

SUBCHAPTER 02B - HIGHWAY PLANNING

SECTION .0100 - RIGHT OF WAY

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History Note: Authority G.S. 133-5; 133-17; 136-18(2); 136-18(10); 136-18(16); 136-18(23); 136-19; 136-19.1 to 136-19.3; 136-44.11; 136-89.52; 136-103; 136-131 to 132; 136-148; 143B-350B(f),(g);
Eff. July 1, 1978;
Amended Eff. November 1, 1991; October 1, 1991; June 1, 1985;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0109 ACQUISITION OTHER THAN UNIMPROVED STATE SECONDARY ROADS

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. November 1, 1991.

19A NCAC 02B .0110 PROPERTY OWNER'S APPRAISALS

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0111 NEGOTIATION BY CORRESPONDENCE

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. November 1, 1991.

19A NCAC 02B .0112 NEGOTIATION WITH OWNER (HIS AGENT OR ATTORNEY)

19A NCAC 02B .0113 NEGOTIATION FOR PROPERTY UNDER LEASE

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0114 NEGOTIATION WITH DEPARTMENT OF TRANSPORTATION EMPLOYEES

When acquiring right of way from Department of Transportation employees performing highway functions:

- (1) The appraisal of any property having damages in excess of two thousand five hundred dollars (\$2,500), owned by an employee of the Department of Transportation, shall be made by an independent fee appraiser, rather than a staff appraiser;
- (2) The Right of Way Review Board shall pass on the approval of the appraisal of any employee of the Right of Way Branch, or any other employee of the Department of Transportation performing highway functions at salary grade 73 or above;
- (3) Right of way acquisitions may be negotiated at the approved appraisal with employees below salary grade 73;

- (4) Right of way acquired from any employee of the Department of Transportation performing highway functions at salary grade 73 or above shall not be acquired by negotiation but by the filing of a complaint and declaration of taking.

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1993; November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0115 NEGOTIATION WITH LOCAL GOVERNMENT UNITS
19A NCAC 02B .0116 NEGOTIATION WITH FEDERAL AGENCIES
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19A NCAC 02B .0118 NEGOTIATION WITH THE U. S. FOREST SERVICE

History Note: Authority G.S. 136-18(2); 136-19; 143B-24; 143B-350(f),(g); 146-25.1; 146-32(2);
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0119 NEGOTIATION WITH MUNICIPALITIES AND MUNICIPAL AGREEMENTS

History Note: Authority G.S. 136-18(2); 136-19; 136-66.3; 143B-24; 143B-350(f),(g);
Eff. July 1, 1978;
Transferred and Recodified to 19A NCAC 2B .0315 Eff. October 1, 1993.

19A NCAC 02B .0120 AGREEMENTS FOR ENTRY
19A NCAC 02B .0121 RIGHT OF WAY DONATIONS

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. November 1, 1991;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0122 DISPOSITION OF IMPROVEMENTS PURCHASED BY THE BOARD

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. November 1, 1991.

19A NCAC 02B .0123 SECONDARY ROAD RIGHT OF WAY

History Note: Authority G.S. 136-18(2); 136-18(26); 136-29; 136-44.7;
Eff. July 1, 1978;
Amended Eff. November 1, 1991;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0124 PERSONAL PROPERTY NOT TO BE ACQUIRED

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Transferred and Recodified to 19A NCAC 2B .0316 Eff. October 1, 1993.

19A NCAC 02B .0125 STOCK OR VEHICULAR UNDERPASSES
19A NCAC 02B .0126 PAYMENT TO PARTIES OTHER THAN THE OWNER OF RECORD TITLE
19A NCAC 02B .0127 INSTRUMENTS OF CONVEYANCE USED FOR HIGHWAY BEAUTIFICATION
19A NCAC 02B .0128 PREPARATION OF INSTRUMENTS OF CONVEYANCE

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0129 NO OBLIGATION OTHER THAN IN AGREEMENT WILL BE RECOGNIZED

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1993; November 1, 1991;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02B .0130 CONSTRUCTION OUTSIDE THE RIGHT OF WAY

History Note: Authority G.S. 136-18(2); 136-19; 136-103; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0131 CONDITIONS PRECEDENT TO CONDEMNATION

Condemnation will not be instituted until the property owner has been made an offer of settlement and has been allowed a period of two weeks in which to consider the offer. The waiting period may be waived in those instances where, after the offer is made, the property owner emphatically states that he has no intention of settling and would prefer that the compensation be determined by the courts. In unusual instances where questions of title or ownership make it impossible to conduct or conclude negotiations, condemnation may be instituted without making an offer. However, such person, if any, who may be in charge of the property or who may claim "color of title" shall be advised of the action contemplated by the Department of Transportation.

History Note: Authority G.S. 136-18(2); 136-19; 136-103; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0132 NOTICE TO OWNER OF INTENT TO CONDEMN

The Right of Way agent shall mail to the property owner a letter advising him of Department of Transportation intent to proceed with condemnation. The letter shall specify the amount of the offer and give the property owner a time limit in which to accept the offer. The date specified in this letter shall not be later than the last working day before the filing date. If there is a lease involved, the letter will be sent to both the lessor and lessee.

History Note: Authority G.S. 136-18(2); 136-19; 136-103; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1993; July 2, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0133 NOTICE TO DISPLACEDS TO VACATE

Written notice of when to vacate will be given to all parties owning personal property located within the taking. This notification will be given to owners, and tenants when persons are lawfully occupying real property as a home, farm, business, barn, or outbuilding.

History Note: Authority G.S. 136-18(2); 136-19; 136-103; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1993; July 2, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

**19A NCAC 02B .0134 SETTLEMENT OF CLAIMS AFTER INSTITUTION OF SUIT AND DEPOSIT
19A NCAC 02B .0135 OCCUPANCY OF IMPROVEMENT AFTER ACQUISITION**

19A NCAC 02B .0136 IMPROVEMENTS NOT TO BE MOVED
19A NCAC 02B .0137 RODENT CONTROL PROCEDURES

History Note: Authority G.S. 136-18(2); 136-19; 136-103; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. November 1, 1991;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0138 DISPOSITION OF IMPROVEMENTS

All improvements that are acquired in connection with the right of way are to be disposed of by one of the following methods:

- (1) resold to the property owner for the retention value placed upon the improvement by the appraisal,
- (2) sold by public sale or by a negotiated sale if no bids are received after public advertisement,
- (3) demolished by the roadway contractor or by demolition contract,
- (4) retained by the Department for other public use,
- (5) sold to a displacee for replacement housing.

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1993; November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0139 PUBLIC SALE OF IMPROVEMENTS

- (a) Improvements acquired by the Department of Transportation that are not resold to the property owner may be disposed of by a public sale. Sales shall be by means of sealed bids or auction sale.
- (b) If no bids are received for the sale of improvements after public advertisement, the improvements will be sold by negotiation with individuals interested in purchasing them.

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1993; November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0140 PUBLIC SALE OF IMPROVEMENTS WITH LAND RESIDUE

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0141 DISPOSITION OF IMPROVEMENTS BY MOVING CONTRACT

The Department of Transportation will not enter into agreements with property owners to move buildings from the right of way except where a contractual obligation exists under a previous agreement with the property owner or where on secondary road improvement projects, a property owner has donated the right of way and it has been agreed the buildings within the right of way will be moved by the Department of Transportation. Where a contractual obligation exists under a former agreement to move a building, the property owner may sell the building to the Department of Transportation rather than have it moved.

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0142 REMOVAL OF GRAVES OR CEMETERIES

- (a) If it is necessary to remove a cemetery or graves from the limits of highway right of way, the preferred procedure to follow is by consent of the next of kin. Since all work pertaining to the removal of graves shall be under supervision and direction of the county board of commissioners or other appropriate official, including the local health director, the Relocation Agent shall ascertain the proper party to contact in each county in which graves will be disinterred or reinterred. A letter from

the Relocation Agent to the board of county commissioners shall be written indicating that the Department of Transportation is certifying the necessity for moving the graves or cemetery from the right of way of the proposed project.

(b) The remains may be removed to a burial plot in the same cemetery, and this practice shall be encouraged wherever possible. If requested by the next of kin, however, the remains may be removed to another cemetery or location in the community. In the event the remains are being removed and relocated in a cemetery that will not permit above ground markers or headstones, a provision shall be placed in the form regarding the disposition of the markers that are located in the cemetery and the existing markers shall be buried with the remains at the new grave site. The agent must arrange for and secure the substitute burial plot with the Department of Transportation paying all expenses of disinterment, removal, and reinterment, including the actual reasonable expense that the next of kin incurred in attending the disinterment and reinterment. The expenses of the next of kin may not exceed the sum of two hundred dollars (\$200). Deeds to substitute burial plots shall be drawn in favor of the next of kin. If no next of kin can be located, the plot shall be deeded to the county, if agreeable, and to the Department of Transportation as the last resort.

(c) In the event that no next of kin can be located or the next of kin will not grant permission for the removal of the remains, the Department of Transportation shall apply the procedures in G.S. 65-13.

History Note: Authority G.S. 65-13; 136-18(2); 136-18(20); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0143 THE SALE OF SURPLUS LANDS

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g); 150B-21.3A;
Eff. July 1, 1978;
Amended Eff. November 1, 1993; October 1, 1991; February 1, 1988; November 1, 1982;
Repealed Eff. February 1, 2019.

19A NCAC 02B .0144 SALES OF SURPLUS LANDS

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1991;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02B .0145 COPIES OF FORMS

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g); 150B-21.3A;
Eff. July 1, 1978;
Amended Eff. November 1, 1991;
Repealed Eff. February 1, 2019.

19A NCAC 02B .0146 RELOCATION ASSISTANCE MANUAL

History Note: Legislative Objection Lodged Eff. August 19, 1980;
Legislative Objection Removed Eff. April 23, 1981;
Authority G.S. 133-6; 133-14; 150A-63(c);
Eff. July 1, 1978;
Amended Eff. April 11, 1980;
Repealed Eff. April 3, 1981.

19A NCAC 02B .0147 OBTAINING COPIES

History Note: Authority G.S. 136-6; 150A-62;
Eff. July 1, 1978;
Repealed Eff. April 3, 1981.

19A NCAC 02B .0148 UTILITY ENCROACHMENTS

History Note: Legislative Objection Lodged Eff. August 19, 1980;
Legislative Objection Removed Eff. April 23, 1981;
Authority G.S. 136-18(1); 136-93; 150A-63(c);
Eff. July 1, 1978;
Amended Eff. April 11, 1980;
Repealed Eff. April 3, 1981.

19A NCAC 02B .0149 OBTAINING COPIES

History Note: Authority G.S. 150A-62;
Eff. July 1, 1978;
Repealed Eff. April 3, 1981.

19A NCAC 02B .0150 RAILROAD RIGHT OF WAY DEFINITIONS

The following definitions apply to Rules .0150 through .0158 of this Subchapter.

