

# *Encroachment Guide*

**February 2021**

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## **General Encroachment Information**

It is the philosophy of the South Dakota DOT to keep highway right-of-way clear of private uses and encroachments. The Department's philosophy recognizes that there are non-highway uses of highway right-of-way allowed by State statute. The Department also acknowledges that there are private encroachments and uses meeting special criteria that may remain in place. Encroachments not allowed by statute or not meeting these special criteria must be removed from the right-of way by orderly process.

This guide addresses encroachments identified during a project encroachment survey. However, encroachments (including mailboxes deemed a safety hazard) located outside upcoming projects must also be addressed as they become evident. You do not need to follow the encroachment survey process to deal with these items.

## **Encroachment Survey Process**

Encroachment Surveys will be conducted by the Area Offices. The majority of projects along state highway routes using Federal Funds require an encroachment survey prior to letting. Refer to Primavera to determine if an encroachment survey is required.

A list of all upcoming projects in a particular Area can be generated from the STIP via C2C.

- a. Open C2C
  - i. username = your first name and last name's initial
  - ii. password = password unless you have changed it to your own personal one
- b. Click "Plan"
  - i. If "Current Plan" is the year of STIP you want, go to step "c".
  - ii. If "Current Plan" needs to be changed, click "Select/Change Plan" and pick the current STIP year.
- c. Click "Reports", "STIP Reports", "By Coding"
  - i. Click "Region/Area" and pick your Area.
  - ii. Enter Years in "Year From" and "To" if you don't want everything including the long range projects.
  - iii. Click the "Public Copy" and "Include Ready/Letting Date" so a checkmark is in the little box (you don't want the comments).
  - iv. Click "View Report".
  - v. Find all upcoming state highway projects. Encroachment surveys for Local Government Projects will be handled by the local government agency.

An encroachment survey is valid for a period of three years. If the project letting is delayed beyond this time, a drive through must be made to verify the original survey is correct. Any newly identified encroachments must be added to the survey and addressed accordingly.

### **3R and Maintenance Projects when we are not purchasing ROW:**

Encroachment surveys should be completed a minimum of **4 months** prior to the Bid Letting Date. This will allow time for establishing ROW widths, any necessary investigative work, negotiations, FHWA review, any necessary revisions, and FHWA approval prior to letting.

If the project has no encroachments, simply send an e-mail or letter to Connie Johnson – Bid Letting Transportation Analyst in Project Development (cc: Becky Hoffman – Bid Letting Engineer in Project Development, Rick Gordon – Construction Engineer in Operations Support, and Kirk VanRoekel (FHWA) [Kirk.VanRoekel@dot.gov](mailto:Kirk.VanRoekel@dot.gov)) stating there are no encroachments.

If there are encroachments, follow these steps:

- 1) The survey shall include how far the item encroaches along with pictures of each encroachment. Pictures shall have a description and location on each picture. All items within the ROW shall be noted with the exception of mailboxes which shall be made standard as part of the project. The Encroachment Survey Form Letter and Exhibit A should be saved as a separate file from the Encroachment Images. All the individual pictures should be saved in one file as Encroachment Images. These 2 files should be stored under the project directory for the approval process and future reference.
- 2) Each item must be addressed as to how it is going to be resolved.
  - a. Landscaping items to remain by Permit to Occupy ROW.
  - b. Items removed prior to construction.
  - c. Items removed prior to end of construction.
  - d. Items allowed to remain in place.
- 3) Submittals to FHWA – The Area Office will send Kirk VanRoekel (FHWA) the Encroachment Survey Form Letter via e-mail ( [Kirk.VanRoekel@dot.gov](mailto:Kirk.VanRoekel@dot.gov) ). The form letter will provide FHWA a link to where the Exhibit A and Images files are stored on the FTP Server. FHWA will review the recommended solutions to each encroachment. If revisions to the recommendations are necessary, the Area Office will need to re-submit this information to FHWA.
- 4) FHWA Approval – Once FHWA approves of encroachment solutions, FHWA will notify the Area Office, Project Development (Connie Johnson and Becky Hoffman), and Operations Support (Rick Gordon). Project Development staff will forward the information to Marilyn Patterson (Agreements Transportation Analyst) in Project Development for Maintenance and Encroachment Agreement purposes.
- 5) Landowner Correspondence – All correspondence with Landowners shall be sent from the Area Office directly to the Landowner. If the encroachment is located within city limits a copy of correspondence will be sent to the City for their information.
- 6) Project Development will obtain a signed copy of the Maintenance and Encroachment Agreement with Exhibit A and images attached.

