

1 19A NCAC 02B .0150 is readopted as published in 33:16 NCR 1717-1720 with changes as follows:

2  
3 **19A NCAC 02B .0150 RAILROAD RIGHT OF WAY DEFINITIONS-CONSTRUCTION OF RAILROAD**  
4 **TRACKS ACROSS RIGHT OF WAY**

5 ~~It shall be unlawful to construct a railroad track across any portion of the State Highway System, without the written~~  
6 ~~permission of the Chief Engineer or his authorized agent.~~

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

- 8 (1) “At-grade crossing” means an intersection where roadways and railroads join or cross at the same  
9 level.
- 10 (2) “Closed crossing” means a location where a previous crossing no longer exists because either the  
11 railroad tracks have been removed, or each pathway or roadway approach to the crossing has been  
12 removed, leaving behind no intersection of railroad tracks with either a pathway or roadway. A  
13 grade-separated highway-rail crossing that has been removed shall be considered a closed crossing.
- 14 (3) “Crossing Agreement” means a [formal] written agreement between the Department and a railroad  
15 through which the railroad permits the Department to build a road across the railroad’s tracks.
- 16 (4) “Facilities” means real or personal property, or any interest in that property, that is [determined to  
17 be necessary or convenient] situated for the provision of a freight or passenger rail fixed guideway  
18 facility or system. The term includes all property or interests necessary or convenient for the  
19 acquiring, providing, using, or equipping of a rail fixed guideway facility or system, including  
20 rights-of-way, trackwork, train controls, stations, and maintenance facilities.
- 21 (5) “Flange guard” means a protective edge, rib, or rim made of rubber, steel, timber, or any other  
22 composite material on any object such as the base of a rail, on the top and bottom horizontal parts  
23 of a beam, or girder.
- 24 (6) “Grade” means the rate of ascent or descent of a roadway, expressed as a percentage and calculated  
25 by the change in roadway elevation per unit of horizontal length.
- 26 (7) “Grade point” means the point where the new construction of a facility ties into and terminates at  
27 the existing facility.
- 28 (8) “Grade separation” means a crossing of a highway and a railroad at different levels that allows  
29 unimpeded traffic movement.
- 30 (9) “Railroad” means an entity that owns or maintains the track through the at-grade crossing, or an  
31 entity that operates one or more trains through an at-grade crossing or grade separated crossing on  
32 or connected to the general railroad system of transportation.
- 33 (10) “Separated” means the travelways of two transportation facilities, such as two highways or a  
34 highway and a railroad, that are disconnected by means of a bridge so that traffic on one shall not  
35 conflict with traffic on the other.
- 36 (11) “Separation structure” means the bridge structure that separates the travelways of the two  
37 transportation facilities.

1           (12) “Track” means an assembly of rails, ties, and fastenings that cars, locomotives, and trains traverse.

2           (13) “Traffic control device” means a sign, signal, marking, or other device placed on or adjacent to a  
3           street or highway by authority of a public body or official having jurisdiction to regulate, warn, or  
4           guide traffic.

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

1 19A NCAC 02B .0153 is readopted as published in 33:16 NCR 1717-1720 with changes as follows:

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3 **19A NCAC 02B .0153 SIGNALIZATION OF NEW-GRADE AT-GRADE CROSSING**

4 ~~(a) For purposes of this Rule, the term "crossing agreement" is a formal written agreement between the N.C. Department of Transportation and a railroad company. The railroad company permits the Department of Transportation to build a road across the railroad company's tracks. The agreement also lists responsibilities of each party with regard to the construction, maintenance, and funding of the new crossing.~~

8 ~~(b) 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 will 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 of Transportation determines during said 20-year period that a signalization or a separation structure is required. If a crossing in existence prior to December 3, 1966 is eliminated by the relocation of an existing road, the policy stated in Rule .0152 of this Section shall apply.~~

14 ~~(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.~~

18 ~~(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 [lists] shall list the construction, maintenance, safety device installation, and funding responsibilities of each party.~~

22 ~~(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.~~

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

29 ~~(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.~~

- 31 (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

1 notify the Director ~~[notification shall be immediate. required]~~ upon commencement of agreement  
 2 negotiations.

3 (2) If a municipality and railroad seek to enter into an agreement for the construction of a new railroad  
 4 track across the municipal street system, at-grade, the municipality or public authority responsible  
 5 for the maintenance, construction, reconstruction, and right-of-way acquisition for the municipal  
 6 street system shall provide the Rail Division Director with 60-days' notice prior to the execution of  
 7 the agreement. If the municipality anticipates there to be less than 60 days between the negotiations  
 8 and execution of the agreement, the municipality shall notify the Director ~~[notification shall be~~  
 9 immediate. required] upon commencement of agreement negotiations.

10 (3) If a private developer and a railroad seek to enter into an agreement for the construction of a railroad  
 11 track across the municipal street system, at-grade, or a new municipal street across a railroad track,  
 12 at-grade, the private developer shall provide the Rail Division Director with 60-days' notice prior  
 13 to the execution of the agreement. If the private developer anticipates there to be less than 60 days  
 14 between the negotiations and execution of the agreement, the private developer shall notify the  
 15 Director ~~[notification shall be immediate. required]~~ upon commencement of agreement negotiations.