- (1) "At-grade crossing" means an intersection where roadways and railroads join or cross at the same level.
- (2) "Closed crossing" means a location where a previous crossing no longer exists because either the railroad tracks have been removed, or each pathway or roadway approach to the crossing has been removed, leaving behind no intersection of railroad tracks with either a pathway or roadway. A grade-separated highway-rail crossing that has been removed shall be considered a closed crossing.
- (3) "Crossing Agreement" means a written agreement between the Department and a railroad through which the railroad permits the Department to build a road across the railroad's tracks.
- (4) "Facilities" means real or personal property, or any interest in that property, that is situated for the provision of a freight or passenger rail fixed guideway facility or system. The term includes all property or interests necessary or convenient for the acquiring, providing, using, or equipping of a rail fixed guideway facility or system, including rights-of-way, trackwork, train controls, stations, and maintenance facilities.
- (5) "Flange guard" means a protective edge, rib, or rim made of rubber, steel, timber, or any other composite material on any object such as the base of a rail, on the top and bottom horizontal parts of a beam, or girder.
- (6) "Grade" means the rate of ascent or descent of a roadway, expressed as a percentage and calculated by the change in roadway elevation per unit of horizontal length.
- (7) "Grade point" means the point where the new construction of a facility ties into and terminates at the existing facility.
- (8) "Grade separation" means a crossing of a highway and a railroad at different levels that allows unimpeded traffic movement.
- (9) "Railroad" means an entity that owns or maintains the track through the at-grade crossing, or an entity that operates one or more trains through an at-grade crossing or grade separated crossing on or connected to the general railroad system of transportation.
- (10) "Separated" means the travelways of two transportation facilities, such as two highways or a highway and a railroad, that are disconnected by means of a bridge so that traffic on one shall not conflict with traffic on the other.
- (11) "Separation structure" means the bridge structure that separates the travelways of the two transportation facilities.
- (12) "Track" means an assembly of rails, ties, and fastenings that cars, locomotives, and trains traverse.
- (13) "Traffic control device" means a sign, signal, marking, or other device placed on or adjacent to a street or highway by authority of a public body or official having jurisdiction to regulate, warn, or guide traffic.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20; 150B-2(8a)(h);
Eff. July 1, 1978;
Amended Eff. December 1, 2012;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0151 RAILROAD GRADE CROSSING SIGNS AND SIGNALS

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;
Eff. July 1, 1978;
Amended Eff. November 1, 1991;
Repealed Eff. November 1, 1993.

19A NCAC 02B .0152 SIGNALIZATION OF EXISTING GRADE CROSSING

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20; 150B-21.3A;
Eff. July 1, 1978;
Amended Eff. December 1, 1993;
Repealed Eff. June 1, 2019.

19A NCAC 02B .0153 NEW AT-GRADE CROSSING

(a) It shall be unlawful to construct a railroad track across any portion of the State highway system without the Secretary of Transportation or the Secretary's designee providing a written statement of approval. The Secretary or designee's determination shall consider rail crossing engineering standards for safety, location, sight lines, traffic volume, grade, horizontal alignment, curvature, cant and the number of traffic lanes.

(b) A crossing agreement shall be required for any construction or relocation of railroad track across the State highway system, and any construction or relocation of the State highway system across already existing railroad track. The crossing agreement shall list the construction, maintenance, safety device installation, and funding responsibilities of each party.

(c) Where the construction of a new road or the relocation of an existing road involves an additional or a new crossing and does not involve the elimination of an existing crossing, the railroad shall not be required to bear any costs of signalization or separation, either at the time of the initial construction or within a 20-year period from the execution of the Crossing Agreement if the Department determines during that 20-year period that a signalization or a separation structure shall be required.

(d) If a crossing in existence prior to December 3, 1966 shall be eliminated by the relocation of an existing road, Rule .0155 of this Section shall apply.

(e) The following shall be required for the construction of a new municipal street across an already existing railroad track, or railroad tracks across the municipal street system.

- (1) If a municipality and railroad seek to enter into an agreement for the construction of a new municipal street, meaning a street forming a part of the municipal street system consisting of those streets or highways that are not a part of the State highway system, across a railroad track, at-grade, the municipality or public authority responsible for the maintenance, construction, reconstruction, and right-of-way acquisition for the municipal street system shall provide the Rail Division Director with 60-days' notice prior to the execution of the agreement. If the municipality anticipates there to be less than 60 days between the negotiations and execution of the agreement, the municipality shall notify the Director upon commencement of agreement negotiations.
- (2) If a municipality and railroad seek to enter into an agreement for the construction of a new railroad track across the municipal street system, at-grade, the municipality or public authority responsible for the maintenance, construction, reconstruction, and right-of-way acquisition for the municipal street system shall provide the Rail Division Director with 60-days' notice prior to the execution of the agreement. If the municipality anticipates there to be less than 60 days between the negotiations and execution of the agreement, the municipality shall notify the Director upon commencement of agreement negotiations.
- (3) If a private developer and a railroad seek to enter into an agreement for the construction of a railroad track across the municipal street system, at-grade, or a new municipal street across a railroad track, at-grade, the private developer shall provide the Rail Division Director with 60-days' notice prior to the execution of the agreement. If the private developer anticipates there to be less than 60 days between the negotiations and execution of the agreement, the private developer shall notify the Director upon commencement of agreement negotiations.
- (4) Notice shall be in writing and shall be effective upon receipt by the Rail Division Director. Notice may be delivered personally, by email, sent by overnight courier with recipient's signature or other electronic acknowledgement of receipt from the recipient requested, or by certified or registered mail, postage

prepaid. Please address all physical copies of the required notice to the Rail Division Director at 1553 Mail Service Center, Raleigh, NC 27699-1553. The Rail Division Director's email address may be found, free of charge, at <https://apps.ncdot.gov/dot/directory/authenticated/UnitPage.aspx?id=3393>.

- (5) Notice shall include the following information:
- (A) the name, address, telephone number, and email address of the entity submitting the notice;
 - (B) a description of the anticipated crossing, including whether the agreement is for the construction of a railroad track across the municipal street system, or the construction of a municipal street across an already existing railroad track;
 - (C) the county, city, or political subdivision where the crossing will be located;
 - (D) the railroad milepost number, if an already existing railroad track; and
 - (E) the State maintained road number or name, if an already existing road.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20; 136-20.1; 136-66.1; 136-195;
Eff. July 1, 1978;
Amended Eff. December 1, 1993;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0154 RAILROAD SEPARATION STRUCTURES

- (a) Whenever any highway project provides for the construction of a separation structure over or under the railroad, the Department shall construct the separation structure to provide for an additional track upon the request of the railroad and the furnishing of the justification or enter into an agreement with the railroad to provide for the additional track if such tracks are constructed and placed in use within a 20-year period from the signing of the agreement.
- (b) If a grade crossing that was in existence prior to December 3, 1966, is separated, the railroad shall pay five percent of the cost of the separation structure and approaches from grade point to grade point.
- (c) If the separation structure eliminated the crossing at-grade, the railroad shall pay five percent of the total costs of the separation structure and approaches from grade point to grade point as constructed initially and five percent of the costs of the widening of the structure within the 20-year period.
- (d) If the separation structure is an additional or new crossing and no existing crossing is closed, the Board of Transportation shall pay the entire cost of the structure including the provision for additional tracks on request by the railroad with justification, or will pay the entire cost of widening the structure within the aforementioned 20-year period.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;
Eff. July 1, 1978;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0155 EXISTING AT-GRADE CROSSING

- (a) If the construction, reconstruction, or maintenance of an existing at-grade crossing causes any road, street, or highway forming a part of the State highway system to cross or intersect any railroad, including an industrial siding, at the same level or grade, the railroad shall be responsible for the following:
- (1) construction and maintenance of the crossing and the area between the ends of the ties and the edge of the pavement of the main traveled lanes plus a maximum of 10 feet of the usable shoulders; and
 - (2) construction cost of the crossing for the pavement width and maintenance for the entire area herein described at its own expense.
- (b) Pursuant to G.S. 136-20(h), the railroad shall be responsible for 50 percent of annual maintenance costs of grade crossing signals.
- (c) A railroad, county, city, or other political subdivision of the State may identify and propose at-grade crossings for potential closure by submitting a Crossing Closure Request to the Rail Division Director as follows:
- (1) The Crossing Closure Request shall be addressed to the Rail Division Director, 1553 Mail Service Center, Raleigh, North Carolina, 27699-1553 and contain the following information:
 - (A) name of the entity submitting the request;
 - (B) name of the county, city, or political subdivision where the crossing is located;
 - (C) Association of American Railroads (AAR) crossing number;
 - (D) railroad milepost number;
 - (E) State maintained road number or name; and
 - (F) any existing protection at the crossing.

- (2) The Rail Division shall review the Crossing Closure Request and make a final recommendation to the Board of Transportation upon the consideration of transportation impacts, including emergency access, safety, feasibility, and public convenience.
- (3) If upon the consideration of the Rail Division's final recommendation, the Board of Transportation approves the at-grade closure, the Rail Division shall give notice to the governing body within which the at-grade crossing is located, direct the Railroad to close or remove the crossing within 60 days, and coordinate with the Railroad the responsibilities for removal.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0156 PAVING OF ROADWAY SURFACE CROSSING RAILROAD TRACKS

When any road, street or highway forming a link in the State highway system is being surfaced or resurfaced, the Department of Transportation shall, pave the roadway surface across the crossing upon request by the railroad. The railroad shall provide and place at its own expense the necessary crossing flange guards on rail guards and otherwise adjust the facilities to meet the level of the finished road surface.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0157 COST OF CHANGING ELEVATION OF RAILROAD FACILITIES

When the grade of any road, street, or highway requires a change in the elevation of the railroad's tracks or facilities, except those changes required by surfacing or resurfacing, the Department shall pay for the necessary change in the railroad facilities that may be required to meet the grade of the finished road surface.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0158 CHANGING GRADE OF ROAD WHEN GRADE OF RR TRACKS IS CHANGED

When any railroad changes the grades of its tracks where the tracks cross or intersect any road, street, or highway of the State highway system, the railroad shall be responsible for adjusting, at its own expense, the grade of such road, street or highway as required to meet the change in grade of the railroad's tracks or facilities. Any adjustment of the road, street or highway shall be made in accordance with Departmental engineering standards. A minimum of ten feet runoff shall be required for each inch of difference in elevation between track grade and road grade. The Department may contract with the railroad to perform the asphalt run-off work on a 100 percent reimbursement basis.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;
Eff. July 1, 1978;
Amended Eff. October 1, 1993; November 1, 1991;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0159 NOTIFICATION TO RAILROADS

19A NCAC 02B .0160 WIDTH OF RIGHT OF WAY

History Note: Authority G.S. 136-18(2); 136-19; 136-20(f);
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0161 BICYCLE TRAILS

History Note: Authority G.S. 136-71.9; 136-71.10;
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Transferred and Recodified to 19A NCAC 2E .0427 Eff. October 1, 1993.

19A NCAC 02B .0162 DELEGATION TO DIRECTOR OF PLANNING AND PROGRAMMING

History Note: Authority G.S. 143B-350;
Eff. March 1, 1989;
Amended Eff. October 1, 1993;
Repealed Eff. December 1, 1993.

19A NCAC 02B .0163 IMPLEMENTATION OF ROADWAY CORRIDOR OFFICIAL MAPS

History Note: Authority G.S. 136-33.53; 136-44.50; 136-44.51; 136-44.52;
Eff. October 1, 1991;
Transferred and Recodified to 19A NCAC 2B .0317 Eff. October 1, 1993.

19A NCAC 02B .0164 USE OF RIGHT OF WAY CONSULTANTS

(a) Introduction and purpose. The North Carolina Department of Transportation maintains a staff capable of performing the normal workload for most of the functions required for the acquisition of rights of way for our highway system. However, it is recognized that situations arise and certain specific needs exist which can best be met by the use of qualified consultants outside the Department.

This Rule is established for the preparation, execution and administration of contracts for right of way acquisition services by consultant firms that are over ten thousand dollars (\$10,000.00).

Due to the diversity of contract types, some portions of this Rule may not be fully applicable to all situations. The Right of Way Branch Manager shall determine when waivers from portions of this Rule are justified. Guidelines for determining if a waiver is justified shall include:

- (1) A determination of whether an emergency situation exists that affects the health and safety of the traveling public; and
 - (2) A determination of the availability of pre-qualified firms willing to perform specified work according to the Department's schedule.
- (b) The following are incorporated by reference including any subsequent amendments or editions:
- (1) General Statute 136-28.1(f) and General Statute 130A-444 thru General Statute 130A-451.
 - (2) 23 CFR 710-720, FHWA right of way regulations which contain some contracting requirements.
 - (3) 49 CFR 18.36, USDOT contracting regulations.

These documents are available for public inspection in the office of the Right of Way Branch. Copies may be obtained from the Right of Way Consultant Coordinator at a cost of five dollars (\$5.00) for each document.