## **Reconstruction/Grading Type Projects when we are purchasing ROW:**

When ROW is being purchased for a reconstruction project, the Area Staff and ROW Office Staff will have to coordinate efforts to address any possible encroachments in the existing ROW.

Once Road Design Staff has graphically established the existing highway ROW, Area Staff should verify and document when it is in question whether a certain item is within the existing ROW or not. Area Staff should forward this information to the ROW Office for their use in preparing appraisals and negotiations. This information will be used to help determine if specific items are reimbursable to the Landowner. This information should be provided to the ROW office as soon as possible to help eliminate unnecessary work and confusion on items that are not clearly within or out of the existing ROW.

## **Encroachment Resolution Process**

**Landscape items to remain by Permit to Occupy ROW** – Encroaching landscape items that do not pose a safety threat to the general public will be allowed to remain in place. Items may include rock, block, timber, plants or ornaments that lay low to the ground or will not be an obstacle to a vehicle or pedestrian.

The Area Office will send the Landowner a letter along with a completed Permit to Occupy ROW detailing all allowable encroachments for the Landowner's signature. Once the signed permit is returned to the Area Office the Area Engineer will approve the permit. The approved permit will be sent to the Landowner and a copy of the permit along with pictures of the encroachment(s) will be placed on file at the Area Office. If the encroachment is in city limits a copy will also be provided to the City for their information.

**Items to be removed prior to construction** – Encroaching items within the work limits must be removed prior to construction.

The Area Office will send a letter to the Landowner stating it is their responsibility to remove the encroachment and specifying a date prior to construction by which the encroachment must be removed from the ROW. The Area Office is responsible for verifying the letter was received by the Landowner. If the encroachment is located within city limits, the city may be asked to assist in the removal.

If the Landowner believes the date for removal of an item will cause substantial hardship, the Landowner may request a time extension for removal. These requests will be resolved by the Area Engineer on a case by case basis considering the type and extent of the hardship and the impact the encroachment has on construction activities.

**Items to be removed by the end of construction** – Encroaching items located outside the work limits must be removed by the end of construction.

The Area Office will send a letter to the Landowner stating it is their responsibility to remove the encroachment and specifying a reasonable date by which the encroachment must be removed from the ROW. The Area Office is responsible for verifying the letter was received by the Landowner. If the encroachment is located within city limits, the city may be asked to assist in the removal.

**Items to remain in place** - Where the highway passes through established business districts and the buildings are at the property line and are continuous or very closely spaced, encroachments may be allowed to remain. Items allowed to remain are those that have no reasonable alternative location, have historical significance or the removal of which will adversely affect the highest and best use of the property. The Area Engineer must affirm the item will not impair the highway or interfere with the free and safe flow of traffic and pedestrians.

The description and pictures of the encroachments remaining in place must be placed on file at the Area Office and a list of these items must be provided to the City for their information.

**Trees** – Trees located within the ROW shall be dealt with on a case by case basis. If a tree poses a threat to the traveling public, it must be removed. Some examples of a threat would be rural trees located within the clear zone or trees reducing site distance.

If a tree to be removed was planted by the landowner, they may be held responsible for the removal. In many cases the tree removal will be the departments responsibility.