16 (4) Notice shall be in writing and shall be effective upon receipt by the Rail Division Director. Notice  
 17 may be ~~[if]~~ delivered ~~[personally]~~ personally, ~~[or]~~ by email, ~~[or]~~ sent by overnight courier with  
 18 recipient's ~~[if]~~ signature ~~[for the receiving party is obtained,]~~ or other electronic acknowledgement  
 19 of receipt from the recipient requested, or ~~[sent]~~ by certified or registered mail, postage ~~[prepaid,]~~  
 20 prepaid. Please address all physical copies of the required notice to the Rail Division Director at  
 21 1553 Mail Service Center, Raleigh, NC 27699-1553. The Rail Division Director's email address  
 22 may be found, free of charge, at  
 23 <https://apps.ncdot.gov/dot/directory/authenticated/UnitPage.aspx?id=3393>.

24 (5) Notice shall include the following information:

25 (A) the name, address, telephone number, and email address of the entity submitting the notice;

26 (B) a description of the anticipated crossing, including whether the agreement is for the  
 27 construction of a railroad track across the municipal street system, or the construction of a  
 28 municipal street across an already existing railroad track;

29 (C) the county, city, or political subdivision where the crossing will be located;

30 (D) the railroad milepost number, if an already existing railroad track; and

31 (D) the State maintained road number ~~[and/or]~~ or name, if an already existing road.

33 *History Note: Authority G.S. 136-18(5); 136-18(11); 136-20; 136-20.1; 136-66.1; 136-195;*

34 *Eff. July 1, 1978;*

35 *Amended Eff. December 1, 1993;*

36 *Readopted Eff. June 1, 2019.*

1 19A NCAC 02B .0154 is readopted as published in 33:16 NCR 1717-1720 with changes as follows:

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3 **19A NCAC 02B .0154 COST-OF-RAILROAD SEPARATION STRUCTURES**

4 ~~Whenever any highway project provides for the construction of a separation structure over or under the railroad, the~~  
5 ~~Department of Transportation will construct the separation structure to provide for an additional track upon the request~~  
6 ~~of the railroad and the furnishing of the proper justification or enter into an agreement with the railroad to provide for~~  
7 ~~the additional track if such tracks are constructed and placed in use within a 20-year period from the signing of the~~  
8 ~~agreement. If the separation structure eliminated the crossing at grade, the railroad will be required to pay five percent~~  
9 ~~of the total costs of the separation structure and approaches from grade point to grade point as constructed initially~~  
10 ~~and five percent of the costs of the widening of the structure within the aforementioned 20-year period. If the~~  
11 ~~separation structure is an additional or new crossing and no existing crossing is closed, the Board of Transportation~~  
12 ~~will pay the entire cost of the structure including the provision for additional tracks on request by the railroad with~~  
13 ~~proper justification, or will pay the entire cost of widening the structure within the aforementioned 20-year period.~~

14 ~~[(a) Construction, elimination, costs, and maintenance of a grade separation over or under any road, street, or highway~~  
15 ~~forming a part of the State highway system.]~~

16 ~~(a)[(1)] Whenever any highway project provides for the construction of a separation structure over or under the~~  
17 ~~railroad, the Department shall construct the separation structure to provide for an additional track upon the request of~~  
18 ~~the railroad and the furnishing of the [proper] justification or enter into an agreement with the railroad to provide for~~  
19 ~~the additional track if such tracks are constructed and placed in use within a 20-year period from the signing of the~~  
20 ~~agreement.~~

21 ~~(b)[(2)] If a grade crossing that was in existence prior to December 3, 1966, [shall be ]is separated, the railroad shall~~  
22 ~~pay five percent of the cost of the separation structure and approaches from grade point to grade point.~~

23 ~~(c)[(3)] If the separation structure eliminated the crossing at-grade, the railroad shall pay five percent of the total~~  
24 ~~costs of the separation structure and approaches from grade point to grade point as constructed initially and five percent~~  
25 ~~of the costs of the widening of the structure within the 20-year period.~~

26 ~~(d)[(4)] If the separation structure is an additional or new crossing and no existing crossing is closed, the Board of~~  
27 ~~Transportation [will] shall pay the entire cost of the structure including the provision for additional tracks on request~~  
28 ~~by the railroad with [proper] justification, or will pay the entire cost of widening the structure within the~~  
29 ~~aforementioned 20-year period.~~

30  
31 *History Note:* Authority G.S.136-18(5); 136-18(11); 136-20;

32 Eff. July 1, 1978;

33 Readopted Eff. June 1, 2019.

1 19A NCAC 02B .0155 is readopted as published in 33:16 NCR 1717-1720 with changes as follows:

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3 **19A NCAC 02B .0155 EXISTING AT-GRADE CROSSING CONSTRUCTION AND MAINTENANCE OF**  
4 **RAILROAD CROSSINGS**

5 ~~Whenever any road, street or highway forming a part of the State Highway System shall cross or intersect any railroad,~~  
6 ~~including an industrial siding, at the same level or grade, the railroad owner shall be responsible for the construction~~  
7 ~~and maintenance of the crossing and the area between the ends of the ties and the edge of the pavement of the main~~  
8 ~~traveled lanes plus a maximum of 10 feet of the usable shoulders. The railroad owner shall assume the construction~~  
9 ~~cost of the crossing for the pavement width and shall maintain the entire area herein described at its own expense.~~  
10 ~~The Department of Transportation shall reimburse the railroad owner for costs incurred in constructing the crossing~~  
11 ~~through the shoulder widths. The Department of Transportation shall also be responsible for the construction and~~  
12 ~~maintenance of the road beyond the ends of the ties.~~