(c) Definitions. The following definitions are for the purpose of clarifying and describing words and terms used in this Section:

- (1) Right of Way Consultant Coordinator - The individual who is assigned the responsibility of initiating, negotiating, and administering a contract for professional or specialized services.
- (2) Cost per Unit of Work - A method of compensation based on an agreed cost per unit of work including actual costs, overhead, payroll additives and operating margin.
- (3) Cost Plus Fixed Fee - A price based on the actual allowable cost, including overhead and payroll additives, incurred by the firm performing the work plus a pre-established fixed amount for operating margin.
- (4) Cost Proposal - A submittal specifying the amount of work anticipated and compensation requested for the performance of the specific work or services as defined by the Department.
- (5) Firm - Any private agency, firm, organization, business or individual offering qualified right of way acquisition services.
- (6) Lump Sum - A fixed price, including cost, overhead, payroll additives and operating margin for the performance of specific work or services.

- (7) Payroll Additive - Employer paid fringe benefits including employer's portion of F.I.C.A., comprehensive health insurance, group life insurance, unemployment contributions to the State, vacation, sick leave, holidays, workers' compensation and other such benefits.
- (8) Proposal - An offer by a firm to perform specific work or services for the Department at specified rates of compensation.
- (9) Scope of Work - All services, actions and physical work required by the Department to achieve the purpose and objectives defined in the contract. Such services may include the furnishing of all required labor, equipment, supplies and materials except as specifically stated.
- (10) Contract Amendment - A written supplement to the contract which modifies the terms of an existing contract.
- (11) Termination Clause - A contract provision which allows the Department to terminate, at its discretion, the performance of work, in whole or in part, and to make final payment in accordance with the terms of the contract.
- (12) Right of Way Consultant Selection Committee - The Committee shall consist of the Branch Manager, Assistant Way Branch Manager, Unit Heads, and the Right of Way Consultant Coordinator or their designated representatives and shall be chaired by the Branch Right of Way Manager. When Federal funds will be used as compensation for services to be solicited, a representative of the Federal Highway Administration shall sit with the Committee but shall not be a voting member.

(d) Application. This Rule shall apply to all contracts for right of way acquisition services which cost more than ten thousand dollars (\$10,000.00) and are obtained by the Department of Transportation pursuant to G.S. 136-28(f).

(e) Pre-qualification of firms. The Department shall advertise for firms interested in performing right of way acquisition services for the North Carolina Department of Transportation when necessitated by its projected workload. The advertisement shall be published in the North Carolina Purchase Directory, a bi-monthly publication of the N.C. Department of Administration. The advertisement shall indicate that interested firms must respond by letter to the Department indicating their interest within two weeks of the date of the advertisement. The response shall include the Federal Government's Government Accounting Office Forms 254 and 255, and copies of the firms latest brochures. Additional firms may be considered for pre-qualification at any time that the Department recognizes a need based on current projected workload for additional pre-qualified firms. Evaluation of the firms expressing interest shall be based on the following considerations:

- (1) Experience, education, reputation, and required certifications of staff in the fields of expertise required by the contract including negotiations, appraisals, and relocation assistance;
- (2) Number of staff available to perform the services required by the contract including negotiations, appraisals, and relocation assistance;
- (3) Financial ability to undertake the proposed work;
- (4) The firm's accounting system including ability to identify costs chargeable to the project;
- (5) Past performance by the firm on previous Right of Way acquisition contracts including meeting the time schedule for the work;
- (6) Equipment necessary to perform the required services.

A number of firms sufficient to perform the anticipated workload that meet the qualifications in Paragraphs (e)(1) through (e)(6) of this Rule shall be designated as pre-qualified to perform right of way acquisition services for the North Carolina Department of Transportation.

(f) Register of pre-qualified firms. The Right of Way Consultant Coordinator shall maintain a "Register of Pre-Qualified Firms" from whom specific project proposals may be solicited to perform right of way acquisition services for the North Carolina Department of Transportation - Right of Way Branch.

(g) Request for approval to solicit specific project proposals. The Right of Way Consultant Selection Committee through the Manager of Right of Way shall determine when the need for right of way acquisition services exists. Upon determining that a need exists, the Committee shall request approval from the Branch Way Manager to solicit proposals for the work.

The request shall be in writing and shall include the type of work and specific justification for the work being performed by a consultant firm such as:

- (1) non-availability of manpower,
- (2) lack of expertise, or
- (3) other reasons.

(h) Solicitations of specific project proposals. Specific Project Proposals shall be solicited from all Pre-Qualified Firms. Solicitations shall be by direct mailing of plans and Specific Project Proposal.

The Right of Way Consultant Coordinator, upon the approval of the Manager of Right of Way, shall prepare the requests for proposals. The request shall contain plans and information describing the location of the project, types and scope of work required, and the time schedule for accomplishing the work.

The solicitation for a Specific Project Proposal shall require that all firms attend a Scoping Meeting on a specified date in order to qualify to submit a Specific Project Proposal for consideration. Any firm that does not wish to submit a Specific Project Proposal on a particular project shall advise, in writing, the Manager of Right of Way of their decision not to submit a Specific Project Proposal for that project.

(i) Selection of firm for specific project contract. The Right of Way Consultant Selection Committee shall review all responses received to the request for proposals and shall select three firms from those indicating interest (except when there are fewer than three responses). When several projects are under consideration at the same time, a firm shall be selected for each project and two alternates may be selected from the entire group, at the discretion of the Selection Committee. These firms shall be listed in descending order of preference based on the Selection Committee's review and analysis of all responses. The Committee may elect to interview all or part of the firms responding to the request for proposal prior to establishing the order of preference. The Selection Committee's file shall be documented as to the reasons for the selection of a firm.

In the evaluation of the firms submitting Specific Project Proposals, the following factors shall be considered:

- (1) The monetary amount of the competitive proposal;
- (2) The firm personnel who are currently available to perform right of way acquisition services on the specific project and their qualifications; and
- (3) The ability of the firm to complete the work according to the Department's schedule.

Any firm selected to perform Right of Way Services for the North Carolina Department of Transportation shall be required to establish an office at the location of the project. This office shall be the location for maintaining all project records open for review by appropriate Department personnel.

After the authorization to proceed to negotiations is given by the Branch Way Manager, the Right of Way Consultant Coordinator shall notify the firm chosen by the Selection Committee.

(j) Negotiation of specific project contract. Prior to receiving a specific project proposal, the Right of Way Consultant Coordinator shall prepare an estimate of the cost of performing the work in-house. This estimate shall be used in evaluating the acceptability of the selected firm's cost proposal.

If considered necessary by the Right of Way Consultant Coordinator a meeting with the selected firm may be scheduled to discuss the scope of the proposed work. The discussions will vary depending upon the firm's familiarity with the Department's methods, policies, standards, etc. For firms unfamiliar with the Department's requirements, the discussions shall include:

- (1) Policies used by the Department for the type and scope of work involved;
- (2) A copy of a contract in draft form;
- (3) Methods of payment;
- (4) Procedures for invoicing;
- (5) Standard forms to be used;
- (6) Fiscal requirements;
- (7) Items and services to be provided by the Department.

A representative of the firm shall keep minutes of the meeting, have them typed and submit a copy to the Right of Way Consultant Coordinator. The minutes shall be reviewed for completeness, accuracy and confirmation of mutual understanding of the scope of work. The minutes shall be approved by the signature of the Right of Way Consultant Coordinator and an approved copy shall be returned to the firm.

The firm's competitive cost proposal shall be supported by a breakdown of the manhours required to perform each of the services contained in the contract and the fixed billable rate for each of the classifications of personnel to be utilized. The fixed fee must be specifically broken out on the firm's specific project cost proposal. The firm's cost proposal must also include a breakdown of all non-salary direct costs and any sub-contract or fee services.

Upon receipt of the selected firm's cost proposal, a review shall be made. The review shall include a comparison with the in-house estimate and is intended to determine both the reasonableness of the proposal and areas of substantial differences which may require further discussion and negotiation. When further negotiations are required, they shall be the responsibility of the Right of Way Consultant Coordinator.

The final negotiations shall satisfactorily conclude all remaining points of difference and shall consider any comments submitted by the External Audit Unit. The Right of Way Consultant Coordinator with the concurrence of the Manager of Right of Way shall approve the final fee.

If an acceptable contract cannot be negotiated, negotiations shall be terminated, the firm shall be notified in writing and the next listed firm shall be contacted to initiate negotiations for the work.

(k) Board of Transportation approval and execution of contract. After final negotiations are completed, the firm shall execute a minimum of two contract originals and submit them to the Consultant Coordinator.

The Consultant Coordinator shall submit the contract to the Chief Engineer who may consult with the Advisory Budget Commission pursuant to G.S. 136-28.1(f). The Manager of Right of Way shall submit the proposed contract to the Board of Transportation for approval. After the Board of Transportation approves the contract, the Manager of Right of Way shall execute and return the contract to the Right of Way Consultant Coordinator.

The Right of Way Consultant Coordinator shall transmit one original contract to the contracting firm and shall retain one in the project file. The Consultant Coordinator shall provide each of the following with a copy of the contract: the Manager of DOT Program and Policy Branch, DOT Fiscal Section, and Federal Highway Administration when federal-aid funds are involved.

(l) Sub-contracting. A contracting firm may sublet portions of the work proposed in the contract only upon approval of the Right of Way Consultant Coordinator.

The responsibility for procuring a subcontractor and assuring the acceptable performance of the work lies with the prime contractor. Also, the prime contractor shall submit the proper supporting data to the Contract Administrator for all work that is proposed to be sublet.

(m) Methods of compensation:

- (1) Lump Sum - This method of compensation is suitable for contracts where the amount and character of required work or services can be defined and understood by both the Department and the contracting firm.
- (2) Cost Plus Fixed Fee - This method of compensation is suitable for contracts where the general magnitude of work is known but the scope of work or period of performance cannot be defined and the Department needs more flexibility in expediting the work without excessive amendments to the contract.
- (3) Cost Per Unit of Work - This method of compensation is suitable for contracts where the magnitude of work is uncertain but the character of work is known and a cost of the work per unit can be determined accurately.
- (4) Cost Plus a Percentage of Cost - This method of compensation shall not be used.

(n) Administration of contract. The administration of the contract shall be the responsibility of the Right of Way Consultant Coordinator. This shall include the review of invoices and recommendation for payment to the Fiscal Section.

(o) Contract Amendments. Each contract shall contain procedures for contract modifications and define what changes can only be made by means of a contract amendment.

Any change in the amount of compensation must be accomplished by contract amendment. For contracts which use federal funds as compensation for services, the contract amendment must be approved by the Federal Highway Administration.

(p) Monitoring of work. The responsibility for monitoring the work, the schedule and performing reviews at intermediate stages of the work shall rest with the Right of Way Consultant Coordinator.

(q) Final payment. When it is determined that the work is complete, the final invoice shall be approved by the Right of Way Consultant Coordinator and forwarded to the Fiscal Section with a recommendation for payment. When the contract is terminated by the Department, the final payment shall be for that portion of work performed.

(r) Termination of contracts. All contracts shall include a provision for the termination of the contract by the Department. Such termination by the Department shall be in writing and shall be effective upon receipt by the contracting firm.

*History Note: Authority G.S. 136-28.1(f);
Eff. November 1, 1991;
Amended Eff. December 1, 2012; August 1, 1998; October 1, 1993; November 2, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0165 ASBESTOS CONTRACTS WITH PRIVATE FIRMS

(a) The North Carolina Department of Transportation maintains a staff capable of performing the normal workload for most of the functions required for the acquisition of rights of way for our highway systems. However, it is recognized that situations arise and certain specific needs exist which can best be met by the use of qualified consultants outside the Department.

These Rules are established for the preparation, execution and administration of contracts over ten thousand dollars (\$10,000.00) for asbestos inspections, asbestos removals, and structure clearings by consultant firms.

(b) The following are incorporated by reference including any subsequent amendments or editions:

- (1) 23 CFR 710 FHWA right of way regulations which contain some contracting requirements; and
- (2) 49 CFR 18.36, USDOT contracting regulations.

