way of any highway project receiving federal aid.

MnDOT developed this policy in accordance with Minnesota statutes and rules, federal statutes and regulations, the *Federal Highway Administration (FHWA) Program Guide: Utility Relocation and Accommodation on Federal-Aid Highway Projects*, and applicable American Association of State Highway and Transportation Officials (AASHTO) publications. The Related Information section of this policy lists relevant references.

Principal Points

- MnDOT operates the state trunk highway system to provide a safe and convenient means for the vehicular transportation of people and goods. Utility owners provide other essential services to the public. Cooperation between these entities is essential to serve the public in the most economical manner consistent with the respective public service needs, obligations, and interests. Although MnDOT strives to accommodate utility facilities whenever possible, the

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POLICY HISTORY

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[MnDOT Policy Website](#)

permitted use and occupancy of highway right of way for non-highway purposes is subordinate to the primary interest and safety of the traveling public.

- Trunk highways in Minnesota that are part of the federal-aid system are also subject to federal statutory and regulatory requirements. When determining whether a portion of a federal-aid highway should be used to accommodate a utility facility, federal law requires states to “first ascertain the effect such use will have on highway and traffic safety, since in no case shall any use be authorized or otherwise permitted, under this or any other provision of law, which would adversely affect safety.” **23 USC § 109(l) (1) (A)**.
- The procedures used by MnDOT for accommodating utility facilities along, across, or on the right of way of all highways under the jurisdiction of the Minnesota Commissioner of Transportation are in the Utility Accommodation Section of the [MnDOT Utility Accommodation and Coordination Manual](#) and referred to as the [Manual](#) in this policy.
- The FHWA has approved this statement of policy.

Application of Policy

- This policy applies to all placements of public utilities (and private lines that are also allowed to cross highways), including, but not limited to:
 - All forms of communication facilities
 - Cable television
 - Electric power
 - Water, steam and sewer lines
 - Pipelines that carry gas, liquids, or solids in suspension
 - Facilities that carry waste, drainage, or storm water not connected with highway drainage
 - Any the accommodation of another similar commodity within the right of way of highways under the jurisdiction of the Commissioner of Transportation
- This policy applies to underground, surface, or overhead facilities, either singularly or in combination, including bridge attachments.
- This policy applies to all existing utility facilities retained, relocated, replaced, or altered and to new utility facilities installed on state right of way, including facilities needed for highway purposes (such as for highway lighting or utility facilities to serve a weigh station, rest area, or recreation area).
- Energy generation facilities are not utility facilities for the purpose of this policy. Energy generation facilities may be allowed to occupy a portion of a trunk highway right of way:
 - By means of a lease agreement, dependent upon the nature of the trunk highway right of way
 - MnDOT’s ownership interest of the right of way, and
 - The nature and ownership of the proposed wireless communications or energy generation facility

Scope of Policy

- This policy addresses the location, design, and methods for installing, adjusting, accommodating, and maintaining utility facilities on trunk highway rights of way and projects subject to the requirements of **23 CFR 645.209(g)**.
- MnDOT will apply relevant Minnesota or federal statutes, rules, or industry codes as appropriate to the circumstances of the placement of a utility facility on trunk highway right of way. If more stringent protection is prescribed by Minnesota or federal statutes, rules, or industry codes than is provided in this policy, the more stringent requirement shall prevail. Nothing in this policy shall be considered as a limitation on the authority or responsibility of MnDOT to apply statutes and regulations as appropriate to the specific circumstances.

WHO NEEDS TO KNOW THIS POLICY?

- Utility owners maintaining existing facilities and wanting accommodation for new facilities along, across, or on trunk highway right of way, and their consultants assisting with these tasks.
- MnDOT employees involved in the review and approval process of applications for accommodation of utility

facilities on trunk highway right of way.

- Anyone involved in planning, designing, or constructing a MnDOT or local federal-aid projects or a project that involves utility accommodation on trunk highway right of way, including but not limited to: MnDOT employees, local agency representatives, consultants, contractors and, utility owners.