### **Encroachment Removal Guidance When Landowner Will Not Comply**

#### **Follow-up on Encroachment Removals after Deadline if Encroachment is Not Removed**

1. Step one is to mail a certified letter to the landowner directing removal of the encroachment (include as attachments, any previous documentation as appropriate).
  - i. If the encroachment is entirely on highway ROW and can be removed by DOT or contracted forces without damage or entering private property, we can notify them in that letter that if the encroachment has not been removed by the date specified, it will be removed and disposed of by DOT and the landowner will be billed for it. To seek reimbursement from the landowner complete a DOT-307 and send it to Joanie Blair in Finance along with landowner information and a description of the work.
  - ii. If the encroachment is such that it would require access to the private property or spans the ROW, we would notify that failure to remove the encroachment by the specified date will result in the issue being turned over to our Legal Office.
2. Step two is to provide Legal Office with the necessary information such that they can send a letter notifying our intent to take legal action.
3. Step three would be to take formal legal action.
4. If formal legal action against the landowner is required to remove the encroachment, the landowner will be billed for DOT's legal fees and removal expenses.

**NOTE:** If we have DOT Staff or a contractor remove smaller and easily accessible encroachments, we should only do it if there are not negative impacts to the remaining item or private property (make sure we aren't making removals such as removing part of a retaining wall that won't work when the part in the ROW is removed or removing part of a footing for some item – those types of removals should be done by the landowner or his designee).

## **New Requests for Permit to Occupy ROW**

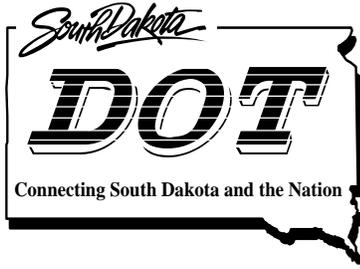
A Permit to Occupy ROW may be approved for encroaching landscape items that do not pose a safety threat to the general public. Items may include rock, block, timber, plants or ornaments that lay low to the ground or will not be an obstacle to a vehicle or pedestrian.

A Permit to Occupy ROW may be approved for encroaching items where the highway passes through established business districts and the buildings are at the property line and are continuous or very closely spaced. Items allowed may be those that have no reasonable alternative location, support the highest and best use of the property, or are part of beautification projects such as benches, planters or dining tables. The Area Engineer must affirm the item will be located outside the clear zone, will not impair the highway or interfere with the free and safe flow of traffic and pedestrians, and will comply with ADA guidelines.

### **Form Letter and Exhibit A guidance:**

**RED text to be revised, updated and/or deleted. *BLUE italic text provides guidance and shall be deleted.***

Change all text to black when done revising the letter, except for that information you may want to stand out.



# Department of Transportation

## Area Office Address Info

### Date

Project Development  
Attention: Connie Johnson, Transportation Analyst  
Department of Transportation  
700 E. Broadway Ave.  
Pierre, SD 57501

RE: **Project Number; County Name** County; PCN **PCN#**  
**Project Location Description**  
**Type of Work**

An Encroachment Survey was completed for the referenced project. It has been determined there are no encroachments. This project is cleared for construction from an encroachment standpoint.

**OR**

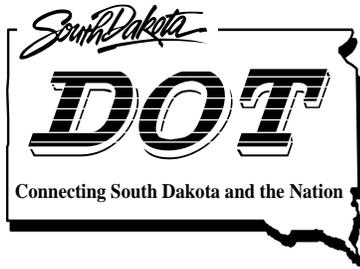
An Encroachment Survey was completed for the referenced project and XX features have been identified as being within the state's right of way (ROW). Letters have been sent to the landowners requiring the XX features be removed prior to DATE. This project is cleared for construction from an encroachment standpoint.

Please feel free to contact us if there are any questions.

