



Art on Trunk Highway Right-of-Way Policy

Policy # OE007
Effective:

Policy Owner: Director, Office of Land Management and Director, Office of Bridge

Policy Contact: Director, Office of Land Management and Director, Office of Bridge

Policy Statement

Federal Highway Administration (FHWA) regulations require that all real property in the right-of-way of federal aid highways, including airspace, be devoted exclusively to public highway purposes. However, the FHWA Administrator may approve a non-highway use based on a determination that it is in the public interest and will not impair the highway or interfere with the free flow of traffic thereon, [23 CFR §1.23](#). The regulations provide that FHWA will cooperate with state and local agencies to provide opportunities to display original works of art in highway rights of way, [23 CFR §752.2\(b\)](#).

Art does not directly serve a transportation purpose. An art project may possess functional as well as artistic qualities, it may be an integral part of a transportation facility or it may be a discrete stand-alone work. For purposes of this policy, art does not include aesthetic treatments that may be included in a highway project and paid for based on the [MnDOT Cost Participation Policy](#) and [Manual](#).

The Minnesota Department of Transportation (MnDOT) will accept donations of art for placement on trunk highway right-of-way in conformance with this policy. MnDOT will only consider applications for art donations submitted by political subdivisions of the state, other state agencies, or tribal governments. MnDOT will evaluate applications for art donations on a case-by-case basis, considering a number of criteria, such as:

- Potential traffic safety issues
- Potential maintenance concerns for MnDOT
- Protection of the clear zone
- Documented public support for the proposed art project
- Potential to enhance the roadside environment

The art proposal applicant will be required to assume full responsibility, as against MnDOT, for all costs associated with the proposed art project, including but not limited to costs associated with design, installation, maintenance, operation (as necessary), and removal. MnDOT will not prohibit the applicant from seeking reimbursement, or other contribution from a third party, including the artist of the proposed art project, however the applicant's responsibility to MnDOT may not be assigned, transferred, or otherwise minimized or delegated.

This policy does not apply to the following:

- Sites not located on trunk highway right-of-way;
- Aesthetic treatment of an existing or proposed transportation facility or structure beyond the basic items and features necessary to address the safety, operation and maintenance needs of a MnDOT

project and which may be included in a highway project and paid for based on the [MnDOT Cost Participation Policy](#) and [Manual](#);

- [Memorial Markers](#);
- Proposed art not in compliance with the [Right-of-way Manual](#), Municipal Identification Signs (\$514); and
- Landscaping, except when it is an essential feature of the art and the artist's original design.

Reason for Policy

- Establish the process for the donation and placement of art within the trunk highway right-of-way.
- Provide a method for applicants to propose an art project.
- Provide guidance on how MnDOT will evaluate applications for art within the trunk highway right-of-way.
- Encourage creativity in all of its forms and offer broad opportunities for participation.
- Identify roles and responsibilities related to art within the trunk highway right-of-way.
- Ensure that MnDOT complies with applicable state and federal laws, including the Visual Artists Rights Act (VARA), [17 U.S.C. §106A](#).

Who needs to know this policy

- Anyone involved in planning, designing, constructing, maintaining, or destruction of art within the trunk highway right-of-way, including applicants, contractors, consultants, artists, and MnDOT staff.
- MnDOT staff involved in the art on the trunk highway right-of-way application review and determination process.
- MnDOT staff involved in the agreement development, negotiation, and review process related to the donation, placement, maintenance, or removal of art within trunk highway right-of-way.

Definitions

Artist

An artist is a person who creates a work of visual art. The term "artist" and "author" are used interchangeably in this policy and its related documentation.

Author

An author, as used in this policy and within the Visual Artists Rights Act, is a person who creates a work of visual art. The term "artist" and "author" are used interchangeably in this policy and its related documentation.

Create

A work of visual art is created when, by or under the authority of the artist, a work is sufficiently permanent or stable to allow it to be perceived, reproduced, or otherwise communicated for the first time. 17 U.S.C. §101.

Clear Zone

A roadside border area that is available for safe use by errant vehicles as determined in accordance with Chapter 3 of the AASHTO Roadside Design Guide.

Public Engagement

A broad range of methods through which members of the public become more informed about and/or influence public decisions.