DEFINITIONS

Abandoned Facility

An underground facility that is no longer in service and is physically disconnected from a portion of the operating facility that is in use or still carries service. An abandoned facility deemed abandoned by the utility owner.

Clear Zone

The total roadside border area, starting at the edge of the travelled way (the portion of the roadway for movement of through traffic) available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or the area at the toe of a non-recoverable slope. The width is dependent upon the traffic volumes, speeds, and roadside geometry. **(23 CFR § 645.207)**

Commissioner

The Commission of Transportation or the duly appointed Deputy Commissioner, or other designee of the Commissioner

Control of Access

The condition where the right of owners or occupants abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority. **(Minnesota Statutes § 160.08)**

FHWA – Federal Highway Administration

“The Federal Highway Administration (FHWA) provides leadership, guidance, and direction to State Departments of Transportation in the planning, construction and maintenance of transportation projects. Working collaboratively with State partners, FHWA Division Offices ensure that the nation's roads, bridges and tunnels are safe and continue to support economic growth and environmental sustainability. Additionally, to ensure accountability, the FHWA Division Offices work with the State to develop, track and analyze activities and recommend innovative techniques and strategies to improve the performance of the transportation system. FHWA and its Division Offices are responsible for working with State Departments of Transportation to ensure that the nation's strategic investments preserve and modernize the U.S. highway system - and ultimately to save lives.”

Freeway

A divided arterial highway with full control of access **(23 CFR § 645.207)**

Highway

A general term denoting a public way for the transportation of people, materials, goods, and services but primarily for vehicular travel, including the entire area within the right of way.

Interstate Highways

Highways that are a part of the Dwight D. Eisenhower National System of Interstate and Defense Highways. Highways on this system that are in Minnesota are included in the Minnesota Trunk Highway System.

National Highway System

An interconnected system of principal arterial routes serving major population centers, international border crossings, ports, airports, public transportation facilities, and other intermodal transportation facilities and major travel destinations. The National Highway System includes all highways on the Interstate system, a large percentage of urban and rural principal arterials, the defense strategic highway network, and major strategic highway connectors.

Out-of-service facility

An underground facility no longer maintained and is not intended for future use, but has not been deemed abandoned. An out-of-service facility may still be connected to a portion of the operating facility that is in use or still carries service.

Permit

The document by which MnDOT regulates and gives approval for the use and occupancy of highway right of way by utility facilities or private lines.

Private Lines

Privately owned facilities that convey or transmit communications, electric power, gas, oil, water, or any other similar commodities outlined in the definition of “utility facility”, but devoted exclusively to private use.

Right of Way

Real property or interests therein, acquired, dedicated or reserved for the construction, operation, and maintenance of a highway.

Road

See highway.

Street

See highway.

Trunk Highway System

All roads established or to be established under the provisions of **Article XIV, Section 2 of the Constitution of the State of Minnesota**. This system includes highways that are constructed, improved, and maintained as public highways under the jurisdiction of the Commissioner of Transportation, including highways on the Interstate system.

Utility Facility

A privately, publicly or cooperatively owned line, facility or system for producing, transmitting, or distributing communications, cable television, electric power, 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. This term includes utility-type facilities that are owned or leased by a government agency for its own use, or otherwise dedicated solely for governmental use. This term includes those facilities used solely by the utility that are a part of its operating plant. (See **Minnesota Statutes §§ 161.45, 222.37, subd. 2, and 23 CFR § 645.207**)

PROCEDURES

Minnesota statutes and rules require utility owners to obtain a permit from MnDOT to install or maintain utility facilities on trunk highway right of way. These permits incorporate the current rules under which they are issued. The utility owner or its contractor must receive an approved permit before starting work on highway right of way.

MnDOT will apply current law each time a utility permit is requested or impacted by highway construction. A utility owner shall abide by the current version of this policy and the requirements in the Utility Accommodation Section of the [Manual](#) each time a permit is authorized. When future changes are made to this policy, a utility owner is not required to modify an existing utility facility to meet the new version unless proposed changes to that facility require a new permit from MnDOT. Proposed changes to a utility facility requiring a new permit include those ordered by MnDOT to facilitate highway maintenance and construction or a change in a fundamental characteristic or usage of the highway or right of way.

