

Article- Cost Responsibility

A. Topic

Determining cost responsibility for relocation of conflicting utilities.

B. Background/Overview

There are numerous factors that influence whether the Department or owner is responsible for the cost of relocation. There are two general rules, each with numerous exceptions discussed in Section C below. Some exceptions are simple in concept however, may require significant research to determine their applicability.

General rules:

- 1. Utilities located in existing NCDOT R/W are relocated at the owner's expense.**
- 2. Utilities located outside existing NCDOT R/W are relocated at the Department's expense.**

C. Considerations/Guidance/Discussion

Exceptions to general rule #1 include:

- 1. The utility owner is covered under GS 136-27.1 or GS 136-27.2.**

These 2 General Statutes include 8 different scenarios where the cost of relocation is borne by the Department. There is a 9th scenario where the Department may pay a portion of the cost.

- 2. The utility demonstrates prior rights.**

Affidavits, recorded easements, and NCDOT agreements can serve as evidence of prior rights. To demonstrate adverse possession, the utility must provide evidence the utility was established at least 20 years prior to NCDOT taking possession. **Exception-** If the utility sold its easement rights to the Department, on a previous project, they forfeit claims of prior rights.

3. The utility was paid to relocate on a previous project.

If a utility's relocation was covered once, typically they will continue to be covered.

4. The utility has a joint-use agreement with a pole owner and therefore has a compensable interest.

Example- An aerial power utility has demonstrated prior rights. Pole riders include 2 communication utilities, one having a joint-use agreement with the pole owner, and a CATV provider. The Department will bear the cost of relocating the power utility and the communication utility with the joint-use agreement. CATV providers currently are not permitted to set poles within NCDOT R/W and therefore cannot have a joint-use agreement with another utility.

5. The municipally owned utility is located on a municipal-system street R/W.

This is applicable provided that a) the highway construction does not constitute an improvement to the municipal-system street in which the utilities are located, and b) the municipal-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.

Exceptions to general rule #2 include:**1. The relocation includes a betterment.****2. Facilities outside the existing R/W must be relocated/replaced to resolve a conflict that is within existing R/W.**

Often times, a point conflict will require the relocation/replacement of facilities some distance from the conflict area. The party responsible for the cost of relocation at the point of conflict is responsible for the cost of the entire relocation. Examples:

An electric power utility has poles in valid easement and their aerial line crosses NCDOT R/W and is in conflict with bridge construction. The conflict area is the overhead wire within the R/W (an aerial encroachment). The utility is responsible for the cost of relocation. If it requires taller poles, it is still their cost regardless of the fact the poles are in valid easement.

A similar example would be a gravity sewer crossing the R/W. If the conflict is within the existing R/W and the utility is responsible for the cost at the point of conflict, then the utility is responsible for the entire cost even if it requires replacing pipe and manholes that are outside existing R/W.

3. Facilities are located in a non-valid easement.

If the utility cannot provide documentation of recorded easement or right of way, nor can they prove adverse possession, they are considered to be in a non-valid easement. In such cases, the utility is responsible for the cost of their relocation.

However, if a utility is located within municipally owned right of way by a **franchise agreement**, they are considered to be in a valid easement and the cost to relocate may be borne by the Department. In this case, cost responsibility is dependent on whether the franchise agreement requires the utility to pay for relocations due to roadway improvements.

D. Summary/Conclusion

The intent of this article is to identify the criterion, including amplifying information, used to determine cost responsibility in the majority of situations. There are numerous anomalies and “exceptions to the exception” that are beyond the scope of this document. If encountering a situation not covered, please contact the Utilities Unit for guidance.

E. For Additional Information

Definitions

Adverse Possession (“Squatter’s Rights”)-

<http://legal-dictionary.thefreedictionary.com/adverse+possession>

Betterment- Replacing with any more than the minimum required (e.g., increased size/capacity, better material, etc.)

Compensable Interest- A right or interest in real property and/or facilities placed upon real property that qualify under State law for reimbursement for some or all of the cost of the relocation of the facilities as necessitated by the Department.

Joint Use Agreement- An agreement between two utilities, both permitted to place poles in the R/W, to jointly use their poles. This is different from a pole attachment agreement, typically used by utilities not permitted to set their own poles (CATV).

Prescriptive Easement/Prescription-

<http://legal-dictionary.thefreedictionary.com/prescriptive+easement>

<http://legal-dictionary.thefreedictionary.com/prescription>

References

§ GS 130A, Article 2, Part 2

§ GS 136-19.5

§ GS 136-27.1

§ GS 136-27.2

§ GS 162A

Please send questions, comments, and recommendations for improving this article to Carl Barclay cbarclay@ncdot.gov .