13 (a) If the construction, reconstruction, or maintenance of an existing at-grade crossing causes any road, street, or  
14 [highway,] highway forming a part of the State highway [system,] system to cross or intersect any railroad, including  
15 an industrial siding, at the same level or grade, [then] the railroad shall be responsible for the following:

- 16 (1) construction and maintenance of the crossing and the area between the ends of the ties and the edge  
17 of the pavement of the main traveled lanes plus a maximum of 10 feet of the usable shoulders; and  
18 (2) construction cost of the crossing for the pavement width and maintenance for the entire area herein  
19 described at its own expense.

20 (b) Pursuant to G.S. § 136-20(h), the railroad shall be responsible for 50 percent of annual maintenance costs of grade  
21 crossing signals.

22 (c) A railroad, county, city, or other political subdivision of the State may identify and propose at-grade crossings for  
23 potential closure by submitting a Crossing Closure Request to the Rail Division [Director,] Director as follows:

- 24 (1) The Crossing Closure Request shall be addressed to the Rail Division Director, 1553 Mail Service  
25 Center, Raleigh, North Carolina, 27699-1553 and contain the following information:

- 26 (A) name of the entity submitting the request;  
27 (B) name of the county, city, or political subdivision where the crossing is located;  
28 (C) Association of American Railroads (AAR) crossing number;  
29 (D) railroad milepost number;  
30 (E) State maintained road number [and/or] or name; and  
31 (F) any existing protection at the crossing.

- 32 (2) The Rail Division [will] shall review the Crossing Closure Request and make a final  
33 recommendation to the Board of Transportation upon the consideration of transportation [impacts]  
34 impacts, including emergency access, safety, feasibility, and public convenience.

- 35 (3) If upon the consideration of the Rail Division's final recommendation, the Board of Transportation  
36 approves the at-grade closure, the Rail Division [will] shall give notice to the governing body within

1                   which the at-grade crossing is located, direct the Railroad to close or remove the crossing within 60  
2                   days, and coordinate with the Railroad the responsibilities for removal.

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4    *History Note:    Authority G.S. 136-18(5); 136-18(11); 136-20;*

5                   *Eff. July 1, 1978;*

6                   *Amended Eff. October 1, 1993;*

7                   *Readopted Eff. June 1, 2019.*

1 19A NCAC 02B .0156 is readopted as published in 33:16 NCR 1717-1720 with changes as follows:

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3 **19A NCAC 02B .0156 PAVING OF ROADWAY SURFACE CROSSING RAILROAD TRACKS**

4 When any road, ~~street, street~~ or highway forming a link in the State highway system is being surfaced or resurfaced, the  
 5 Department ~~of Transportation shall, will~~ [if in such instances requested to do so by the railroad,] pave the roadway surface  
 6 across the ~~[crossing, ]crossing upon request by the railroad. [but the]~~ The railroad shall provide and place at its own  
 7 ~~[expense,] expense~~ the necessary crossing ~~timbers~~ flange guards on rail guards and otherwise adjust ~~[it's]~~ the facilities to meet  
 8 the level of the finished road surface.

9

10 *History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;*

11 *Eff. July 1, 1978;*

12 *Amended Eff. October 1, 1993;*

13 *Readopted Eff. June 1, 2019.*



1 19A NCAC 02B .0157 is readopted as published in 33:16 NCR 1717-1720 with changes as follows:

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3 **19A NCAC 02B .0157 COST OF CHANGING ELEVATION OF RAILROAD FACILITIES**

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

7

8 *History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;*

9 *Eff. July 1, 1978;*

10 *Amended Eff. October 1, 1993;*

11 *Readopted Eff. June 1, 2019.*

1 19A NCAC 02B .0158 is readopted as published in 33:16 NCR 1717-1720 with changes as follows:

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3 **19A NCAC 02B .0158 CHANGING GRADE OF ROAD WHEN GRADE OF RR TRACKS IS CHANGED**

4 When any railroad changes the grades of its tracks where ~~said the~~ tracks cross or intersect any road, street, or highway of the  
5 State ~~Highway System~~ highway system, the railroad shall be responsible for adjusting, at its own expense, the grade of such  
6 road, street or highway as required to meet the change in grade of the railroad's tracks or facilities. Any adjustment of the  
7 road, street or highway shall be made in accordance with Departmental engineering standards. ~~[a manner approved by an~~  
8 ~~authorized representative of the Department of Transportation. [Department.]~~ A minimum of ten feet runoff shall be required  
9 for each inch of difference in elevation between track grade and road grade. The Department may contract with the railroad  
10 to perform the asphalt run-off work on a 100 percent reimbursement basis.