MnDOT may order the adjustment and relocation of the permitted facilities after permit approval, if necessary, to facilitate highway maintenance and construction. This includes situations where a fundamental characteristic or usage of the highway or right of way, such as but not limited to highway type, control of access, and clear zone, is being changed even if the utility facility is not in conflict with construction. All costs for constructing, maintaining, altering, and relocating the permitted facilities shall be the obligation of the utility owner, unless state law otherwise provides.

MnDOT may also consider the future characteristics and usage of a highway or right of way, such as future plans for upgrading a highway to a freeway, when making decisions regarding the accommodation of utility facilities.

Permits

MnDOT documents the rules and requirements that apply to the use and occupancy of highway right of way by utility facilities or private lines in a permit. Utility owners must have an approved permit from MnDOT before starting work and follow permit regulations and requirements to occupy highway right of way. The applicant shall strictly conform to the terms of the permit and the **Minnesota Rules Parts 8810.3100 through 8810.3600**, together with the special provisions.

MnDOT issues several types of permits relating to trunk highway rights of way. This policy addresses the utility accommodation permit and the miscellaneous work permit.

- **Application for Utility Accommodation on Trunk Highway Right of Way (Form 2525)** – MnDOT requires the Application for Utility Accommodation on Trunk Highway Right of Way for the vast majority of utility placements and relocations. Utility owners complete this form to request permission to place, construct, and reconstruct utility facilities within trunk highway right of way, whether the utility facility runs longitudinally, skewed, or perpendicular to the centerline of the highway. Drainage may be treated as a utility, requiring this form, in certain cases when a facility passes through the right of way without any outlet from or inlet to the facility within the right of way. For utility-initiated projects, utility owners submit this form to the MnDOT Utility Agreements and Permits Unit. For relocations to accommodate a highway project, utility owners submit this form to the appropriate MnDOT project manager. A valid utility accommodation permit includes the following signatures:
 - An authorized person representing the utility owner
 - The MnDOT District Engineer (or Authorized Representative), and
 - The MnDOT Utilities Engineer, acting for the Commissioner of Transportation
- **Application for Miscellaneous Work on Trunk Highway Right of Way (Form 1723)** – The Application for Miscellaneous Work on Trunk Highway Right of Way is used for minor work, such as installation of utility service connections that do not cross or parallel the roadway within the trunk highway right of way. It is also used for installation of miscellaneous guy wires and anchors, to place temporary obstructions on the right of way, and to perform temporary relocations of a more minor nature to accommodate a highway construction project. In addition, MnDOT requires this form from the utility owner for service and maintenance operations within trunk highway right of way. For utility-initiated projects, utility owners submit this form to the appropriate MnDOT district permit office. For applicable adjustments to accommodate a highway project, utility owners submit this form to the appropriate MnDOT project manager.

MnDOT also issues other permits not covered directly in this policy. The following are among those other permits and are listed here for information only.

- **Application for Drainage Permit (Form 30795-02)** – The Application for Drainage Permit is used for all types of drainage changes on a trunk highway; this form is to be completed when water flow on highway property is involved.
- **Application for Access/Driveway Permit (Form 1721)** – The Application for Access/Driveway Permit is used for all requests for a driveway or other access point to a trunk highway or for a change in use of an existing access.
- **Application for Rail Bank Access Permit (Form 1721 RB)** – Minnesota Statutes §222.63 and Minnesota Rules parts 8830.5810 through 8830.5860 govern state rail bank property. The Application for Rail Bank Access Permit is for all requests for access on rail bank right of way. In addition to the Rail Bank Access permit, a lease agreement and a fee will apply.
- **Application for Utility Installation on Rail Bank (Form 1723 RB)** - Minnesota Statutes §222.63 and Minnesota Rules parts 8830.5810 through 8830.5860 govern state rail bank property. Similar to the Application for Miscellaneous Work on Trunk Highway Right of Way, the Application for Utility Installation on Rail Bank is for all utility installations or other objects on, along, or across rail bank right of way. In addition to the Rail Bank Utility permit, a lease agreement and a fee will apply.