Right of Attribution

The right of an artist of a work of visual art to claim creation of that work, prevent the use of his/her/their name as the creator of any work of visual art which he/she/they did not create, and prevent or rescind the use of his/her/their name as the artist of a work of visual art in the event of a modification of the work which would be prejudicial to the artist's honor or reputation. 17 U.S.C. §106A(a)(1),(2).

Right of Integrity

The right of an artist of a work of visual art to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his/her/their honor or reputation and the right to prevent any intentional or grossly negligent destruction of a work of recognized stature. 17 U.S.C. §106A(a)(3).

Work of Visual Art

A painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the artist, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the artist and bear the signature or other identifying mark of the artist; or a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the artist, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the artist. 17 U.S.C. §101.

Procedures

The topics in this section appear in chronological order to help individuals, groups, and non-governmental or governmental entities navigate through the process of donating, placing, maintaining, and removing art within the trunk highway right-of-way. Applicants must contact their [Local MnDOT District Office](#) to discuss the scope and details of the proposed art project for feedback and guidance prior to proceeding with the full application process.

1. Eligibility requirement and application procedures
 - A. Applicant Eligibility.
 - i. Applications may only be submitted by a political subdivision of the state, state agency, or tribal government.
 - B. MnDOT staff must review application for completeness and accuracy.
 - i. A political subdivision, state agency, or tribal government applying to place art within the trunk highway right-of-way, including on an existing or proposed MnDOT trunk highway facility or structure, must submit a complete and accurate application package to MnDOT, including:
 - Completed Application for Art on Highway Right-of-way, including:
 - A resolution from the applicant's governing body (if the applicant is a political subdivision or tribal government), or a letter from the agency commissioner or highest

official (if the applicant is a state agency) stating the applicant's leadership is aware of and supports the proposed art project

- A detailed project description, including:
 - Information about the proposed site location and community setting using text, preliminary drawings, models, computer simulations, samples and/or other exhibit materials sufficient to communicate the design intent and identify potential areas of concern
 - Information outlining the relationship between the proposed artwork and the trunk highway right-of-way, any affected transportation facility or structure, any design elements impacted by the proposed art project, and the degree of flexibility in the art design to resolve highway issues
 - Identification of any transportation or public safety issues the proposed artwork may alleviate or worsen
 - A cost estimate and source of funding for the proposed artwork
- A description of completed public engagement activities related to the proposed artwork and a summary of comments, feedback, and information received in the public engagement process. Applicant must ensure that those most impacted by the proposed artwork have an opportunity to express support or opposition to the proposed art and the application made under this policy. Applicant will determine the methods of public engagement and facilitate review of feedback and information received in the public engagement process.
- A detailed plan set including and providing the following:
 - Location of trunk highway right-of-way;
 - Proximity of trunk highway to proposed artwork;
 - Known existing and proposed utilities in the trunk highway right-of-way and proximity of utilities to proposed artwork;
 - Structural details of proposed artwork, prepared by a State of Minnesota licensed structural engineer;
 - A detailed construction/installation plan;
 - A detailed work plan including estimated costs, fees, and projected schedule sufficient to guarantee that the project will be within the budget, timetable and technical specifications proposed;
 - A detailed maintenance plan, maintenance contacts, and lifespan expectation of the proposed art project. Maintenance requirements are generally provided in this policy;
 - A detailed plan set showing any necessary improvements or repairs to MnDOT facilities or structures that may occur or be needed due to the art installation; and
 - If known, an artwork removal plan.
- An artist's statement, including a description of the proposed artwork, including size specifications, materials used, colors, shapes, and other defining and/or unique characteristics
- A statement describing how the proposed artwork relates to the proposed site and how the art fits in the context of the community
- A statement describing how the proposed artwork is expected to respond to exposure to weather and other roadside conditions, and how it is expected to respond to anticipated MnDOT construction and maintenance activities

- c. A completed and signed Waiver of Rights Pursuant to Visual Artists Rights Act
- d. Additional Documentation Requirements. The following documentation will be required for all accepted applications and may be required prior to acceptance of an application:
 - With respect to applications for art on proposed facilities or structures:
 - MnDOT must review design calculations by a structural engineer licensed in the state of Minnesota
 - MnDOT must receive and approve all forms, CADD drawings and other pertinent design data prior to the 30% final plan submittal for the project
 - With respect to applications for art on existing facilities or structures:
 - MnDOT must review and approve design calculations by a structural engineer licensed in the state of Minnesota

Please Note: Additional documentation may be required to complete or supplement the application.