Sincerely,

**Area Engineering Supervisor**, Engineering Supervisor  
Department of Transportation  
**Area** Area Office

Cc: Becky Hoffman – Bid Letting Engineer  
**Area Engineer**, **Area** Area Engineer  
Kirk VanRoekel, FHWA  
Rick Gordon, Construction Engineer  
Project file



# Department of Transportation

## Area Office Address Info

### Date

FHWA  
Attention: Kirk VanRoekel, Realty & Civil Rights Specialist  
116 East Dakota Avenue, Suite A  
Pierre, SD 57501-3110

RE: **Project Number; County Name County; PCN PCN#**  
**Project Location Description**  
**Type of Work**

An Encroachment Survey was completed for the referenced project and XX features have been identified as being within the state's right of way (ROW). These encroachments have been separated into several categories for action and will be handled as documented in "Exhibit A".

"Exhibit A" can be found at the following link:

<FTP Server/DOT/regionXX/prj/CounPCN#/ExhibitA.doc>

Images of the encroachments can be found at the following link:  
<FTP Server/DOT/regionXX/prj/CounPCN#/file name>.

Please feel free to contact us if there are any questions.

Sincerely,

**Area Engineering Supervisor**, Engineering Supervisor  
Department of Transportation  
**Area** Area Office

Cc: **Area Engineer**, Area Engineer  
Rick Gordon, Construction Engineer  
Project file

AGREEMENT BETWEEN THE POLITICAL SUBDIVISION AND THE STATE  
FOR  
FEDERAL AID HIGHWAY ENCROACHMENTS

EXHIBIT "A"

**Landscaping items**

Permits will be issued by the Department of Transportation Area office allowing the following encroachments to remain. During the Encroachment Survey, it has been determined these encroachments will not impair the highway or interfere with the free and safe flow of traffic.

<b>Pic#</b>	<b>Station</b>	<b>Description</b>	<b>Encroaches</b>
4	Sta. 4+25 Lt.	Bush	encroaches 1.5'
5	Sta. 9+12 Rt. to Sta. 9+62 Rt.	Block and rock	encroaches 2.3'
7	Sta. 13+45 Lt.	Planter	encroaches 5.4'

**Items to be removed prior to construction.**

The following encroachments are located within the work limits and will be removed from the right-of-way prior to construction:

<b>Pic#</b>	<b>Station</b>	<b>Description</b>	<b>Encroaches</b>
22	Sta 59+55 Rt.	Flagpole	encroaches 9.6'
23	Sta 55+00 Rt.	Chateau Canopy	encroaches 2.4'
37	Sta 38+50 Lt.	Reader Sign	encroaches 18.0'
38	Sta 39+00 Rt.	Advertising	encroaches 3.7'

**Items to be removed by the end of construction.**

The following encroachments are located outside the work limits and will be removed from the right-of-way prior to end of construction:

<b>Pic#</b>	<b>Station</b>	<b>Description</b>	<b>Encroaches</b>
9	Sta 67+80 Lt.	Primerica	encroaches 1.9'
16	Sta 61+20 Lt.	Colonial Inn Rates	encroaches 3.8'
18	Sta 75+50 Rt.	Dairy Queen	encroaches 0.6'
19	Sta 61+60 Rt.	Vet. Medical Clinic	encroaches 2.7'

**Items allowed to remain in place.**

The following items are located within established business districts where buildings are at the property line and are continuous or very closely spaced. These items have no feasible alternative location, have historical significance or the removal of which will adversely affect the highest and best use of the property. During the Encroachment Survey, it has been determined these encroachments will not impair the highway or interfere with the free and safe flow of traffic and pedestrians.