MnDOT Review

Before issuing a permit, MnDOT must:

1. Review the sketches and any pertinent information regarding the type of facility for compliance with this policy and rules and laws pertaining to transportation and the accommodation of utilities.
2. Verify that utility installations crossing state lines on roadways and bridges have been coordinated with appropriate highway permitting officials in the neighboring states.

FHWA Review

When a utility owner submits a permit application or request to MnDOT to use or occupy the right of way of a federal-aid highway, MnDOT is not required to submit the matter to the FHWA for prior concurrence except when the proposed installation is not in accordance with this policy that is approved by the FHWA for use on federal-aid highways. MnDOT's authority, by mutual agreement with the local FHWA Division Office is manifested in the form of an approved Utility Accommodation Permit. [See 23 CFR § 645.215(d)].

Exceptions to Policy

MnDOT may allow exceptions to this policy if the utility owner can demonstrate that extreme hardships or unusual conditions provide justification and where alternative measures can be prescribed to fulfill the intent of applicable statutes and rules. Any such exceptions must be:

- Requested by an authorized person representing the utility owner;
- Recommended for approval by the MnDOT District Engineer (or authorized representative);
- Submitted to the FHWA for concurrence if the exception applies to a utility facility located on the Interstate, other freeways, expressways, and other highways on the National Highway System; and
- Approved by the MnDOT Utilities Engineer, acting for the Commissioner of Transportation

All requests for exceptions must include an evaluation of the direct and indirect design, environmental, and economic effects that would result from approval of the exception, plus any other pertinent information.

Enforcement of Policy

MnDOT shall enforce this policy consistent with applicable Minnesota statutes and rules. Such enforcement might include, but is not limited to,

- Assessment of responsibility for restoration costs when utilities begin work without a permit;
- Increased security deposit levels;
- Denial of future permits until past non-compliance is resolved;
- Misdemeanor citations by the appropriate enforcement agency;
- Litigation; and
- Removal of facilities placed without a permit, in nonconformance with a permit, or in nonconformance with other legal requirements.

RESPONSIBILITIES

MnDOT Utility Agreements and Permits Unit (Central Office)

The Utility Agreements and Permits Unit which consists of the Utilities Engineer, Utility Agreement Writers, Utility Permit Writers, and the Utility Transmission Route Coordinator. Their responsibilities for utility accommodation follow.

- **Utilities Engineer** – The Utilities Engineer oversees the activities of the Utility Agreements and Permits Unit and approves permits on behalf of the Commissioner of Transportation, enforces the MnDOT Utility Accommodation Policy, and helps resolve any outstanding utility issues.
- **Utility Permit Writers** – Utility Permit Writers review and process all applications for Utility Accommodation Permits (Form 2525) to install permanent facilities on trunk highway right of way. They suggest changes to applications, if necessary, and issue permits with special provisions.
- **Utility Transmission Route Coordinator** – The Utility Transmission Route Coordinator acts as MnDOT's liaison between the Public Utilities Commission (PUC), the Department of Commerce (DOC), and MnDOT districts when projects involving high-voltage transmission lines, power plants, wind turbine farms, or large pipelines affect or potentially affect MnDOT property or right of way. The Utility Transmission Route Coordinator researches, supplies information, and formally responds to inquiries by the PUC and DOC to protect the interest and safety of the agency, the state transportation system, and the traveling public.

MnDOT District Permit Staff

District Permit Staff review and process many different types of permit applications, including Miscellaneous Work Permits (Form 1723) for minor or temporary installations and maintenance projects, drainage permits, and access permits. They also are responsible for checking the accuracy of information on completed applications for Utility Accommodation Permits (Form 2525) and verifying field location.