2. Application review and approval process

A. General Information

- i. The safety of the traveling public using the trunk highway system is and will always be the primary consideration in evaluating an application for a public art project submitted in accordance with this policy and its related procedures.
- ii. Applications for art on the trunk highway right-of-way will be considered on a case-by-case basis, with guidance and input from appropriate MnDOT staff and subject matter experts.
- iii. Notwithstanding any other provision of this policy or its related documentation, MnDOT retains the sole discretion to approve or deny any application for art.
- iv. Any art project accepted under this policy and its related procedures will be considered a gift donated to MnDOT.

B. Criteria for approval

- i. MnDOT will review each application on a case-by-case basis, considering relevant factors.
- ii. The following non-exhaustive list of artwork elements and related circumstances will be given special consideration in the application review process:
 - a. Proposed art fixes objects near the clear zone
 - b. Proposed art is attached to a historic structure
 - c. Proposed art is potentially distracting to drivers
 - d. Proposed art creates an attractive nuisance
 - e. Proposed art is near environmentally - sensitive areas
 - f. Proposed art uses or requires electrical or alternative (solar, wind, other) power
 - g. Proposed art impedes or increases the cost of infrastructure inspection and maintenance
 - h. If the proposed art is located within an Airport Influence Area (particular to each public airport), coordination with the MnDOT Office of Aeronautics is required to identify the potential for airspace or land use impacts. Airport Influence Area Maps are available online.
- iii. Applications for art projects containing any of the following factors, elements, and/or characteristics will be rejected.

- a. Proposed art placement is in the median areas of controlled-access highway
- b. Proposed art obstructs the sight distance for motorists
- c. Proposed art contains advertising
- d. Proposed art contains distractions for drivers such as bright lights or flashing lights, moving parts or loud sounds
- e. Proposed art obscures or interferes with traffic control devices
- f. Proposed art resembles, makes use of, or simulates the design, colors or combinations of shapes and colors reserved for traffic control devices
- g. Proposed art impedes the functionality of any major or ancillary highway structure
- h. Proposed art does not meet guidelines or standards of the AASHTO Roadside Design Guide and AASHTO: A Policy on Geometric Design of Highways and Streets (American Association of State Highway and Transportation Officials), the MN MUTCD (Minnesota Manual on Uniform Traffic Control Devices), the LRFD Bridge Design Manual (MnDOT Load and Resistance Factor Design), the MnDOT Accessibility Policy, or the MnDOT ADA Transition Plan
- i. Proposed art involves placement of a fixed object within the clear zone as identified in the MnDOT Road Design Manual
- j. Proposed art has features that may be deemed a section 4(f) property as detailed in 23 U.S.C §138, U.S.C. §303, and 23 U.S.C. Part 774

C. Review and approval process

Please Note: Once an application is approved, changes to the application are not permissible without written approval from MnDOT.

- i. Application review includes evaluation of a number of criteria, including the impact that the proposed art may have on the safety of vehicle drivers and other users of the transportation system. While the process may differ depending on application and project circumstances, the following provides a general description of the application review and determination process:
 - a. Applicant will submit, to the appropriate MnDOT district office, a completed Application for Art on the Highway Right-of-way and completed and executed Waiver of Rights under the Visual Artists Rights Act.
 - b. The District Engineer (or designee) will solicit comments on the application from the appropriate functional groups within the district, and may include appropriate MnDOT statewide divisions, including, but not limited to, the Office of Environmental Stewardship, the Bridge Office, the Office of Land Management, or the Office of Chief Counsel.
 - c. If the internal review of the application is favorable to the applicant, the District Engineer will approve the application and sends the signed application to the district contact.
 - d. The district contact will notify the applicant of the application's approval and will submit a request for the preparation of a MnDOT Art on the Highway Right-of-way Agreement from the Cooperative Agreements Section. The agreement is broadly described in this policy.
 - e. The district contact will request the applicant review, sign and return the agreement to the district contact.
 - f. The district contact will request the District Engineer review, sign and forward the agreement to the Contract Management Section of the Office of Chief Counsel.
 - g. The Contract Management Section will review, sign, and forward the agreement to the Cooperative Agreements Section.
 - h. The Cooperative Agreements Section will enter the application documentation and executed agreement in the appropriate MnDOT repository.