These documents are available for public inspection in the office of the Right of Way Branch. Copies may be obtained from the contract administrator at a cost of five dollars (\$5.00) for each document.

(c) Contracts on Specific Projects.

- (1) The Department may continue to let individual contracts on specific projects for inspections, abatements or structure clearings to a responsible bidder after publicly advertising for bids.
- (2) If the Manager of the Right of Way Branch determines that the project schedule does not allow time for public advertising the Department shall solicit at least three informal bids and may award a contract to the lowest responding qualified bidder.

(d) Retainer Contracts. In order to provide a method of accomplishing the required asbestos inspections, asbestos abatements, and structure clearings when the Right of Way Branch Manager determines that the project schedule does not provide enough time for a specific project contract to be put in place by the procedure in Subparagraphs (c)(1) and (c)(2) of this Rule, the Department may also contract with private firms as specified in Paragraphs (d) through (u) of this Rule.

(e) Due to the diversity of contract types, some portions of these Rules may not be fully applicable to all situations. The Right of Way Branch Manager shall be responsible for determining when waivers from portions of these Rules are justified. Guidelines for determining if a waiver is justified shall include:

- (1) The amount of time the Department has to secure bids for a specific project under Subparagraphs (c)(1) and (c)(2) of this Rule; and
- (2) The willingness of contractors retained under this Rule to perform work on a specific project. Any waiver from these Rules shall require approval of FHWA if Federal Funds are involved in the project.

(f) DEFINITIONS. The following definitions are for the purpose of clarifying and describing words and terms used herein:

- (1) Contract Administrator - The individual who is assigned the responsibility of initiating, negotiating, and administering the contracts for asbestos inspections, asbestos removals, and structure clearings.
- (2) Cost per Unit of Work - A method of compensation based on an agreed cost per unit of work including actual costs, overhead, payroll additives and operating margin.
- (3) Cost Plus Fixed Fee - A price on the actual allowable cost, including overhead and payroll additives, incurred by the firm performing the work plus a pre-established fixed amount for operating margin.
- (4) Cost Proposal - A submittal specifying the amount of work anticipated and compensation requested for the performance of the specific work or services as defined by the Department.
- (5) Firm - Any private agency, firm, organization, business or individual offering qualified asbestos inspections, asbestos removals, and structure clearings.
- (6) Lump Sum - A fixed price, including cost, overhead, payroll additives and operating margin for the performance of specific work or services.
- (7) Payroll Burden - Employer paid fringe benefits including employers portion of F.I.C.A., comprehensive health insurance, group life insurance, unemployment contributions to the State, vacation, sick leave, holidays, workers compensation and other such benefits.
- (8) Proposal - An offer by a firm to perform specific work or services for the Department at specified rates of compensation.
- (9) Scope of Work - All services, actions and physical work required by the Department to achieve the purpose and objectives defined in the contract. Such services may include the furnishing of all required labor, equipment, supplies and materials except as specifically stated.
- (10) Contract Amendment - A written supplement to the contract which modifies the terms of an existing contract.
- (11) Termination Clause - A contract provision which allows the Department to terminate, at its discretion, the performance of work, in whole or in part, and to make final payment in accordance with the terms of the contract.

(g) APPLICATION. These Rules shall apply to all retainer contracts for asbestos inspections, asbestos removals, and structure clearings obtained by the Right of Way Branch of the Department of Transportation under the authority of G.S. 136-28.1(f) and in accordance with the provisions of G.S. 130A-444 through 130A-451.

(h) SELECTION COMMITTEE. The Committee shall consist of the Right of Way Branch Manager or his designated representative, the State Right of Way Agent or his designated representative, and at least one employee of the Department's Preconstruction Unit or Construction Unit professional staff designated by the Right of Way Branch Manager, and shall be chaired by the Right of Way Branch Manager or his representative.

(i) SELECTION OF FIRMS. On a yearly basis (or more often if needed), the Department shall advertise for firms interested in performing asbestos inspections, asbestos removals, and structure clearings for the North Carolina Department of Transportation. The advertisement shall be published in the North Carolina Purchase Directory. The response time will

normally be two weeks after the advertising date. The response shall include copies of the numbered certifications of employees certified by NC Department of Health and Human Services, Division of Public Health Asbestos Hazard Management Program to perform asbestos inspections, copies of the firm's latest brochures, and such similar information related to the firms qualifications.

Evaluation of the firms expressing interest will be based on the following considerations:

- (1) Experience, education, reputation, and required certifications of staff in the fields of expertise required by the contract including inspection, abatement, and structure clearings;
- (2) Number of staff available to perform the services required by the contract including inspection, abatement, and structure clearings;
- (3) Financial ability to undertake the proposed work;
- (4) The firm's accounting system including ability to identify costs chargeable to the project;
- (5) Past performance by the firm on previous right of way acquisition contracts including meeting the time schedule for the work; and
- (6) Equipment necessary to perform the required services.

The Selection Committee shall, on the basis of the criteria of Subparagraphs (1) - (6) of this Paragraph, select a sufficient number of firms for contract negotiations in order that those negotiations will produce a sufficient number of contracts to handle the anticipated work over the next year. The number of firms shall be determined prior to advertising.

(j) REQUEST FOR PROPOSALS. Each selected firm shall be requested by the contract administrator to submit a proposal which provides for:

- (1) Unit Cost for inspection and lab analysis, if any;
 - (A) per unit of less than 800 SF (minimum of 4 samples - to include out buildings, signs, barns, etc.);
 - (B) per unit of 800 SF to 2000 SF (maximum of 8 samples);
 - (C) per unit of 2000 SF to 5000 SF (maximum of 10 samples); or
 - (D) per unit of 5000 SF or more (subject to adjustment if approved by the Department); and
- (2) a per unit cost for Final Visual Inspection of abated improvements including air monitoring; and
- (3) a per unit abatement price - to a maximum of 200 SF or LF;
 - (A) Non-Friable Asbestos;
 - (i) per square foot of asbestos materials; or
 - (ii) per linear foot of asbestos materials
 - (B) Friable Asbestos;
 - (i) per square foot of asbestos materials; or
 - (ii) per linear foot of asbestos materials; and
- (4) a per unit cost for general clearings;
 - (A) Residential (up to 1,500 SF);
 - (i) per square foot - frame; or
 - (ii) per square foot - masonry or other;
 - (B) Commercial (up to 3,000 SF);
 - (i) per square foot - frame; or
 - (ii) per square foot - masonry or other.

The Proposal Request shall state that the Department intends to enter into a retainer contract for the term of one year and a maximum amount of one million dollars (\$1,000,000) each with a sufficient number of firms on a statewide basis to perform asbestos inspections, asbestos removals, and structure clearings on an as needed basis.

(k) NEGOTIATION OF CONTRACTS. Upon receipt of the proposals from the selected firm negotiations shall be initiated with the selected firm to produce a retainer contract with a term of one year and maximum amount of one million dollars (\$1,000,000). Should negotiations fail to reach successful execution of a contract with any selected firm, the negotiations shall be terminated and shall be initiated with an alternate firm. The object of the negotiations shall be to establish an acceptable per unit cost for any asbestos investigations needed by the Department for the term of the contract and to establish an acceptable per square foot cost and per running foot cost for abatement of any asbestos discovered upon completion of the inspections and a unit cost for clearing of improvements. When agreement is reached on the unit costs, a retainer contract shall be executed with a sufficient number of selected firm to perform the anticipated work for the term of one year and shall provide for the scope of services enumerated in this Rule.

(l) BOARD OF TRANSPORTATION APPROVAL AND EXECUTION OF CONTRACT. After final negotiations are completed, the firm shall execute a minimum of two contract originals and submit them to the consultant coordinator. The Manager of Right of Way shall submit the proposed contract to the Board of Transportation for approval. After the Board of Transportation approves the contract, the Manager of Right of Way shall execute and return the contract to the Right of Way

consultant coordinator. The Right of Way contract administrator shall transmit one original contract to the contracting firm and shall retain one in the Central Office. The Way contract administrator shall provide a copy of the contract to the DOT Fiscal Section.

(m) **REQUEST FOR SPECIFIC JOB ESTIMATES.** When the Department acquires structures that require inspection for asbestos, two firms who have executed the retainer contract will be contacted by the Right of Way Branch, given the location of the structure(s), and requested to submit a work assignment cost estimate. The first firm's estimate shall cover Inspections, both preliminary and final; and the second firm's estimate shall be for abatements, if any, and clearing, if required, of the structure. The Estimate of Job Costs submitted by the contractor shall be reviewed by Right of Way staff personnel to insure:

- (1) that the per unit cost is in compliance with those specified in the retainer contract, and
- (2) the quantities specified in the Estimate of Job Costs are reasonable. If the estimate is found to be reasonable, the contract administrator shall authorize the work by the firm under the retainer contract by signing the Estimate document. If the estimate is unacceptable and agreement cannot be reached by negotiations with the firm, an estimate will be requested from another firm on retainer contract and evaluated in the same manner until agreement is reached and work can be authorized. In the event that an agreement cannot be reached through negotiations with any firm on retainer contract, then the Department shall terminate negotiations and advertise for specific project bids under the provisions of Subparagraph (b)(2) of this Rule.

(n) **SUB-CONTRACTING.** A contracting firm may sublet portions of the work proposed in the contract only upon approval of the contract administrator as set out in these rules. The responsibility for procuring a subcontractor and assuring the acceptable performance of the work lies with the prime contractor. Also, the prime contractor shall be responsible for submitting the proper supporting data to the contract administrator for all work that is proposed to be sublet.

(o) **METHODS OF COMPENSATION.** Cost Per Unit of Work - This method of compensation is suitable for contracts where the magnitude of work is uncertain but the character of work is known and a cost of the work per unit can be determined accurately.

(p) **ADMINISTRATION OF CONTRACT.** The administration of the contract shall be the responsibility of the contract administrator. This shall include the review of invoices and recommendation for payment to the Fiscal Section.

(q) **CONTRACT AMENDMENTS.** Each contract shall contain procedures for contract modifications and define what changes can be made only by means of a contract amendment. The Department may, with the concurrence of the Manager of Right of Way, delete any clearing item.

(r) **MONITORING OF WORK.** The responsibility for monitoring the work, the schedule and performing reviews at intermediate stages of the work shall rest with the staff personnel. An inspector may be assigned on each job by the Division Engineer who shall make periodic status reports to the Division Right of Way Office. The firm shall be required to provide a written progress report accompanying each invoice describing the work performed for the project covered by the invoice.

(s) **FINAL PAYMENT.** When it is determined that the work is complete, the final invoice shall be approved by the Way contract administrator and forwarded to the Fiscal Section with a recommendation for payment. When the contract is terminated by the Department, the final payment shall be for that portion of work performed. Should the firm believe that additional compensation or time should be allowed for services not covered under the contract, the firm must notify the Department in writing within 60 days after receipt of final payment. The Department shall render a decision on the claim which will be final, subject to review in accordance with Chapter 150B of the North Carolina General Statutes. Exhaustion of the administrative procedure described herein shall be a prerequisite to the firm's right of review.

(t) **TERMINATION OF CONTRACTS.** All contracts shall include a provision for the termination of the contract by the Department. Such termination by the Department shall be in writing and shall be effective upon receipt by the contracting firm.

*History Note: Authority G.S. 130A-444; 136-28.1(f);
Eff. November 1, 1991;
Temporary Amendment Eff. May 4, 1992 for a Period of 180 Days to Expire on October 31, 1992;
Amended Eff. December 1, 2012; August 1, 2002; November 2, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

SECTION .0200 - TRAFFIC ENGINEERING

19A NCAC 02B .0201 DELEGATION BY STATE HIGHWAY ADMINISTRATOR

History Note: Authority G.S. 136-18(5); 136-30; 136-44.1; 136-54; 136-89.53;

Eff. January 1, 1986;
Amended Eff. October 1, 1993; October 1, 1991;
Repealed Eff. December 29, 1993.