FORMS/INSTRUCTIONS

[Application for Utility Accommodation on Trunk Highway Right of Way \(Form 2525\)](#)

[Application for Miscellaneous Work on Trunk Highway Right of Way \(Form 1723\)](#)

FREQUENTLY ASKED QUESTIONS

Q: *How does the policy address the technical requirements for utility accommodation?*

A: The **Utility Accommodation Policy** describes how MnDOT addresses requests by utilities to occupy a portion of trunk highway right of way. In each case, MnDOT must evaluate the technical aspects of how accommodation of the utility facility will be accomplished, such as how and where a utility may be located so as not to interfere with other utility facilities or the safety of the traveling public.

The Utility Accommodation Section of the [Manual](#) outlines the technical components of utility accommodation.

Simply put, utility owners must fulfill the requirements described in the Utility Accommodation Policy, and fulfill the technical requirements that are contained in the Utility Accommodation Section of the manual. The manual is available at [Manual](#).

Q: *Is the accommodation of private lines allowed?*

A: Private lines are privately owned facilities that convey or transmit communications, electric power, gas, oil, water, or any other similar commodities outlined in the definition of utility facility, but devoted exclusively to private use. Since private lines serve only the owner, it is generally not in the public interest for them to occupy a portion of the limited space available within highway right of way. Accordingly, private lines may be allowed to make a perpendicular crossing of a state trunk highway, but longitudinal installations are not allowed. An application for private crossings may use Application for Utility Accommodation (Form 2525). All private utility installations allowed to cross state highway right of way shall follow this policy's requirements and procedures.

Q: *How are service lines accommodated?*

A: Service lines are a special class of private lines. The sole reason for a service line to be on the highway right of way is to facilitate connection of distribution lines to individual customers. Because it is in the interest of both the customer and the utility owner to have these connections, service lines may be allowed to cross state trunk highways wherever practical, but longitudinal installations are not allowed.

There is a wide variation among public utilities on the division of ownership, costs, and responsibility between the utility and the customer for the portion of a service line on highway right of way. MnDOT does not regulate this relationship; however, MnDOT will look to that utility to locate, mark, and protect any service lines when requested to do so (**Minnesota Statutes 216D**).

Q: *What is the process for performing an emergency repair?*

A: Where an emergency exists that is dangerous to the life or safety of the public and requires immediate repair, the utility owner may perform service and maintenance operations on the trunk highways, including opening and disturbing the surface of the right of way without a work permit. Immediately after learning about the emergency, the utility owner shall immediately notify the State Patrol Division. The utility owner shall take all necessary and reasonable safety measures to protect the traveling public and shall cooperate fully with the State Patrol Division.

In such an event, the utility owner will request a work permit from the MnDOT office of the assistant district engineer, maintenance, not later than the second working day thereafter when a work permit would ordinarily have been required but for the emergency. Nothing herein shall be construed as requiring a utility owner to delay an emergency repair.

Q: *What are a utility owner's responsibilities for facilities that are no longer in use?*

A: If a utility owner discontinues use of an above ground facility, the facility shall be entirely removed from the right of way by the utility owner within 30 days after its use is discontinued, unless MnDOT grants written approval for a time extension. All removal costs shall be the responsibility of the utility owner.

If a utility owner discontinues use of an underground facility but desires to leave it in place on the right of way, the utility owner must receive written approval to do so from MnDOT, and a record shall be kept in the utility owner's permanent files so that the facility can be accurately located in the field. The utility owner shall locate discontinued underground facilities in the same manner as an active facility. MnDOT may at its discretion require abandoned and out-of-service pipes and appurtenant facilities (e.g., manholes, pull boxes, etc.) to be filled in or removed by the utility owner at the time of removal from service or at any time thereafter. All necessary removal and related costs shall be the responsibility of the utility owner.

If a utility owner discontinues use of a facility on a highway bridge but desires to leave it in place on the bridge, the utility owner must receive written approval to do so from MnDOT. Any abandoned or out-of-service facilities that are removed from a bridge must be done so utilizing procedures that are approved by the MnDOT Office of Bridges and Structures. All required removal costs shall be the responsibility of the utility owner.

RELATED INFORMATION

The Utility Accommodation Section of the [Manual](#) includes technical requirements regarding the location, design, and methods for installing, adjusting, accommodating, and maintaining utility facilities on trunk highway right of way. The Utility Accommodation Section of the [Manual](#) is a part of this policy by reference.