11

12 *History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;*

13 *Eff. July 1, 1978;*

14 *Amended Eff. October 1, 1993; November 1, 1991;*

15 *Readopted Eff. June 1, 2019.*

1 19A NCAC 02B .0315 is readopted as published in 33:16 NCR 1717-1720 with changes as follows:

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3 **19A NCAC 02B .0315 NEGOTIATION WITH MUNICIPALITIES AND MUNICIPAL AGREEMENTS**

4 ~~Highway Transportation~~ projects within municipalities shall be constructed in accordance with a municipal agreement  
 5 ~~which that~~ is executed by the municipality and the Board when ~~[such] the~~ construction includes any financial  
 6 participation by the municipality in project costs, or the municipality requests additional work that results in  
 7 maintenance responsibilities or financial participation by the municipality. ~~Board.~~ If there is no financial participation  
 8 by the municipality, no additional work requested by the municipality, and no maintenance requirements by the  
 9 municipality, then a municipal agreement shall not be required under the terms of this Rule. ~~The~~ If a municipal  
 10 agreement is necessary in accordance with this Rule, then the agreement shall set forth conditions including whether  
 11 the Department of Transportation or the municipality will acquire the right of way, right-of-way, and shall identify  
 12 any financial participation by the municipality. ~~municipality in regard to right of way cost and utility provisions.~~

13

14 *History Note: Authority G.S. 136-18(2); 136-19; 136-66.3; 143B-24; 143B-350(f),(g);*

15 *Eff. July 1, 1978;*

16 *Transferred and Recodified from 19A NCAC 2B .0119 Eff. October 1, 1993;*

17 *Amended Eff. December 1, 1993;*

18 *Readopted Eff. June 1, 2019.*

1 19A NCAC 02D .0402 is readopted as published in 33:16 NCR 1717-1720 with changes as follows:

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3 **19A NCAC 02D .0402 CURB AND GUTTER AND UNDERGROUND DRAINAGE ON HIGHWAYS**

4 (a) The following subparagraphs are applicable to Programmed Improvement Projects (Projects Included included in  
5 the State Transportation Improvement Program)-Program.

6 (1) On programmed state State highway improvement projects in areas where the additional cost of If  
7 curb and gutter and or-underground storm drainage facilities is are not justified from the state's  
8 State's standpoint but where the adjacent property owner(s) or the municipality may desire curb and  
9 gutter and underground storm drainage facilities, included in a State highway improvement project,  
10 such facilities may be included added as part of the programmed project provided-if the additional  
11 cost of these facilities is borne are paid by the adjacent property owner(s) or the municipality, and  
12 provided these facilities are in accordance with other criteria set forth in this Rule, municipality.

13 (2) The Department of Transportation will shall approve participation by the property owner(s) or the  
14 municipality in cases where the property owner(s) or the municipality agree to have curb and gutter  
15 and underground storm drainage, if required, on both sides of the project for a minimum distance of  
16 one block or, if no intersections are present, for a minimum distance of 1000 feet. The state will  
17 State shall pay the cost of widening the present or proposed pavement out to the curb and gutter so  
18 provided.

19 (3) The property owner(s) or the municipality ~~must~~ shall submit in advance of the project construction  
20 a certified check for the additional cost of the approved curb and gutter and storm drainage facilities.

21 (b) Other Existing Paved Roads. Along existing paved State ~~Highway System~~ highway system routes where no  
22 construction project is proposed and the adjacent property owner(s) or the municipality construct curb and gutter and  
23 underground drainage facilities as approved by the Board of Transportation, the Department of Transportation will  
24 shall bear the cost of widening the existing pavement as required for the proper location and installation of such  
25 facilities. Approval of ~~such~~ curb and gutter or underground storm drainage facilities that are located along the State  
26 highway system, where no construction projects are proposed, shall be determined according to the engineering  
27 standards of the Department, and based on:

- 28 (1) adequacy of the facilities to handle drainage requirements;
- 29 (2) adequacy of the resulting roadway cross section to handle existing and anticipated traffic demands;
- 30 (3) conformance of the proposed street cross section with engineering standards as established by the  
31 Board of Transportation;
- 32 (4) a minimum distance of one block length or, if no intersections are present, for a minimum distance  
33 of 1000 feet provided this requirement is not in conflict with local municipal ordinances, f  
34 ordinances, but} [in] In cases of conflict, the local ordinance [will] shall prevail; and ordinances (in  
35 case of conflict, local ordinance will prevail);
- 36 (5) availability of ~~state~~ State funds to widen the existing pavement, when applicable. ~~pavement.~~

1 (c) Unpaved Roads. Construction of curb and gutter along unpaved ~~state~~ State highway system routes shall not be  
2 permitted.

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4 *History Note: Authority G.S. 136-44.1; 136-66.1; 143B-350(f); 143B-350(g);*

5 *Eff. July 1, 1978;*

6 *Amended Eff. November 1, 1993;*

7 *Readopted Eff. June 1, 2019.*

1 19A NCAC 02D .0403 is readopted as published in 33:16 NCR 1717-1720 with changes as follows:

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3 **19A NCAC 02D .0403 USE OF DUST ALLAYING MATERIALS**

4 (a) Requests for calcium chloride dust treatments shall be addressed to the County Maintenance Yard having  
5 jurisdiction in the county where the work is proposed.