19A NCAC 02B .0202 DEFINITIONS

History Note: Authority G.S. 136-18; 136-20; 136-45; 136-66.1; 150B-21.3A;
Eff. July 1, 1978;
Amended Eff. November 1, 1992;
Repealed Eff. February 1, 2019.

19A NCAC 02B .0203 RESPONSIBILITY FOR TRAFFIC CONTROL DEVICES

History Note: Authority G.S. 20-158; 20-158.1; 20-169; 136-18; 136-30;
Eff. July 1, 1978;
Amended Eff. November 1, 1993; November 1, 1991;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02B .0204 TRAFFIC SIGNAL SPECIFICATIONS

History Note: Legislative Objection Lodged Eff. August 19, 1980;
Legislative Objection Removed Eff. April 23, 1981;
Authority G.S. 136-18(1); 136-44.1; 136-45; 150A-63(c);
Eff. July 1, 1978;
Amended Eff. April 11, 1980;
Repealed Eff. April 3, 1981.

19A NCAC 02B .0205 NORTH CAROLINA SIGN SUPPLEMENT

History Note: Legislative Objection Lodged Eff. August 19, 1980;
Legislative Objection Removed Eff. April 23, 1981;
Authority G.S. 136-18(5); 136-30; 150A-62; 150A-63(c);
Eff. July 1, 1978;
Amended Eff. April 11, 1980;
Repealed Eff. April 3, 1981.

19A NCAC 02B .0206 NC CONSTRUCTION AND MAINTENANCE OPERATIONS SUPPLEMENT

History Note: Legislative Objection Lodged Eff. August 19, 1980;
Legislative Objection Removed Eff. April 23, 1981;
Authority G.S. 136-18(5); 136-30; 150A-62; 150A-63(c);
Eff. July 1, 1978;
Amended Eff. April 11, 1980;
Repealed Eff. April 3, 1981.

19A NCAC 02B .0207 NORTH CAROLINA SIGNAL SUPPLEMENT

History Note: Legislative Objection Lodged Eff. August 19, 1980;
Legislative Objection Removed April 23, 1981;
Authority G.S. 136-18(5); 136-30; 150A-62; 150A-63(c);
Eff. July 1, 1978;
Amended Eff. April 11, 1980;
Repealed Eff. April 3, 1981.

19A NCAC 02B .0208 UNIFORM TRAFFIC CONTROL DEVICES

History Note: Authority G.S. 20-158; 20-169; 136-18(5); 136-30; 150B-21.3A;
Eff. July 1, 1978;
Amended Eff. October 1, 1993; October 1, 1991; January 1, 1986; April 3, 1981;
Repealed Eff. February 1, 2019.

19A NCAC 02B .0209 MISCELLANEOUS SIGNS
19A NCAC 02B .0210 SPECIAL MUNICIPAL SIGNS
19A NCAC 02B .0211 CONSTRUCTION AND MAINTENANCE SIGNING

History Note: Authority G.S. 136-18(5); 136-18(19); 136-30;
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0212 PARKING SIGNS

(a) No Parking Signs (State Highway System). Where parking is prohibited by either Department of Transportation or municipal ordinance, the installation and maintenance of appropriate No Parking signs is the responsibility of the Department of Transportation.

(b) Parking Control Signs (State Municipal System). Where parking is permitted but the municipality desires to control its duration or type, the appropriate standard signs necessary are the responsibility of the municipality. They shall be installed and maintained at no expense to the Department of Transportation. Such signs include, but are not limited to, 15 Min. Parking, 1 Hr. Parking, No Parking 4-6 P.M., Loading Zone, Bus Stop, and Taxi Stand.

History Note: Authority G.S. 20-162; 20-162.1; 136-18(5);
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0213 TRUCK ROUTE DESIGNATION

(a) Municipal governments have the authority to establish by ordinance truck routes on the state highway system within their corporate limits. Such truck routes must have approval of the Department of Transportation.

(b) The Department of Transportation also has authority to establish truck routes within a municipality. Truck routes may traverse both state highway system streets and municipal streets; however non-system streets may be designated as a truck route only by the municipality.

(c) The Department of Transportation will be responsible for all necessary signing on the state highway system streets with the municipality being responsible for signing that portion of the truck route traversing non-system streets.

History Note: Authority G.S. 20-116(h); 136-18(5); 136-30;
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0214 BUSINESS AND BYPASS ROUTE DESIGNATIONS

History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Repealed Eff. April 11, 1980.

19A NCAC 02B .0215 SHOPPING CENTER SIGNS

History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Amended Eff. October 1, 1993; August 1, 1984;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02B .0216 STREET NAME SIGNS

(a) Street name signs are the sole responsibility of the municipality. If such signs are installed on the state highway system rights-of-way they must be in conformance with the "Manual on Uniform Traffic Control Devices" and may not be erected in such a manner as to interfere with standard highway signing.

(b) Street Name Signs (State Rural Secondary System). The board of county commissioners or developers and property owners can request permission for the appropriate street name signs and, upon approval by the traffic engineering branch as to type, design, and location of said signs, they may be erected and will be maintained by those responsible for the placing of the signs.

(c) The Department of Transportation may remove all street name signs that are not properly maintained or that hamper the maintenance of the streets by the Department of Transportation.

Note: Refer also to the Code of Federal Regulations, Chapter 23, Part 655, Subpart C.

History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0217 ALL AMERICA CITY SIGNS
19A NCAC 02B .0218 RAILROAD NAME SIGNS ON OVERPASSES

History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Amended Eff. January 1, 1995; November 1, 1993; October 1, 1993;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02B .0219 FIRE STATION WARNING SIGN

History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0220 FIRE DISTRICT SIGN
19A NCAC 02B .0221 GENERAL MOTORIST SERVICES SIGNS

History Note: Authority G.S. 136-18(5); 136-30; 136-128; 136-140.7;
Eff. July 1, 1978;
Amended Eff. July 1, 1995; September 1, 1994; December 1, 1993; October 1, 1993; November 1, 1987;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02B .0222 NATIONAL GUARD ARMORY AND AIR NATIONAL GUARD SIGNS
19A NCAC 02B .0223 PARKS: HISTORICAL AREAS: SPECIAL TOURIST ATTRACTIONS: ETC.

History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0224 TELEPHONE SIGNS
19A NCAC 02B .0225 BLUE STAR MEMORIAL HIGHWAY SIGNS

History Note: Authority G.S. 136-18(5); 136-18(8); 136-30; 136-102.1;
1949 General Assembly Resolution 21;
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02B .0226 TEMPORARY SIGNS FOR SPECIAL EVENTS

History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0227 COMMUNITY WATCH SIGNS

History Note: Authority G.S. 136-32;
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02B .0228 TRAFFIC SIGNALS - GENERAL

History Note: Authority G.S. 20-158; 20-169; 136-18(5);
Eff. July 1, 1978;
Amended Eff. April 3, 1981;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0229 SIGNAL EQUIPMENT (STATE MUNICIPAL SYSTEM)

The Department of Transportation reserves the right to select the most economical equipment and materials to do a specific job. If the municipality desires to use different or more costly equipment and materials, the municipality shall make a request in writing to the Department of Transportation. If approved, the substitution may be made but the municipality must pay the difference in cost.

History Note: Authority G.S. 20-169; 136-18(5);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0230 PEDESTRIAN ACTUATED SIGNALS (STATE MUNICIPAL SYSTEM)

History Note: Authority G.S. 20-172; 136-66.1;
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0231 FIRE ZONE (STATION) SIGNALS (STATE MUNICIPAL SYSTEM)

Special signal equipment used at or adjacent to fire stations (including preemption equipment) shall be paid for by the municipality out of its own funds and must be of a design acceptable to and approved by the Department of Transportation.

History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0232 SCHOOL FLASHERS (STATE MUNICIPAL SYSTEM)

Standard signing and marking for school zones is the responsibility of the Department of Transportation. If a traffic and engineering investigation conducted by the Department of Transportation shows that there are hazardous conditions present adjacent to a school greater than those normally present in school areas, and that these conditions can be alleviated by the use of school flashers, then the Department of Transportation will install school flashers and maintain them.

History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0233 UPGRADING EXISTING SIGNALS (STATE MUNICIPAL SYSTEM)

The cost for upgrading existing traffic signals and flashers on the state highway system is the responsibility of the Department of Transportation. The existing equipment being replaced shall become the property of the Department of Transportation. In the event the municipality wishes to retain possession of the equipment, or any part thereof, to be replaced, it may do so by mutual agreement with the Department of Transportation.

History Note: Authority G.S. 20-158; 136-18(5);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0234 AUTHORITY FOR TRAFFIC ORDINANCES

History Note: Authority G.S. 20-116; 20-141; 20-158; 10-158.1; 20-161; 20-165.1; 136-18(5);
136-18(19); 136-30 to 31; 136-33.2; 136-89.50; 136-102.5; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0235 CUSTODIAN AND LOCATION OF TRAFFIC ORDINANCES

History Note: Authority G.S. 136-18(5); 150A-63(c);
Eff. July 1, 1978;
Repealed Eff. November 1, 1991.

19A NCAC 02B .0236 MEDIAN OPENINGS - GENERAL

19A NCAC 02B .0237 CROSSOVERS IN CONTROLLED ACCESS HIGHWAYS

History Note: Authority G.S. 20-140.3; 136-18(5); 136-89.58;
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0238 MANUAL ON DRIVEWAY ENTRANCE REGULATIONS

History Note: Legislative Objection Lodged Eff. August 19, 1980;
Legislative Objection Removed Eff. April 23, 1981;
Authority G.S. 136-18(1); 136-93; 150A-63(c);
Eff. July 1, 1978;
Amended Eff. April 11, 1980;
Repealed Eff. April 3, 1981.

19A NCAC 02B .0239 OBTAINING COPIES

History Note: Authority G.S. 136-18(10); 136-93; 150A-62;
Eff. July 1, 1978;
Repealed Eff. April 3, 1981.

19A NCAC 02B .0240 CHANNELIZATION FOR ENTRANCES AND EXITS TO PROPERTY

History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Repealed Eff. February 1, 2019.

19A NCAC 02B .0241 PLACEMENT OF HISTORICAL MARKERS IN ROW

History Note: Authority G.S. 136-18(10); 136-42.2; 136-42.3; 136-129;
Eff. July 1, 1978;

*Amended Eff. December 1, 2012; April 11, 1980;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.*

19A NCAC 02B .0242 NC ROUTE NUMBERS

- (a) The Department of Transportation has full responsibility for establishing NC routes. Normally this relates to removing a road from the secondary road system and placing it on the primary road system.
- (b) NC numbered routes shall have numbers not to exceed 999. NC route numbers shall not be in conflict with interstate numbers or US numbers.
- (c) Requests for the addition, modification, or deletion of NC route numbers shall be submitted to the traffic engineering branch who shall make recommendations relative to the request based upon the following criteria:
- (1) The proposed NC route must be adequately designed and constructed in terms of its pavement structure such that it can carry the statutory 19,000 pound axle load.
 - (2) The proposed route must meet minimum accepted operational standards of a minimum 20-foot paved width and with adequate shoulders.
 - (3) The horizontal and vertical alignment of the route must be such that it can safely handle traffic at the statutory speed limit of 55 miles per hour for the majority of its length. In extreme mountainous areas, consideration may be given to an average operating speed of 45 miles per hour.
 - (4) NC routes shall not overlap existing NC or US routes already established unless the duplication is for a short distance and the routes then diverge, ending in different terminal points.
- (d) No additional NC route shall be added to the primary highway system or extended except where there is a definite showing of an adequately improved highway carrying an established and necessary line of intrastate traffic not otherwise provided for by existing US or NC routes.