D. Art on the Highway Right-of-way Agreement

- i. If an application is approved, MnDOT will enter into a written agreement with the applicant, specifying the terms by which the applicant may install and maintain art within the trunk highway right-of-way. This agreement will contain terms consistent with MnDOT's obligations under state and federal law, and as otherwise deemed necessary and appropriate. The Office of Chief Counsel, Contract Management Section, must review each Art on the Highway Right of-way Agreement for compliance with applicable law and obligation.
- ii. The agreement must include terms that:
 - a. Require the applicant to accept all responsibility for all costs related to the art;
 - b. Require the applicant to develop and implement a maintenance plan as described generally in this policy and consistent with the maintenance plan provided in the application unless otherwise agreed upon, in writing, by the applicant and MnDOT; and
 - c. Provide reasonable termination rights for MnDOT.

E. Art ownership and Moral Rights Conferred by the Visual Artists Rights Act

- i. Art Ownership. Artwork will be deemed donated to MnDOT and MnDOT will own the artwork upon acceptance of the application.
- ii. Moral Rights. The Visual Artists Rights Act of 1990 (VARA), 17 U.S.C. 106A, confers on the artist of a work of visual art certain rights relating to attribution and integrity.
 - a. Rights of attribution include the right of an artist to claim creation of a work, the right of an artist to prevent his/her/their name from being attached to a work of visual art he/she/they did not create, and, under particular circumstances, the right of the artist to remove his/her/their name or claim of creation from a work of visual art.
 - b. Rights of integrity restrict anyone other than an artist from changing or modifying a work of visual art in a way that is inconsistent with the artist's intention for the artwork or prejudicial to the artist's reputation. Rights of integrity also restrict anyone other than the artist from removing or demolishing a work of visual art if the artwork is of recognized stature.
 - c. Public safety and maintaining the transportation purpose of trunk highway right-of-way must always have priority over art on the right-of-way. Therefore, MnDOT retains the right to change, modify, remove, or destroy art within the trunk highway right-of-way as needed. To facilitate this, the artist of the proposed artwork must provide a completed and signed Waiver of Rights Pursuant to Visual Artists Rights Act form waiving the artist's right of integrity.
 - d. When and to the extent reasonable, MnDOT will attempt to contact the artist and seek input on modification, removal, or destruction processes prior to modification, removal, or destruction of the art. Notwithstanding any provision of this policy or its related documentation, however, MnDOT does not guarantee it will: a) attempt to contact the artist in all circumstances; b) attempt to contact the artist multiple times; c) suspend or postpone modification, removal, or destruction of the artwork pending artist contact; or d) follow the input of the artist. In addition, MnDOT does not guarantee any modification(s) made will not alter the art in such a way that the artist's intention is no longer effectuated or in a manner prejudicial to the artist's honor or reputation. MnDOT similarly does not guarantee artwork of a recognized stature will not be removed or destroyed.

- iii. Artist and sponsor recognition. Subject to MnDOT approval, the artist, or sponsor of the approved art may be recognized on or adjacent to the art. The applicant is responsible for the costs involved with such recognition, including maintenance and traffic control as appropriate.

F. Criteria for art maintenance, removal or disposal, modification or change

- i. Applicants must provide all art maintenance and must provide MnDOT a maintenance plan as required by this policy.
 - a. The maintenance plan must include:
 - Traffic control measures for accessing the art and providing required maintenance.
 - Art placement in a location where the maintenance of the art by the applicant is easy and accessible as stated in the agreement. The placement of the art must allow for safe access for maintenance personnel and equipment
 - Maintenance activities must not encroach upon the clear zone area of the highway
 - Necessary snow removal measures for accessing the art and the responsible party for these duties
 - An outline of the inspection schedules along with details on how the applicant will conduct repair and restoration activities including graffiti and litter removal
 - Provisions for the inspection of free standing art at least every two years to assess the structural soundness, stability and public safety. Applicants must retain inspection records and provide the inspection records to MnDOT upon request
 - Removal provisions if not maintained properly or the art has reached the end of its useful service life
 - b. MnDOT, in its sole discretion, reserves the right to remove art from the right-of-way for any reason, including but not limited to safety concerns, failure of applicant to maintain the artwork properly, deterioration of the artwork or surrounding area, or future highway construction and maintenance activities. Regardless of the reason, the applicant is responsible for all associated costs for removal or disposal. Modification of some elements or features to avoid a safety or other hazard to the public, or to alleviate a maintenance difficulty, is not the same as a removal or disposal under this paragraph.