6 (b) Placement and Materials.—Calcium chloride and bituminous dust treatments may shall only be placed on state  
7 State highway system roads and streets provided:

8 (1) ~~Bituminous materials are furnished and placed by the person requesting the treatment;~~

9 (2) ~~Prior approval is obtained from the division engineer~~ Division Engineer or the Division  
10 Engineer's authorized designee having jurisdiction in the county where the work dust treatment is  
11 proposed; and

12 ~~(3) Calcium chloride is furnished by the person requesting the dust treatment and placed by the~~  
13 ~~Department of Transportation or its agents.~~

14 (c) The Division Engineer or the Division Engineer's authorized designee shall approve requests for calcium chloride  
15 dust treatments unless conditions are wet, rendering the dust treatment ineffective, and if the dust treatment would  
16 worsen road surface conditions.

17 (d) The [Division Engineer or the Division Engineer's authorized designee will inform the ]person requesting the dust  
18 treatment [where to] shall purchase and deliver the calcium chloride [in order for the Department to perform the  
19 treatment.] as directed by the Division Engineer or his or her designee.

20

21 *History Note: Authority G.S. 136-18(1); 136-18(27); 143B-346; ~~143B-350(f); 143B-350(g);~~*

22 *Eff. July 1, 1978;*

23 *Amended Eff. November 1, 1993;*

24 *Readopted Eff. June 1, 2019.*

1 19A NCAC 02D .0414 is readopted as published in 33:16 NCR 1717-1720 with changes as follows:

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3 **19A NCAC 02D .0414 LOCATION OF GARBAGE COLLECTION CONTAINERS**

4 ~~Permits for the placement of garbage collection containers shall [only ]be issued only under the following~~  
5 ~~[circumstances.]~~ circumstances:

6 ~~(a)(1) An encroachment agreement between the Department and non-Departmental parties shall be required for a~~  
7 ~~garbage collection container site on any State highway rights-of-way. No garbage collection container site shall be~~  
8 ~~located on any State highway rights of way except by written authorization of the Department of Transportation upon~~  
9 ~~submission of [ Form 16.1A — Two Party, Non Utility, Not Related to Road Construction. Form 16.1A may be~~  
10 ~~accessed, at no cost to the public, by visiting [https://connect.ncdot.gov/municipalities/Utilities/pages/encroachment-](https://connect.ncdot.gov/municipalities/Utilities/pages/encroachment-agreements.aspx)~~  
11 ~~agreements.aspx.] a Right of Way Encroachment Agreement For Non Utility Encroachments on Primary and~~  
12 ~~Secondary Highways (FORM R/W 16.1A (January, 1981)).~~

13 ~~(b)(2) No garbage collection container shall be located within 500 feet of an occupied dwelling unless the applicant~~  
14 ~~obtains written permission from the owner of the dwelling.~~

15 ~~(c)(3) Information on initiating the encroachment agreement process for the placement of garbage collection~~  
16 ~~containers on any State highway rights-of-way may be obtained from the State Utilities Manager. An application for a~~  
17 ~~site permit may be obtained from and shall be submitted to the District Engineer for the county in which the garbage~~  
18 ~~container is proposed to be located.~~

19 ~~(d)(4) Guidelines for container sites are as follows:~~

20 ~~(1)(a) The~~ the county or municipality ~~requesting the permit~~ negotiating and executing the encroachment  
21 agreement shall be responsible for any work to be performed in preparation of the site, and any work  
22 performed by the Department, on the site, shall be on a reimbursable ~~[basis;] basis; and~~ site. Any  
23 work performed on the site by the Department of Transportation shall be on a reimbursable basis in  
24 accordance with rules 19A NCAC 02E .0501 and 19A NCAC 02E .0502;

25 ~~(b) — Container [container ]sites adjacent to paved roadways shall be constructed in accordance~~  
26 ~~with [ Form 16.1A;] FORM R/W 16.1A; and~~

27 ~~(2)(e) Container~~ container sites adjacent to unpaved roads shall be prepared with materials similar to those  
28 existing on the traveled portion of the roadway.

29 ~~(5) — When [If ]container sites are located in areas requiring drainage, drainage shall be in accordance~~  
30 ~~with [ Form 16.1A;] FORM R/W 16.1A.~~

31 ~~(c)(6) Whenever~~ If container sites are located adjacent to the roadway, sight distances shall be provided for any vehicle  
32 to safely enter the road from the container site.

33 ~~(f)(7) Container sites shall be permitted adjacent to roadways only when~~ if lateral clearances can be provided from  
34 the edge of pavement to the container.

35 ~~(g)(8) The county or municipality which that holds~~ a permit-an executed agreement for the placement of garbage  
36 collection ~~[containers,] containers,~~ as ~~[provided herein,] set forth in this Rule,~~ shall maintain a collection schedule in  
37 order to prevent container spillage or overflow, ~~overflow from said containers~~ and shall keep the site free from all

1 garbage and ~~trash, trash~~ other than that which is within the garbage collection containers. Garbage and trash collection  
 2 located within the garbage collection containers shall be authorized by the ~~encroachment agreement.~~~~[permit,~~  
 3 ~~containers which are authorized by the permit.~~ The ~~encroachment agreement shall provide that the~~ District Engineers  
 4 shall give written notice to the county or municipality of any failure to comply with this requirement. ~~The~~  
 5 ~~encroachment agreement shall also provide that, if~~ ~~if~~ a county or municipality ~~which~~ ~~that~~ is so notified ~~and~~ does not  
 6 bring the site within compliance of the requirement within 30 days of receipt of the written notice, ~~the encroachment~~  
 7 ~~agreement shall automatically terminate, and the~~ District Engineer shall ~~arrange for the disposal then revoke the permit~~  
 8 ~~and dispose~~ of the garbage collection ~~containers accordingly.~~ ~~containers.~~

9 ~~Note: [ Guidelines for Placement of Garbage Collection Containers on State Highway System Right of Way shall be~~  
 10 ~~accessible at no cost to the public by contacting the Division of Highways Records and Documents Management Unit~~  
 11 ~~at (919) 707-6925.]~~

12 A booklet describing the guidelines used by the Department of Transportation in granting permits is available from  
 13 the local division office free of charge.