*History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Amended Eff. July 26, 1993;
Transferred and recodified from 19A NCAC 02B .0303 Eff. March 4, 1998;
Amended Eff. August 1, 1998;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0243 RAILROAD GRADE CROSSING SIGNS, SIGNALS, AND GATES

- (a) When the Department of Transportation directs a railroad to protect its grade crossings by the erection of electric signals or other safety devices, the railroad so directed shall erect such electric signals or other safety devices as required in the order. Upon the installation and placing into operation of the signals or other safety devices as required in the order, any existing signals or other safety devices shall be removed by the railroad unless otherwise directed by the Department of Transportation.
- (b) Where there has been a discontinuance of service but the tracks have not been paved over or removed, crossbuck signs shall be removed and sign R8-9 "TRACKS OUT OF SERVICE" shall be installed.
- (c) Where there has been a discontinuance of service and the tracks have been paved over or removed, all signs shall be removed.
- (d) Where there has been a discontinuance of service and flashing light signals or gates are present, the gate arms shall be removed and the signal heads shall be hooded, turned, or removed to clearly indicate they are not in operation.

*History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;
Eff. August 1, 1998;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

SECTION .0300 - CHIEF ENGINEER - PROGRAMS

19A NCAC 02B .0301 INTERSTATE ROUTE NUMBERS

19A NCAC 02B .0302 US ROUTE NUMBERS

*History Note: Authority G.S. 136-18(5); 136-30; 136-89.50; 23 U.S.C. 101;
Eff. July 1, 1978;*

Repealed Eff. July 26, 1993.

19A NCAC 02B .0303 NC ROUTE NUMBERS

*History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Amended Eff. July 26, 1993;
Transferred and recodified to 19A NCAC 02B .0242 Eff. March 4, 1998.*

19A NCAC 02B .0304 SECONDARY ROAD NUMBERS

- (a) All secondary roads which are a part of the Highway System will carry a number beginning at 1000.
- (b) Secondary road numbers 1000 to 1099 are developed for the principal routes within a county.
- (c) Wherever possible these numbers are continuous for two or more counties.
- (d) Secondary road numbers for the majority of the secondary roads are numbered numerically, increasing in the county. Thus, different counties will have different routes with the same number.
- (e) Numbering of secondary roads in each county will start in the southwesterly quadrant, numbering in a clockwise direction with numbers starting at 1100 and numerically increasing. A block of numbers is allotted for each section of the county with sufficient unused numbers to permit roads to be added in the future.
- (f) All requests for changing existing secondary road numbers shall be acted upon by the Department of Transportation. Requests for the addition, modification or deletion of secondary road numbers shall be submitted to the Department.

*History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Amended Eff. July 26, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0305 SOURCE AND PURPOSE - POWELL BILL

Annually the North Carolina Department of Transportation shall pay state street aid allocations from the State Highway Fund to eligible and qualifying municipalities for the maintenance, construction and reconstruction of local city streets. Inquiries about these allocations shall be directed to:

Manager of Program Development
North Carolina Division of Highways
Highway Building
1 S. Wilmington Street
Raleigh, N. C. 27611

*History Note: Authority G.S. 136-41.1 to 41.2; 136-41.3; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. July 26, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0306 ESTABLISHING ELIGIBILITY - POWELL BILL

Annually as of July 1, each participating municipality shall establish its eligibility for an allocation. Towns incorporated prior to January 1, 1945, must submit a certified statement which provides information on the municipality's most recent election for the purpose of electing municipal officials, ad valorem taxes, or other provisions for funding the general operating expenses of the municipality; and the mileage of its legally qualified, municipality maintained streets. In addition, towns incorporated on or after January 1, 1945, must also include in their certified statement information on their:

- (1) ad valorem taxes;
- (2) budget ordinance; and
- (3) services provided.

In all cases, the statement must be certified by the mayor and city clerk with the mileage certified by a registered professional engineer or a registered land surveyor. To support the mileage claimed on the certified statement, a street map, certified by a registered land surveyor or registered professional engineer, which clearly shows the claimed local city streets is required. If there have been no changes in mileage from the previous year, only certifications by the mayor and city clerk is required.

Forms and instructions are available from the Manager of Program Development, North Carolina Division of Highways, Raleigh, 27611.

History Note: Authority G.S. 136-41.1; 136-41.2; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. July 26, 1993; November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0307 PAYMENT OF ALLOCATIONS - POWELL BILL
19A NCAC 02B .0308 FINANCIAL STATEMENT - POWELL BILL

History Note: Authority G.S. 136-41.1; 136-41.3; 136-143; 143B-350 (f), (g);
Eff. July 1, 1978;
Repealed Eff. July 26, 1993.

19A NCAC 02B .0309 SOURCE AND PURPOSE - PL (METROPOLITAN PLANNING) FUNDS

The North Carolina Department of Transportation is responsible for administering the Metropolitan Planning Funds (PL) established by the 1973 Federal-Aid Highway Act. These funds are for the purpose of carrying out the provisions of 23 U.S.C. 134, relating to transportation planning in urban areas. Funds are apportioned to the state in the ratio which the population in urbanized areas bears to the total population in such urbanized areas in all the states as shown by the latest available census. Inquiries about these funds should be directed to Manager of Statewide Planning, North Carolina Division of Highways, Raleigh, 27611.

History Note: Authority 23 U.S.C. 104(f); 23 U.S.C. 134; G.S. 136-18(12); 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. March 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0310 RECIPIENTS OF FUNDS - PL (METROPOLITAN PLANNING) FUNDS

Metropolitan Planning Funds appropriated to the state shall be allocated to the organization recognized by the Governor, through an official designation, as having accepted responsibility for transportation planning for the urbanized area. Urbanized areas are those areas of over 50,000 population, as identified by the U.S. Bureau of Census in the latest available decennial census or special census taken since the decennial census, and required by the United States Department of Transportation to maintain a comprehensive transportation planning process.

History Note: Authority 23 U.S.C. 104(f); 23 U.S.C. 134; G.S. 136-18(12); 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. July 26, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0311 ALLOCATION OF FUNDS - PL (METROPOLITAN PLANNING) FUNDS

Metropolitan Planning Funds shall be allocated to the designated organizations by formula developed by the state and approved by the Federal Highway and Urban Mass Transportation Administrators. North Carolina's formula allocates one-half of the funds in equal shares to the designated agencies and one-half on the ratio of the urbanized area's population to the total population of all the urbanized areas. Allocation is in the form of a commitment of funds to the area for reimbursement of cost incurred in carrying out transportation planning.

History Note: Authority 23 U.S.C. 104(f); 23 U.S.C. 134; G.S. 136-18(12); 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. July 26, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0312 MATCHING - PL (METROPOLITAN PLANNING) FUNDS

The federal share payable on account of work performed using PL (Metropolitan Planning) Funds shall be 80 percent. The remaining 20 percent is local money provided by the urbanized area.

History Note: Authority 23 U.S.C. 104(f); 23 U.S.C. 134; G.S. 136-18(12); 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. July 26, 1993; March 1, 1993; August 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0313 PROGRAMMING - PL (METROPOLITAN PLANNING) FUNDS

The expenditure of PL Funds by each organization shall be supported by a planning work program setting forth the transportation planning work to be undertaken. Approval of the program by the Department of Transportation and the United States Department of Transportation is required.

History Note: Authority 23 U.S.C. 104(f); 23 U.S.C. 134; G.S. 136-18(12); 143B-250(f),(g);
Eff. July 1, 1978;
Amended Eff. November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0314 ADMINISTRATIVE AGREEMENT - PL (METROPOLITAN PLANNING) FUNDS

Administration of PL Funds shall be pursuant to an agreement between the Department of Transportation and the planning organization. As a minimum, the agreement shall identify the parties involved; specify the purpose, statement of work, period of performance, consideration and payment, and cost principals; grant the Department of Transportation the rights of access to, and examination and audit of records; and provide for retention of records.

History Note: Authority 23 U.S.C. 104(f); 23 U.S.C. 134; G.S. 136-18(12); 143B-350(f),(g);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0315 NEGOTIATION WITH MUNICIPALITIES AND MUNICIPAL AGREEMENTS

Transportation projects within municipalities shall be constructed in accordance with a municipal agreement that is executed by the municipality and the Board when the construction includes any financial participation by the municipality in project costs, or the municipality requests additional work that results in maintenance responsibilities or financial participation by the municipality. If there is no financial participation by the municipality, no additional work requested by the municipality, and no maintenance requirements by the municipality, then a municipal agreement shall not be required under the terms of this Rule. If a municipal agreement is necessary in accordance with this Rule, then the agreement shall set forth conditions including whether the Department or the municipality will acquire the right-of-way, and shall identify any financial participation by the municipality.

History Note: Authority G.S. 136-18(2); 136-19; 136-66.3; 143B-24; 143B-350(f),(g);
Eff. July 1, 1978;
Transferred and Recodified from 19A NCAC 2B .0119 Eff. October 1, 1993;
Amended Eff. December 1, 1993;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0316 PERSONAL PROPERTY NOT TO BE ACQUIRED

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g); 150B-21.3A;
Eff. July 1, 1978;
Transferred and Recodified from 19A NCAC 2B .0124 Eff. October 1, 1993;
Repealed Eff. February 1, 2019.

19A NCAC 02B .0317 IMPLEMENTATION OF ROADWAY CORRIDOR OFFICIAL MAPS

(a) A roadway corridor official map, hereinafter referred to as "official map," is defined as a map, drawing or written description of a planned roadway alignment, with approximations of future right of way boundaries, which is adopted by the Board of Transportation for right of way protection purposes.

(b) The Division of Highways of the North Carolina Department of Transportation is responsible for the implementation of the procedures governing the adoption of official maps.

(c) The Department of Transportation shall conduct environmental studies or screenings prior to the adoption of an official corridor map as follows:

- (1) If environmental studies are in the process of being conducted on a project being considered for an official map, then the adoption of the map must await the determination of the recommended alternative. In such cases, the public hearing required for a proposed official map or amendment under G.S. 136-44.50(a)(1) may be combined with the design public hearing.
- (2) If environmental studies have not been conducted or are not underway for a project for which an official map is to be prepared, a preliminary environmental screening of the proposed alignment must be conducted to determine the environmental feasibility of the project.

(d) An official map illustrating the proposed project must be prepared prior to the initiation of the map adoption procedure. An official map must be of sufficient detail to identify the proposed project in terms of functional design, location and preliminary right of way boundaries. The approximate property boundaries will be identified on the map and the names of the affected property owners at the time of the recording must be provided.

(e) The Department of Transportation shall conduct a public hearing on the proposed map or an amendment to the existing adopted map prior to the adoption of an official corridor map or amendment as follows:

- (1) The Public Hearing Officer of the Division of Highways, after the project has been selected and the official map has been prepared, shall arrange the date and location of the public hearing on the proposed map or amendment as required by G.S. 136-44.50(a)(1). The date of the hearing must be determined in advance so as to allow sufficient time for the period of public notice which is required pursuant to G.S. 136-44.50(a)(1).
- (2) In addition to the public hearing notice requirements established by G.S. 136-44.50(a)(1), the notice shall indicate that copies of the proposed official map are available for review in the office of the District Engineer in whose jurisdiction the area which is the subject of the map is located.
- (3) The Public Hearing Officer shall conduct the public hearing. Public comment at the hearing shall be directed towards the designation of the subject project as an "official map" and any impacts created by such designation. Either a transcript of the public hearing or a summary of the comments made at the hearing shall be prepared.

(f) The Board of Transportation, following a review of the public hearing transcript or the summary of the comments made at the hearing, may adopt an official map at a Board of Transportation meeting.

(g) In addition to the statutory requirements for the distribution and maintenance of official maps established by G.S. 136-44.50(b)(1), a copy of an official map adopted by the Board of Transportation shall be maintained by the Program Development Branch of the Department and a copy shall be provided to the building inspectors and planning officials in the jurisdictions affected by the map.