All art projects accepted under this policy and its related procedures are subject to modification, removal, or demolition at any time by MnDOT in its sole discretion. While MnDOT staff may make reasonable efforts to notify and/or seek input from the artist prior to modification, removal, or demolition, these efforts to communicate with and receive input from the artist are a courtesy to the applicant and/or artist and are not guaranteed.

Responsibilities

APPLICANT

Applicant must:

- Contact the appropriate Local MnDOT District Office to discuss the scope and details of the proposed art project for feedback and guidance prior to proceeding with the full application process.
- Conduct and provide documentation of the public engagement process as required by this policy, including a summary of feedback and information received from public engagement activities.

- Submit to the appropriate local MnDOT District Office a complete and accurate Application for Art on Highway Right-of-way form, including supporting resolution and all information and documentation required under this policy.
- Coordinate with the Office of Aeronautics to identify the potential for airspace or land use impacts.
- Install, maintain, operate, and remove art as directed by MnDOT, in its sole discretion.
- Maintain accurate contact information for the applicant and artist and provide updated information to MnDOT as appropriate or upon MnDOT's request of the information.

MNDOT DISTRICT CONTACT

The MnDOT District Contact will:

- Receive the application from the applicant.
- Review the application for completeness.
 - Verify the application contains the appropriate documentation including detailed plans, entity resolution of authorization and/or support, and waiver of rights granted by the Visual Artists Rights Act.
- Request engineering feedback from appropriate MnDOT offices (for example, Offices of Bridge, Environmental Stewardship, Maintenance, and Traffic, Safety & Technology), for art on or near either existing or proposed facilities or structures.
- Identify any aspects of the proposed art that may involve public controversy and consult with the Office of Communications, the District Public Affairs staff, or other MnDOT staff as needed to address the matters of public controversy.
- Inform the applicant of the review decision (approval or rejection of application)
- Request the preparation of a MnDOT agreement (by or with the Cooperative Agreements Section)
- Request the review and signature of the MnDOT agreement by the applicant
- Submit the MnDOT agreement to the District Engineer for review and signature

MNDOT DISTRICT ENGINEER

- Review and sign the MnDOT agreement to place art on the highway right-of-way

MNDOT OFFICE OF CHIEF COUNSEL

- Confirm receipt of the Waiver of Rights Pursuant to Visual Artist's Rights Act (VARA) and resolve any outstanding issues related to the VARA waiver or agreement
- Review and sign the agreement between MnDOT and applicant
- Send the signed MnDOT agreement to the Cooperative Agreements Section

MNDOT COOPERATIVE AGREEMENTS SECTION

- Prepare the draft(s) of the written agreement
- Enter the signed agreement into the agency repository

Forms/Instructions

- [Application for Art on Highway Right of Way](#)
- [Waiver of Rights Pursuant to Visual Artists Rights Act](#)

Related Information

- [17 U.S.C. §106A](#) Visual Artists' Rights Act (VARA)
- [23 CFR §752.2\(b\)](#) Landscape and Roadside Development
- [23 CFR §774.11\(h\)](#) Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites {Section 4(f)}
- [Americans with Disabilities Act \(1990\)](#) and [ADA Amendments Act of 2008](#) standards and guidance
- [Minnesota Statutes §161.38](#) Special Agreements for Highways and Municipalities
- [Federal Transit Administration \(FTA\)](#) has issued a circular outlining its policy on inclusion of art in FTA funded transit projects. The FTA will provide funding for art in transit projects, but it leaves the allocation of funds for art to the discretion of the local transit entity.
- [Minnesota Airport Land Use Compatibility Manual](#)

History & Updates

Title: *Art on the Trunk Highway Right-of-Way Policy (2018)*

	Date	Comments
Initial Adoption	4-7-2016	Policy #OP007 adopted
1st Revision	11-27-2018	Revised
		Updated Policy Owners only
2nd Revision		
3rd Revision		

Authorization

Policy Owner:

Signature: _____

Print Name: _____

Date: _____

Policy Owner:

Signature: _____

Print Name: _____

Date: _____

Governance Committee has reviewed this policy and recommends approval:

Signature: _____

Print Name: _____

Date: _____

Responsible Senior Officer:

Signature: _____

Print Name: _____

Date: _____