14  
 15 *History Note: Authority G.S. 136-18.3; 136-18(10);*

16 *Legislative Objection [(a)] Lodged Eff. August 19, 1980;*

17 *Legislative Objection [(a)] Removed Eff. April 23, 1981;*

18 *Eff. July 1, 1978;*

19 *Amended Eff. March 1, 2013; November 1, 1993; October 1, 1991; April 3, 1981; April 11, 1980;*

20 *Readopted Eff. June 1, 2019.*



1 19A NCAC 02D .0421 is readopted as published in 33:16 NCR 1717-1720 with changes as follows:

2  
3 **19A NCAC 02D .0421 INSTALLATION OF DRIVEWAY PIPE**

4 (a) ~~Residential Property.~~ The Department of Transportation ~~road maintenance forces shall at state expense install be~~  
5 responsible for the installation and costs of pipe lines in the drainage ditch along the side of state maintained roads  
6 State-maintained roads and within state-maintained right of way State-maintained right-of-way or easement at  
7 entrances to private residential property where the pipe is furnished and delivered to the installation site by the property  
8 owner at the property owner's expense if the following requirements are [met.] met. provided:

- 9 (1) ~~The the~~ opening of the side ditch ~~is [shall be]~~ needed to provide proper drainage drainage:
- 10 (2) ~~The the~~ pipe to be installed ~~has shall [have.]~~ be restricted to a minimum inside diameter of 15 inches  
11 long and maximum inside diameter of 48 inches unless otherwise directed sufficient opening as  
12 determined by the ~~[Department.] Department of Transportation. Department:~~
- 13 (3) ~~The the~~ minimum length of pipe to be installed shall be 20 feet with such additional length as may  
14 be necessary to accommodate earth side slopes. The pipe will shall not be lengthened for the purpose  
15 of eliminating typical side ditches ditches:
- 16 (4) ~~The the~~ property does [shall] not already have adequate ingress and egress egress:
- 17 (5) ~~The the~~ proposed location for the driveway entrance does [shall.] not present undue safety hazards  
18 such as insufficient sight distance, proximity to other intersections, increased traffic congestion,  
19 poor roadway facility operations, decreased highway capacity, driver and pedestrian confusion, or  
20 other risks associated with vehicular traffic entering, leaving, and parking adjacent to accesses for  
21 residential property; and to the traveling public as determined by the [Department.] Department of  
22 Transportation.
- 23 (6) ~~The the~~ property is [shall be] limited to farm entrances and property owned by the individual  
24 currently living on the property or owned by the individual proposing to use the property for  
25 residential purposes. This does not include property being developed for sale.

26 (b) ~~Commercial Property.~~ "Commercial property" includes:

- 27 (1) any property currently being used for commercial or industrial purposes;
- 28 (2) property ~~which that~~ is being developed for commercial or industrial purposes; and
- 29 (3) property ~~which that~~ is being developed for sale.

30 (c) ~~Commercial Driveway Pipe Installed by the Department of Transportation.~~ ~~The Department of Transportation~~  
31 ~~road maintenance forces may shall~~ install pipe lines in the drainage ditch along the side of ~~state maintained~~ State-  
32 maintained roads and within ~~state-maintained right of way~~ State-maintained right-of-way or easements at entrances to  
33 commercial property when the pipe is furnished and delivered to the installation site by the property owner at the  
34 property owner's expense if the following requirements are [met.] met. provided:

- 35 (1) Prior prior to installation, the property owner ~~submits shall submit~~ to the Department ~~of~~  
36 Transportation an application for installation of a commercial driveway pipe together with a

1 payment in the amount of ten dollars (\$10.00) per linear foot of pipe to be installed. The application  
2 shall contain the following: Said amount is to cover the cost of pipe installation by state forces.

3 (A) description of the property location;

4 (B) description of the property use;

5 (C) acknowledgment that the driveway or street entrance shall be constructed and maintained  
6 in absolute conformance with the current "NCDOT Policy on Street and Driveway Access  
7 to North Carolina Highways;"

8 (D) acknowledgment that no signs or objects shall be placed on or over the public right-of-way  
9 other than those approved by the Department;

10 (E) acknowledgment that the driveway(s) or street(s) shall be constructed as shown on the  
11 attached plans;

12 (F) acknowledgment that the driveway(s) or street(s) shall include any approach tapers, storage  
13 lanes, or speed change lanes as deemed necessary by the Department;

14 (G) acknowledgment that if any future improvements to the roadway become necessary, the  
15 portion of driveway(s) or street(s) located on public right-of-way shall be considered the  
16 property of the Department, and the property owner shall not be entitled to reimbursement  
17 or have any claim for present expenditures for driveway or street construction;

18 (H) acknowledgement that the permit shall become void if construction of driveway(s) or  
19 street(s) is not completed within the time specified by the NCDOT Policy on Street and  
20 Driveway Access to North Carolina Highways;

21 (I) requirement that a fifty dollar (\$50.00) construction inspection fee be paid by the property  
22 owner to the Department, and reimbursed to the property owner by the Department if the  
23 application is denied;

24 (J) acknowledgment that the construction and maintenance of the driveway(s) or street(s) shall  
25 be performed in a safe manner so as not to interfere with or endanger the traveling public.