(h) The procedures for the Department of Transportation's consideration of petitions for variances from requirements imposed by the adoption of an official corridor map are as follows:

- (1) Any property owner affected by an official map adopted by the Board of Transportation may petition for a variance from the requirements imposed by the statute (G.S. 136-44.51). A request for a variance shall be directed to the Program Development Branch for consideration and processing. The property owner may either request that an administrative hearing be held in the county in which the affected property is located or may state the reasons for and supply any evidence supporting the variance request in writing to the Director of the Program Development Branch. In instances where a hearing is scheduled pursuant to a request for a variance, the Program Development Branch shall provide written notice of the hearing to the mayor of any affected city or the chairman of the board of commissioners of any affected county, in accordance with G.S. 136-44.52(b).
- (2) Upon consideration of the facts and circumstances pertaining to the petition for a variance as determined from evidence provided by the property owner, the Program Development Branch may grant a variance, recommend the subject property be considered for advance acquisition, or deny the request. A written record of the decision shall be provided to the petitioning property owner within 30 days of the date of the hearing or the date of the receipt of the written request for the variance.
- (3) If the petitioning property owner receives an unfavorable ruling from the Program Development Branch concerning the variance request, he or she may request a review of the case by the Chief Engineer. The Chief Engineer shall evaluate the case and provide a final administrative decision in writing within 30 days of the date of the receipt of the review request.

- (4) Any property located within a designated roadway corridor may be considered for advance acquisition prior to the expiration of the three year time period established in G.S. 136-44.51(b). All requests for such advance acquisition shall be in writing, include all supporting documentation, and be submitted to the Right of Way Branch with a copy sent to the Program Development Branch.

History Note: Authority G.S. 136-44.50; 136-44.51; 136-44.52; 143B-350(f);
Eff. October 1, 1991;
Transferred and Recodified from 19A NCAC 2B .0163;
Amended Eff. December 1, 2012; December 29, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0400 - RELOCATION ASSISTANCE PROCEDURES

19A NCAC 02B .0401	DEFINITIONS
19A NCAC 02B .0402	PURPOSE
19A NCAC 02B .0403	ELIGIBILITY FOR STATE AND FEDERAL FUNDS
19A NCAC 02B .0404	APPLICABILITY
19A NCAC 02B .0405	ASSURANCES OF ADEQUATE RELOCATION ASSISTANCE PROGRAM
19A NCAC 02B .0406	PERSONS TO WHOM ADVISORY ASSISTANCE SHOULD BE OFFERED
19A NCAC 02B .0407	ASSISTANCE ON ADVANCE AND SPECIFIC PARCEL ACQUISITIONS
19A NCAC 02B .0408	PUBLIC NOTICE OF AVAILABILITY OF SERVICE
19A NCAC 02B .0409	INITIAL CONTACT WITH DISPLACEE
19A NCAC 02B .0410	NOTICE TO FINANCIAL INSTITUTIONS
19A NCAC 02B .0411	NINETY DAYS WRITTEN NOTICE
19A NCAC 02B .0412	REVIEW PROCEDURES
19A NCAC 02B .0413	SEVERED IMPROVEMENTS
19A NCAC 02B .0414	REQUEST FOR PROPERTY INSPECTION
19A NCAC 02B .0415	AGENCY RESPONSIBILITY
19A NCAC 02B .0416	MOVING COST
19A NCAC 02B .0417	GUIDELINES FOR HOUSEHOLD MOVES
19A NCAC 02B .0418	MOVING PAYMENTS TO BUSINESSES
19A NCAC 02B .0419	ADVERTISING SIGNS
19A NCAC 02B .0420	REPLACEMENT HOUSING PAYMENTS
19A NCAC 02B .0421	REPLACEMENT HOUSING PAYMENTS FOR OWNER-OCCUPANT
19A NCAC 02B .0422	PAYMENT TO OWNER-OCCUPANTS FOR 180 DAYS OR MORE WHO RENTS
19A NCAC 02B .0423	REPLACEMENT HOUSING PAYMENT TO OWNER (SHORT TERM OWNER)
19A NCAC 02B .0424	PAYMENT TO OWNER-OCCUPANTS FOR 90 DAYS WHO RENTS
19A NCAC 02B .0425	PAYMENT TO TENANT-OCCUPANT FOR 90 OR MORE DAYS WHO RENTS
19A NCAC 02B .0426	PAYMENT TO TENANT-OCCUPANT 90 OR MORE DAYS WHO PURCHASES
19A NCAC 02B .0427	PAYMENT TO TENANT OF A SLEEPING ROOM 90 OR MORE DAYS
19A NCAC 02B .0428	MOBILE HOMES
19A NCAC 02B .0429	SUBSEQUENT OCCUPANTS
19A NCAC 02B .0430	HOUSING AS A LAST RESORT
19A NCAC 02B .0431	COPIES OF FORMS

History Note: Authority G.S. 133-6; 133-7; 133-8; 133-9; 133-10; 133-10.1; 133-11; 133-14;
133-146; 136-18(2); 136-19; 143B-350 (a), (f);
Eff. April 3, 1981;
Repealed Eff. November 1, 1991.

19A NCAC 02B .0432 RELOCATION ASSISTANCE

The Department of Transportation incorporates by reference 49 CFR Subpart 24 and 23 CFR Subpart C, Section 710.313, including subsequent amendments and editions. Copies are available for inspection at no cost to the public, from the Right of Way Unit of the Department of Transportation. The Code of Federal Regulations may be accessed, at no cost to the public, by visiting <https://www.ecfr.gov>.

History Note: Authority G.S. 133-6; 133-14; 143B-350;
Eff. October 1, 1993;
Readopted Eff. February 1, 2019.

19A NCAC 02B .0433 APPLICABILITY

The rules in this Section shall apply to all federal and State Highway projects, except State secondary road projects.

History Note: Authority G.S. 133-6; 133-14; 143B-350;
Eff. October 1, 1993;
Readopted Eff. February 1, 2019.

19A NCAC 02B .0434	RESERVED FOR FUTURE CODIFICATION
19A NCAC 02B .0435	RESERVED FOR FUTURE CODIFICATION
19A NCAC 02B .0436	RESERVED FOR FUTURE CODIFICATION
19A NCAC 02B .0437	RESERVED FOR FUTURE CODIFICATION
19A NCAC 02B .0438	RESERVED FOR FUTURE CODIFICATION
19A NCAC 02B .0439	RESERVED FOR FUTURE CODIFICATION
19A NCAC 02B .0440	RESERVED FOR FUTURE CODIFICATION
19A NCAC 02B .0441	DEFINITIONS
19A NCAC 02B .0442	PURPOSE
19A NCAC 02B .0443	ELIGIBILITY FOR STATE AND FEDERAL FUNDS
19A NCAC 02B .0444	APPLICABILITY
19A NCAC 02B .0445	ASSURANCES OF ADEQUATE RELOCATION ASSISTANCE PROGRAM
19A NCAC 02B .0446	PERSONS TO WHOM ADVISORY ASSISTANCE SHOULD BE OFFERED
19A NCAC 02B .0447	ASSISTANCE ON ADVANCE AND SPECIFIC PARCEL ACQUISITIONS
19A NCAC 02B .0448	PUBLIC NOTICE OF AVAILABILITY OF SERVICE
19A NCAC 02B .0449	INITIAL CONTACT WITH DISPLACEE
19A NCAC 02B .0450	NOTICE TO FINANCIAL INSTITUTIONS
19A NCAC 02B .0451	NINETY DAYS WRITTEN NOTICE
19A NCAC 02B .0452	REVIEW PROCEDURES
19A NCAC 02B .0453	SEVERED IMPROVEMENTS
19A NCAC 02B .0454	REQUEST FOR PROPERTY INSPECTION
19A NCAC 02B .0455	AGENCY RESPONSIBILITY
19A NCAC 02B .0456	MOVING PAYMENTS - RESIDENTIAL
19A NCAC 02B .0457	MOVING PAYMENT - BUSINESSES, FARMS, NON-PROFIT ORGANIZATIONS
19A NCAC 02B .0458	ADVERTISING SIGNS
19A NCAC 02B .0459	REPLACEMENT HOUSING PAYMENTS
19A NCAC 02B .0460	REPLACEMENT HOUSING PAYMENTS FOR 180 DAY OWNER-OCCUPANT
19A NCAC 02B .0461	PAYMENT TO OWNER-OCCUPANTS OF 180 DAYS WHO RENT
19A NCAC 02B .0462	PAYMENT TO OWNER OR OCCUPANT - 90 DAYS
19A NCAC 02B .0463	PAYMENT TO TENANT OR OWNER - LESS THAN 90 DAYS
19A NCAC 02B .0464	MOBILE HOMES
19A NCAC 02B .0465	HOUSING OF LAST RESORT
19A NCAC 02B .0466	DISPLACEMENTS CAUSED BY DISASTERS OR EMERGENCIES

History Note: Authority G.S. 133-6; 133-7; 133-8; 133-9; 133-10; 133-10.1; 133-11; 133-14;
133-15; 133-146; 136-18(2); 136-19; 138-18(2); 143B-350(a) and (f);
Eff. November 1, 1991;
Repealed Eff. October 1, 1993.

SECTION .0500 - UTILITY ENCROACHMENTS

19A NCAC 02B .0501 DEFINITIONS

The following definitions apply to rules contained in this Section:

- (1) "Agreement" means a properly executed document granting permission for a utility encroachment on the highway right-of-way and stipulating any and all conditions and standards that must be met.
- (2) "Applicant" means any individual, corporation, or agency requesting permission to encroach upon the right-of-way of any highway in the State Highway System whether or not permission has been granted.
- (3) "Department" means the North Carolina Department of Transportation.
- (4) "Encroachment" means use of the highway right-of-way for non-highway purposes.

History Note: Authority G.S. 136-18(5); 136-18(10); 143-350(f);
Eff. April 3, 1981;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0502 PERMISSION REQUIRED FOR ENCROACHMENT

- (a) No utility shall cross or otherwise occupy rights-of-way of any road on the State Highway System without written permission from the Department of Transportation.
- (b) No utility which has been placed on the right-of-way of any road on the State Highway System shall be changed or removed without written permission from the Department of Transportation.

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0503 APPLICATION FOR UTILITY ENCROACHMENTS

The applicant for a utility encroachment agreement shall prepare four copies of the standard encroachment agreement on forms which are available from Division and District Engineers Offices or from the State Utility Agent, Highway Building, Raleigh, N.C.

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Amended Eff. October 1, 1993; November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0504 APPROVAL OF UTILITY ENCROACHMENT

Approval of utility encroachments shall be granted by the responsible Division Engineer.

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0505 FORMS OF ENCROACHMENT AGREEMENT

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Repealed Eff. December 29, 1993.

19A NCAC 02B .0506 RESPONSIBILITY FOR EXISTING UTILITIES

- (a) The applicant shall be responsible for determining what, if any, facilities of other utilities are in existence in the encroachment area. Plans attached to encroachment agreements shall show, as nearly as possible, the location of other utilities that may be unearthed, moved, or exposed to potential damage.
- (b) The applicant shall be responsible for providing protection and safeguards during construction to prevent damage to existing utilities and insure that existing utilities will not be rendered inaccessible.

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0507 EXECUTION OF UTILITY AGREEMENT

(a) This Rule specifies the attestation requirements for utility encroachment agreements between the Department and external parties. All applicable rules regarding utility encroachment agreements may be found in this Section.

(b) If the applicant as defined in Rule .0501 of this Section is a corporation or a municipality, the agreement shall have the corporate seal and be attested by the corporate secretary, or by the empowered city official, unless a waiver of corporate seal and attestation by the corporate secretary, or by the empowered city official, is on file in the office of the State Utilities Manager, located at 1000 Birch Ridge Drive, Raleigh, NC 27610. Within each agreement, in the space provided for execution, the name of the corporation or municipality shall be typed above the signature, and the name and title of all persons signing the agreement shall be typed directly below their signature.

(c) If the applicant is not a corporation, the signature shall be witnessed by one other person. The address of the applicant shall be included in the agreement and the names of all witnesses and persons signing the agreement shall be typed directly below their signature.

*History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Amended Eff. October 1, 1993;
Readopted Eff. February 1, 2019.*

19A NCAC 02B .0508 BOND MAY BE REQUIRED

If deemed necessary by the Division Engineer, the applicant requesting encroachment permission shall post a performance bond (surety bond, certified or cashier's check) adequate to indemnify the Department for damages to the roadway or highway facility caused by the installation. Bond requirements will be based upon the performance experience on Department of Transportation projects and the extent of possible damage to the highway facility.