<b>Pic#</b>	<b>Station</b>	<b>Description</b>	<b>Encroaches</b>
13	Sta 61+50 Lt.	Colonial Inn Motel	encroaches 3.8'
19	Sta 63+50 Rt.	Canopy	encroaches 17.7'
32	Sta 45+30 Rt.	Antique store canopy	encroaches 0.9'
50	Sta 21+50 Lt.	House Overhang	encroaches 2.1'
51	Sta 19+80 Lt.	Law Offices	encroaches 1.2'

**Example Images**



Pic. #36 (Broadway Ave.) Yankton  
Sta. 38+15 Lt.  
Binswanger Glass encroaches  
6.6' - 13.2' high



Pic. #50 (Broadway Ave.) Yankton  
Sta. 21+50 Lt.  
House Overhang encroaches 2.1'



Pic. #51 (Broadway Ave.) Yankton  
Sta. 19+80 Lt.  
Law Offices encroaches 1.2'



Pic. #56 (Broadway Ave.) Yankton  
Sta. 17+75 Lt.  
Trinity Lutheran Church  
encroaches 6.0'



# Landscaping Items Letter



## Department of Transportation

**Yankton Area Office**

**1306 West 31st Street**

**Yankton, South Dakota 57078-9662**

**PH: 605/668-2929 FAX: 605/668-2927**

**DATE**

NAME

ADDRESS

CITY, STATE, ZIP

RE: Encroachment

**P-PH 2050(01)408, PCN 6469**

**Reconstruction of SD 50 Loop (Cherry Street) in Vermillion**

Dear (NAME):

As seen in the enclosed photo, your **(DESCRIPTION)** in **Vermillion** encroaches into the **SD 50 Loop, Cherry Street Right-of-Way** by **(DISTANCE)**. The SD Department of Transportation will be reconstructing **Cherry Street** during **the next two years**, and as part of the project, all encroachments must be addressed in order to secure project funding.

The **(DESCRIPTION)** that encroaches in the highway right-of-way is considered to be a landscaping item, and does not need to be moved at this time. If this **(DESCRIPTION)** requires replacement, upgrading or refurbishing for any reason, including storm damage, it must be removed from the highway right-of-way or a new Permit to Occupy Right-of-Way must be obtained.

A DOT-295 Permit to Occupy Right-of-Way is enclosed to allow this encroachment to temporarily remain. Please sign and date the Permit and return it to this office in the enclosed envelope. Thank you for your anticipated cooperation.

If you have questions, please contact me at **(PHONE NUMBER)**.

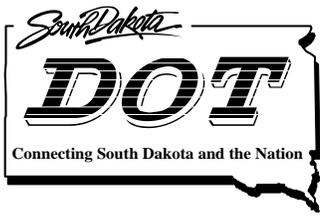
Sincerely,

SD DEPARTMENT OF TRANSPORTATION  
Yankton Area

**Ronald D. Peterson, PE**  
Area Engineer

cc: Project file

## Encroachment to Be Removed Letter



### Department of Transportation

**Yankton Area Office**  
**1306 West 31st Street**  
**Yankton, South Dakota 57078-9662**  
**PH: 605/668-2929 FAX: 605/668-2927**

December 19, 2007

Darmon Staum  
32061 477<sup>th</sup>. Avenue  
Elk Point, South Dakota 57025

Re: P 0050(80)423; PCN 01HS; Union County  
Crack Sealing of Asphalt Concrete  
Encroachments

Dear Mr. Staum;

A sign with the legend "Fontanelle" is encroaching in the Right-of-Way by 2 feet on the south side of SD Highway 50 on the east side of SD Highway 11. Federal Regulations require that this sign needs to be removed from the ROW in order to get our federal funding to construct the subject project.

Please move this sign out of the Right-of-Way by July 1, 2008. A photo of the encroachment is enclosed.

If further information is needed, please contact me at (605)668-2929, Ext. 13. Thank you in advance for your anticipated cooperation.

Sincerely,

SD DEPARTMENT OF TRANSPORTATION  
Yankton Area

Ronald D. Peterson, PE  
Area Engineer

cc: Project File

**SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION  
APPLICATION FOR PERMIT TO OCCUPY RIGHT-OF-WAY: ENCROACHMENT**

[U:\op\Encroachment Guide\DOT295E \(PermittoOccupyROW Encroachment\).doc](U:\op\Encroachment Guide\DOT295E (PermittoOccupyROW Encroachment).doc)