26 (K) acknowledgment that signage, signals, flaggers, and other warning devices shall be  
27 provided during construction and in conformance with the current Manual on Uniform  
28 Traffic Control Devices for Streets and Highways (MUTCD);

29 (L) acknowledgment that the Department shall be indemnified and saved harmless from all  
30 damages and claims for damage that may arise by reason of construction;

31 (M) requirement that the property owner shall provide a Performance and Indemnity Bond in  
32 the amount specified by the Division of Highways for any construction proposed on the  
33 State Highway system;

34 (N) acknowledgment that the permit shall be granted subject to the regulatory powers of the  
35 Department as provided by law and as set forth in the NCDOT Policy on Street and  
36 Driveway Access to North Carolina Highways and shall not be construed as a contract  
37 access point;

(O) requirement that the property owner shall notify the District Engineer when the proposed work has begun and is completed; and

(P) signatures of the property owner, property owner's authorized agent, and their respective witnesses, and receipt and approval signatures of the Department.

(2) ~~applications for~~ Prior to installation, the property owner has ~~shall have~~ received an approved commercial driveway ~~permit~~ permits shall be approved or denied in accordance with the engineering standards and guidelines provided in the NCDOT Policy on Street and Driveway Access to North Carolina Highways. This policy may be accessed at no cost to the public by visiting <https://connect.ncdot.gov/projects/Roadway/RoadwayDesignAdministrativeDocuments/Policy%20on%20Street%20and%20Driveway%20Access.pdf>; and ~~from the Department of Transportation.~~

(3) prior to installation, the property owner shall have received an approved commercial driveway permit from the Department. In the event the permit application is denied, the Department of Transportation will ~~shall~~ return to the applicant the payment referenced in Subparagraph (c)(1) of this Rule. ~~Rule to the applicant.~~

(d) ~~Commercial Driveway Pipe Installed by Other than State Forces.~~ The commercial property owner may elect to have driveway pipe installed by private contractors if the following requirements are met. ~~met.~~ provided:

(1) ~~Prior~~ prior to installation, the property owner ~~submits~~ shall submit to the Department of Transportation an application for installation of a commercial driveway pipe together with a payment of fifty dollars (\$50.00) to cover the cost of the inspection of the pipe installation by Department of Transportation ~~personnel.~~ personnel;

(2) ~~Prior~~ prior to installation, the property owner ~~has~~ shall have received an approved commercial driveway permit from the Department. ~~Department of Transportation.~~ In the event the permit application is denied, the Department of Transportation will return to the applicant the payment referenced in Subparagraph (d)(1) of this ~~Rule.~~ Rule. ~~Rule to the applicant.~~

(3) ~~The~~ the workmanship, ~~materials~~ materials, and final installation ~~are~~ shall be subject to approval by the Department of Transportation's Department's District ~~Engineer.~~ Engineer in accordance with current Department of Transportation standards. In the event the pipe installation does not meet the approval of the District Engineer, the Department of Transportation shall remove the pipe at the expense of the property ~~owner.~~ owner; and

(4) ~~Signing,~~ signing, barricades barricades, and other devices ~~for handling of~~ necessary to mitigate traffic at or adjacent to the installation site ~~is~~ shall be provided during the installation by the property owner or contractor. ~~Said devices must~~ Traffic mitigation ~~devices~~ shall meet the requirements of the Manual on Uniform Traffic Control Devices for Streets and Highways as ~~MUTCD~~ and be approved as by the District Engineer.

(e) ~~Installation~~ Department installation of pipe by state forces includes shall include necessary excavation, placement of pipe ~~complete in place~~ complete pipe placement, and sufficient backfill of the pipe with local material to provide a

1 ~~pipe line and grade protection, cover sufficient to maintain the pipe line and grade.~~ The Department of Transportation  
2 is not obligated to construct a finished driveway.

3 (f) ~~The Department of Transportation shall furnish and install~~ be responsible for the installation and costs of residential  
4 and commercial driveway pipe at state expense at entrances to residential property and commercial property if  
5 necessary as a result of the department's if the Department caused the need by relocating or revising the elevation of  
6 side ditches for the improvement of highway drainage.

7 (g) Note:--See also Rule .0102 of this Subchapter for provisions related to pipe size.