*History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0509 AGREEMENTS DURING CONSTRUCTION

(a) After a highway construction project has been let to contract, the applicant must make satisfactory arrangements with the highway contractor, to insure that the encroachment activity will not interfere with or delay the contractor.

(b) A three-party agreement between the Department, the highway contractor and the applicant shall be entered into, or the Manager of Right of Way shall be furnished a letter from the highway contractor stating that the installation of the encroachment will not be the basis of a claim for delay or additional cost to the Department. This requirement does not apply to the adjustment or relocation of existing utilities necessitated by highway construction.

*History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0510 VEGETATION IN ENCROACHMENT AGREEMENTS

When vegetation on highway right-of-way is involved with utility installations, the encroachment application shall be referred to the Area Roadside Environmental Engineer for investigation and approval before final approval of the encroachment. Encroachment agreements will not be approved until matters pertaining to the cutting or trimming of vegetation on highway right-of-way have been settled, and then permission for allowable cutting and trimming will accompany the approved encroachment agreement with the utility.

*History Note: Authority G.S. 136-18(5); 136-18(10); 136-93; 136-18(9);
Eff. April 3, 1981;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0511 NOTICE REQUIRED BEFORE WORK BEGINS

(a) The applicant shall notify the Division Engineer or his appointed representative prior to beginning work on the highway right-of-way. Notice is not required for underground utility service connections and aerial crossings installed under blanket agreements.

(b) The Division Engineer or his representative shall notify the Bridge Maintenance Superintendent before work begins when attachments to structures are involved.

*History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0512 NOTIFICATION REQUIRED UPON COMPLETION OF WORK

The applicant shall notify the Division Engineer in writing when all work contained in the agreement has been completed. Written notification of completion will not be required for encroachments on active highway projects, and any utility installed under a blanket agreement.

*History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0513 FINAL INSPECTION: FINAL REPORTS

(a) The Division Engineer or his designated representative shall make a final inspection of all authorized encroachments. Where applicable, the Bridge Maintenance Superintendent will also participate in the final inspection.

(b) The Division Engineer or his designated representative shall notify the Manager of Right of Way in writing as to whether or not each completed encroachment is satisfactory. Written notice of acceptance is not required for encroachments authorized under blanket agreement.

*History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0514 ENCROACHMENT AGREEMENTS ON FEDERAL-AID HIGHWAYS

*History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Repealed Eff. December 29, 1993.*

19A NCAC 02B .0515 RELOCATION OF UTILITIES ENCOUNTERED IN HIGHWAY IMPROVEMENTS

(a) The Department of Transportation shall assume the financial responsibility for non-betterment costs of adjusting or relocating utilities which are in conflict with the construction of a highway project and occupy a valid utility right of way. A valid utility right of way for the purpose of this Rule is one in which the Municipality or other utility owner has a compensable interest. The Department of Transportation, upon the request of the Municipality or other utility owner, may provide the engineering and include the utility adjustment or relocation in the highway improvement contract at no cost to the Municipality or other utility owner.

(b) The Department of Transportation shall assume the financial responsibility for the non-betterment cost of adjusting or relocating those municipally-owned utilities necessitated by highway construction when said utilities are located on a non-system right of way provided that:

- (1) the highway construction does not constitute an improvement to the non-system street in which the utilities are located, and
- (2) the non-system street in which the utilities are located is not incorporated into or obliterated by the highway project. The mere crossing of a project by a street either at-grade or by separation shall not constitute "incorporation" into the project.

(c) The Municipality or other utility owner is financially responsible for the adjustment or relocation of utilities in conflict with a highway improvement when such utilities are located within the existing right of way of a State system highway, except as provided for in G.S. 136-27.1.

(d) The owner of the utility is financially responsible for the adjustment or relocation of utilities in conflict with a highway improvement when such utilities are located on a non-valid utility easement.

(e) The Department of Transportation may enter into agreements with Municipalities or other utility owners to provide that the necessary engineering and utility construction be accomplished by the Department on a reimbursement basis as follows:

(1) Reimbursement to the Department will be due after completion of the work and within 60 days after date of invoice.

(2) Interest shall be paid at the rate of eight percent on any unpaid balance due.

(f) Should a Municipality fail to pay the Department of Transportation in accordance with the provisions of the Utility Agreement, the Department may apply up to ten percent of each year's allocation of the Municipality's share of funds allocated under the provisions of G.S. 136-41.1 (Powell Bill) until the Municipality's obligation is paid.

(g) In those cases where no agreement can be reached, or in cases where the utility owner refuses to relocate or refuses to claim ownership, the Board shall issue an order on the authority of G.S. 136-18(10) requiring the necessary adjustments. Upon failure of the utility to comply with the order, all utility construction shall be included in the highway improvement contract. Upon completion of the work, the owner of the utility shall be invoiced for the work performed. If the invoice is not paid, the Board of Transportation shall refer the matter to the Office of the Attorney General for further action.

*History Note: Authority G.S. 136-18(10); 136-27.1; 136-93;
Eff. November 1, 1991;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

SECTION .0600 - DRIVEWAY ENTRANCES

19A NCAC 02B .0601 DRIVEWAYS IN HIGHWAY RIGHT OF WAY - GENERAL

(a) Any person or corporation desiring to construct a driveway or other connection within the right of way of a state system street or highway shall, before beginning any construction, secure a permit from the Department of Transportation authorizing construction on the state right of way. Driveway connections to residences are normally excluded from this requirement, but may be included at the option of the Department where access connections involve a public safety hazard or at locations involving a highway construction project or if drainage installation costs are excessive or drainage complications are obvious.

(b) Failure to secure a permit prior to construction may result in the removal of the driveways or denial of access at that location, until an approved permit is executed.

(c) Within local governments having local ordinances affecting driveways, the more restrictive ordinance, municipal, county or state, shall apply to driveways connecting into state system streets and roads.

*History Note: Authority G.S. 136-18(5); 136-89.50; 136-89.51;
Eff. April 3, 1981;
Amended Eff. October 1, 1993; July 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0602 OBTAINING A DRIVEWAY CONSTRUCTION PERMIT

(a) Application for a driveway construction permit will be made to the District Engineer having jurisdiction in the area.

(b) Information that must be given with the application is listed below. Additional information will be required for special commercial property uses as shown in Rule .0603 of this Section.

(1) The location of the property must be identified clearly enough for the proposed site to be located in the field.

(2) Complete names and addresses of the property owner and the applicant must be given on the application.

(3) The planned property use must be indicated as one of the following:

(A) Residential Subdivision - Low volume traffic generators (Average Daily Traffic less than 200 vehicles per day) such as small apartment complexes, mobile home parks, condominium developments, and other small residential developments.

(B) Regular Commercial - Low to moderate volume traffic generators (Average Daily Traffic greater than 200 but less than 1,000 vehicles per day) such as single commercial businesses, small

shopping centers, light industrial and manufacturing establishments, small service businesses, service organizations and churches.

- (C) Special Commercial - High volume traffic generators (Average Daily Traffic greater than 1,000 vehicles per day) such as large shopping centers, major recreational facilities, large office buildings or complexes containing more than 200 parking spaces, hospitals, large industrial developments, airports, large residential developments and civic centers.

(c) Plans shall be submitted which clearly indicate the character and extent of the work proposed, including:

- (1) the location of all existing or proposed buildings;
- (2) retaining walls, drainage, poles, and other physical features which effect the driveway location;
- (3) pavement and right of way widths;
- (4) roadway alignment and channelization;
- (5) location of control of access; and
- (6) offstreet parking locations which may affect the driveway location.

*History Note: Authority G.S. 136-18(5); 136-89.50; 136-89.51;
Eff. April 3, 1981;
Amended Eff. December 29, 1993; July 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0603 DRIVEWAY PERMITS FOR SPECIAL COMMERCIAL PROPERTY

(a) Property use designated as special commercial in Rule .0602 of this Section shall require study to a greater depth than other commercial property uses due to the possibility of greater traffic generation. As a result, a four-week review period shall be required by the Department. The permit shall be submitted sufficiently in advance of the planned construction date to allow for this review period. The different types of property uses that come under this heading are:

- (1) Shopping centers with one or more adjoining commercial or service establishments planned or constructed;
- (2) Residential developments;
- (3) Recreational facilities;
- (4) Office buildings or complexes containing more than 200 parking spaces;
- (5) Hospitals or large medical facilities;
- (6) Industrial developments;
- (7) Airports;
- (8) Civic Centers;
- (9) Other uses which can be expected to attract large amounts of traffic (Average Daily Traffic greater than 1,000 vehicles per day); and
- (10) Any development located at high volume or high accident locations, which are locations having a history of accidents.

(b) In addition to the items required on the permit application as specified in Rule .0602 of this Section, the following items of information, with the exceptions noted, must be shown on the site plans before the application can be considered:

- (1) a complete plot plan showing the buildings and parking space layouts (not necessary for new public streets);
- (2) the proposed driveway locations and widths;
- (3) the approximate distances between the following items:
 - (A) driveway centerline to centerline of nearest crossroad;
 - (B) driveway centerline to existing or proposed crossovers;
 - (C) driveway centerline to adjacent streams or bridges;
 - (D) pavement edge of road to right of way; and
 - (E) width of adjacent roads.

(c) In the absence of local zoning or subdivision ordinances, the developer shall present four copies of the site plans to the District Engineer at least four weeks prior to the planned construction date.

(d) Where local zoning or subdivision ordinances exist, the developer shall submit five copies of the site plans to the local planning body. The local planning body, after tentative approval of the plan, shall forward four copies of the plans to the Division Engineer. The Division Engineer shall take the necessary action and inform the developer and the local planning body of the results of the investigation conducted by the Department.

History Note: Authority G.S. 136-18(5); 136-89.50; 136-89.51;

Eff. April 3, 1981;

Amended Eff. January 1, 1995; December 29, 1993; July 1, 1981;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0604 APPROVAL OF APPLICATION

The approval of the application shall be subject to the following conditions:

- (1) The application shall be properly and clearly completed.
- (2) The location, design, and construction of driveways shall meet the general and geometric requirements as specified by the responsible District Engineer which will include necessary provisions for drainage, pavement types and thickness, sight distance requirements, and other details.

Note: The Department publishes a brochure entitled, "Manual on Driveway Entrance Regulations" which includes the normal design and construction criteria required for various types of driveway entrances. This manual may be obtained from the Traffic Engineering Branch, Division of Highways, Raleigh, free of charge.

- (3) The permit shall require that the applicant assume the following construction responsibilities:
 - (a) Existing open ditch - The applicant shall furnish all required pipe of size, type and quantity as specified by the engineer. The pipe will be laid and backfilled by the Department, if requested. The applicant shall bear the full cost of any stabilization and pavement placed on the driveway(s) within the right of way.
 - (b) Existing curbed streets - The applicant will bear all costs of driveway construction including the cost of replacing all joints of curb damaged during construction.
 - (c) No alteration or addition shall be made to any driveway within the right of way without first securing a new permit from the District Engineer.

The Department reserves the right of inspection, by its authorized representatives, of any driveway construction within the right of way. In the event of failure to comply with the terms of the permit, faulty workmanship, or materials, the Department shall have the right to stop the work until such time as the objectionable conditions are corrected. All costs incurred in the removal and/or correction of non-compliance with design, defective workmanship, and/or materials shall be borne by the applicant.

History Note: Authority G.S. 136-18(5); 136-89.50; 136-89.51;

Eff. April 3, 1981;

Amended Eff. October 1, 1993; July 1, 1981;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0605 APPLICATION REVIEW PERIOD

The Department will process all permit applications as expeditiously as possible. Routine permit applications processed by the District Engineer will require approximately two weeks to process. Permit applications that are considered complex will be processed in approximately four weeks.

History Note: Authority G.S. 136-18(5); 136-89.50; 136-89.51;

Eff. April 3, 1981;

Amended Eff. October 1, 1993; July 1, 1981;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.