



Highway Maintenance Manual

Bureau of Highway Maintenance

Chapter 07 Roadside Management

July 2015

Section 25 Use of Highway Right of Way By Others

Subject 25 Grading

1.0 Authority

[s. 86.07 \(2\) Wis. Stats.](#), Digging in highways or using bridges for advertising, states that “No person shall make any excavation or fill or install any culvert or make any other alteration” on state trunk highway right of way without first obtaining a permit from the Department of Transportation. Work on federally funded highways must comply with all federal and state regulations. State and federal permits, public notices, or other coordination may be required depending on the scope of the proposal and the character of the site.

Federal, state and local laws, rules and regulations require the department to consider the potential for negative environmental, aesthetic, cultural, and economic impacts for all grading requests prior to approval. Penalties for non-conformance can be levied for certain work in areas such as wetlands when work proceeds prior to obtaining applicable permits from appropriate state and federal agencies

[Trans 400](#), Wisconsin environmental policy act procedures for department actions, provides guidance for levels of agency environmental coordination required for even minor maintenance operations proposed on state highway right of way. Permitted grading work must adhere to the National Environmental Protection Act (NEPA), Trans 400 guidance and other agency permitting requirements. The complete listings of rules and regulations that may apply are outlined in [FDM Chapter 20](#), Federal and State Environmental Laws, Regulations and Agreements.

The Wisconsin Department of Transportation regional office is responsible for ensuring federal and state environmental regulatory compliance. The Department of Natural Resources and the State Historical Society are state agencies that often require coordination and permitting. Evidence of all state and federal coordination and all approved permits must be attached to the work on the right of way permit prior to performing the work - site.

Grading requests and permits must also comply with statutes and rules governing the construction of new access points onto certain state and federal roadways. The following laws govern construction of new access points. See [FDM Chapter 7](#), Access Control, for more information and refer to [FDM 26-35-1](#), Cultural Resources Preservation, for information on other applicable laws.

- [s. 84.09 Wis. Stats.](#), Acquisition of lands and interests therein, addresses purchased access control.
- [s. 84.25 Wis. Stats.](#), Controlled-access highways, addresses administrative access control.
- [s. 84.295 Wis. Stats.](#), Freeways and expressways, addresses designated freeways and expressways.

2.0 Background

Wisconsin is renowned for its natural beauty and environmental ethic. Not only is this scenic beauty valued by motorists traveling Wisconsin’s highways, but the economic benefits of such beauty, in the form of increased tourism, is vital to our state and local economies.

Rare natural habitats, burial mounds and cultural artifacts exist along Wisconsin’s highway rights of way. The department is committed to protecting and preserving these sensitive sites when they are discovered.

3.0 General

Before issuing a permit, the department must determine such work is reasonable and appropriate. The department does not recognize features on adjacent property as having a right to be seen from Wisconsin’s highways or that features on the right of way should be modified to benefit adjacent properties. However, from

time to time, requests are received from adjacent landowners or managers to modify the topography of the adjacent roadsides within the right of way.

There are a number of reasons for such requests, including to:

- Use the graded material for fill on the adjacent property
- Construct a berm on the right of way to block the view or noise of the highway traffic
- Modify drainage patterns between the properties
- Lower the profile of the roadside to make the adjacent land use more visible to motorists on the highway
- Improve or provide new access to the highway

Such requests are typically denied. There are a number of reasons for denial. These include:

- Permanent changes that create driver distraction or confusion
- Grading work disturbs the well-established existing vegetation which often results in erosion problems
- The work may irreversibly diminish the existing natural scenic characteristics and values of the site
- The result would be detrimental to motorists and the public at large
- Negative environmental impacts result and are not permitted under current federal, state and local laws, rules and regulations
- Individual interests should not benefit from the grading activities at the expense of the public investment
- Grading work that improves or provides additional access on access-controlled highways such as designated freeways, expressways and those controlled by Chapter 84.295, Stats., or otherwise purchased or designated under Chapters 84.09 and 84.25, Stats.

In reviewing any request to grade on highway right of way, the department must consider all impacts of the proposed project. These include impacts:

- To the structural integrity of the highway
- On motorist safety
- On neighboring properties
- On the community at large
- On the natural and manmade environments
- On wildlife and other natural communities
- On the visual and aesthetic qualities of the site and the surrounding area
- On the motorist's driving experience
- On the natural course of drainage
- Regarding NEPA compliance and the need for other agency permitting

The department should weigh these permanent impacts against any positive long-term benefits of the project to be derived by the public at large, in whose name the right of way is held. It is expected in rare circumstances will the value to the public be sufficient to warrant approval of the request. Examples may be to correct existing highway drainage problems, to improve safety for highway users or to improve aesthetics such as by providing a visual barrier to existing land uses.

Approval of grading requests made prior to this guideline are not precedent-setting. This guideline will benefit adjacent landowners and the regions by providing uniform statewide guidance.

4.0 Process

The region in which the proposed project is located will be the primary contact for these grading requests. The requestor must submit a completed DT 1812, [Application/Permit to Work on Highway Right of way](#), to the region. This application must provide a comprehensive written description of the work to be done including plan sheets or sketches where appropriate, how the work is to be accomplished, all proposed steps to mitigate any negative impacts including site restoration, and evidence the community at large supports the request. The applicant must address the question, "What is the equivalent public benefit?"

In reviewing the application, the region will consider all of the project's potential impacts, some of which are identified under Section 2.0 of this guideline, the need for federal and state permitting, and the potential benefits of the project to the public at large.

If, after weighing the merits of the request, the region believes the work on the right of way permit **should not** be approved, it should notify the requestor of its decision. If the region believes that the permit **should** be approved, the application should be sent, along with the region's justification for its recommendation and evidence of other agency coordination to: the Director of the Bureau of Highway Maintenance, 4802 Sheboygan Avenue, RM 501, Madison, WI 53707.

The Director will review the application and approve or deny the request. The Director will notify the region of the permit status and the region will in turn notify the applicant. If the request is approved, the region will work with the applicant to assure all necessary special provisions, other agency permits, and any other necessary documents are developed and included as part of the permit and that the permittee remains in compliance.