8

9 *History Note: Authority G.S. 136-18(1); 136-30; 136-92; 136-93; 156-88;*

10 *Eff. July 1, 1978;*

11 *Amended Eff. November 1, 1993; October 1, 1983;*

12 *Readopted Eff. June 1, 2019.*

1 19A NCAC 02D .0535 is readopted as published in 33:16 NCR 1717-1720 with changes as follows:

2  
3 **19A NCAC 02D .0535 FERRY RESERVATIONS**

4 (a) Reservations for space ~~are shall only be available only~~ for the ~~Cedar Island-Ocracoke or the Swan~~  
5 ~~Quarter-Ocracoke~~ Cedar Island-Ocracoke, Swan Quarter-Ocracoke, and Passenger Ferry from Hatteras-Ocracoke  
6 ferry operations. All other operations are on a "first come-first served" basis.

7 (b) Reservations ~~may shall~~ [only] be made ~~only~~ by ~~telephone or in person, [telephone, ]in person at the ferry terminal,~~  
8 online at [or by visiting <https://ferry.ncdot.gov>] ~~or by telephone as follows: by applying to the terminal from which~~  
9 ~~departure is to be made:~~

10 (1) For the main reservation line, call: (800) 293-3779.

11 (2) For departures from Ocracoke, call: (252) 996-6201.

12 (3) For departures from Cedar Island, call: (252) 463-7046.

13 (4) For departures from Swan Quarter, call: (252) 791-3302.

14 (5) Office hours shall be from 6:00 am until 5:00 pm, year-round.

15 ~~For departure from Ocracoke call: (919) 928-3841~~

16 ~~For departure from Cedar Island call: (919) 225-3551~~

17 ~~For departure from Swan Quarter call: (919) 926-1111~~

18 ~~Office hours: 6:00 A.M. to 6:00 P.M.~~

19 (c) Reservations may be made any time within ~~30~~ 90 days of the departure date and ~~are shall not be~~ transferable.  
20 Name of the driver and vehicle license number ~~is shall be~~ required. A credit or debit card shall be required for advance  
21 reservations to secure passage and space aboard a ferry vessel. It shall not be required that the credit or debit card be  
22 in the name of the driver.

23 (d) Reservations ~~must shall~~ be claimed [after the earlier departure and] at least 30 minutes prior to the scheduled  
24 departure. Reservations not claimed prior to this time ~~will shall~~ be cancelled and the space reassigned.

25 (e) Vehicles shall remain in the staging area once ticketed, and until boarding begins.

26 ~~(e)f~~ In case of departure cancellation ~~because of due to~~ mechanical failure, inclement weather, or other unavoidable  
27 causes, the customer [shall be able to ] may reschedule the reservation for either the earliest possible [departure,]  
28 departure or [reschedule the reservation ] or for [a] another time [that is ] convenient for the customer. ~~reservations~~  
29 ~~will be rescheduled for the earliest possible departure.~~

30  
31 *History Note: Authority G.S. 136-82; 143B-10(j);*

32 *Eff. July 1, 1978;*

33 *Readopted Eff. June 1, 2019.*

1 19A NCAC 02E .0301 is readopted as published in 33:16 NCR 1717-1720 with changes as follows:

2  
3 **19A NCAC 02E .0301 UNZONED INDUSTRIAL AREA**

4 (a) For purposes of this Section and the Junkyard Control Act, ~~unzoned industrial area shall mean~~ “Unzoned industrial  
5 area” means the land occupied by the regularly used an industrial activity, including its building, parking lot, storage  
6 or processing, processing area of an industrial activity, and that land located within 1,000 feet thereof which that is:

- 7 (1) located on the same side of the highway as the principal part of ~~said~~ the industrial activity; and  
8 (2) ~~not predominantly~~ used for residential or commercial purposes; and  
9 (3) not zoned by ~~state~~ State or local law, ~~regulation~~ [regulation, ]rule, or ordinance.

10 (b) For the purposes of this section and the Junkyard Control Act, "Industrial activity" activities," for purposes of this  
11 definition, shall mean those permitted only in industrial zones, or in less restrictive zones by means an activity that  
12 the nearest zoning authority within the state, or State permits in industrial zones or zones that are less restrictive. An  
13 activity is also industrial if the nearest zoning authority within the State has prohibited the activity by said authority  
14 but the activity is generally recognized as industrial by other zoning authorities within the State, state, except that none  
15 None of the following shall be considered industrial activities:

- 16 (1) outdoor advertising structures;  
17 (2) agricultural activities including ranching, farming, ~~grazing~~ grazing, and such necessarily related  
18 activities as are generally carried on by a farmer on ~~his~~ the farmer's own premises, including, ~~but~~  
19 ~~not limited to~~, wayside fresh produce stands;  
20 (3) forestry activities ~~which that~~ include the growing of timber, thinning, ~~felling~~ felling, and logging of  
21 timber or pulpwood;  
22 (4) transient or temporary activities;  
23 (5) activities not visible from the traffic lanes of the main-traveled way;  
24 (6) activities more than 1,000 feet from the nearest edge of the right of way;  
25 (7) activities conducted in a building ~~principally~~ used as a residence;  
26 (8) railroad tracts other than yards, minor sidings, and passenger depots; and  
27 (9) junkyards, as defined in Section 136, Title 23, of the United States Code.

28  
29 *History Note: Authority G.S. 136-151; 23 U.S.C. § 136;*

30 *Eff. July 1, 1978;*

31 *Amended Eff. December 1, 1993;*

32 *Readopted Eff. June 1, 2019.*