Minnesota statutes and rules permit the accommodation of utility facilities on the right of way of Minnesota trunk highways. Trunk highways include all roads established under the provisions of *Constitution of the State of Minnesota, Article XIV, Section 2*. This includes all highways that are constructed, improved, and maintained as public highways under the jurisdiction of the Commissioner of Transportation. Thus, all state-maintained highways, including highways on the Interstate Highway System, are trunk highways.

The *Code of Federal Regulations, Title 23, § 645.215* requires each state transportation department to prepare and submit to the FHWA a statement of the authority of utilities to use and occupy highway rights of way and the policies employed for accommodating such utilities within the right of way of federal-aid highways. The procedures and requirements of this policy are consistent with the following:

[Minnesota Statute 161.20, "General Powers of Commissioner"](#)
[Minnesota Statute 161.45, "Utility on Highway Right of way; Relocation"](#) [Minnesota Statute 161.46, "Reimbursement of Utility"](#)
[Minnesota Statute 222.37, subd 2, "Public Road; Use, Restriction - Pipeline"](#)
[Minnesota Statute 216D, "Excavation Notice System"](#)

[Minnesota Administrative Rules Part 7560 "Excavation Notice System"](#)
[Minnesota Administrative Rules Part 881 0.310 0, "Definitions"](#)
[Minnesota Administrative Rules Part 8810.3200, "Purpose and Scope"](#) [Minnesota Administrative Rules Part 8810.3300, "Permits"](#)
[Minnesota Administrative Rules Part 8810.3400, "Standards for Work Conducted Under Permit"](#)
[Minnesota Administrative Rules Part 8810.3500, "Aerial Lines"](#)
[Minnesota Administrative Rules Part 8810.3600, "Underground Lines"](#)

[Title 23, United States Code, Section §103 - "National Highway System"](#)
[Title 23, United States Code, Section §109 - "Standards"](#)
[Title 23, United States Code, Section §123 - "Relocation of Utility Facilities"](#)

[Code of Federal Regulations, Title 23 - Highways, Part 1 "General"](#)
[Code of Federal Regulations, Title 23 - Highways, Part 645 "Utilities"](#)
[Code of Federal Regulations, Title 23 - Highways, Part 710 "Right-of-Way and Real Estate"](#)
[Code of Federal Regulations, Title 23 - Highways, Part 752 "Landscape and Roadside Development"](#)

[Federal Highway Administration Program Guide, "Utility Relocation and Accommodation of Federal-Aid Highway Projects"](#)

[American Association of State Highway and Transportation Officials, "A Policy on the Accommodation of Utilities within Freeway Right-of-Way"](#)

[American Association of State Highway and Transportation Officials, "A Guide for Accommodating Utilities within Highway Right-of-Way"](#)

[Highway/Utility Guide, June 1993, FHWA-SA-93-049](#)

In addition to the above, utilities must also be installed and maintained in a safe manner in accordance with the following:

[Minnesota Manual on Uniform Traffic Control Devices \(MN MUTCD\)](#)

[Temporary Traffic Control Zone Layouts Field Manual \(MN MUTCD\)](#)

[American Association of State Highway and Transportation Officials, "Roadside Design Guide"](#)

[American Association of State Highway and Transportation Officials, "A Policy on Geometric Design of Highways and Streets"](#)

And, any other manuals which may apply to specific situations

POLICY OWNERSHIP AND AUTHORIZATION

Policy Owners

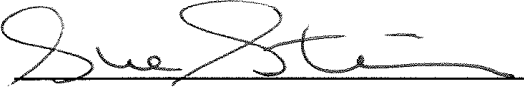
Bryan Dodds, P.E., Director, Office of Land Management



Signature and Date Signed 3-14-16

Governance Council


Sue Stein, Assistant Commissioner, Corporate Services



Signature and Date Signed 3-15-16

Responsible Senior Officer

Susan M. Mulvihill, P.E., Deputy Commissioner/Chief Engineer



Signature and Date Signed 3/17/14