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March 10, 2010

Bill Storm
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Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101-2198

Re: In the Matter of the Application for a High Voltage Transmission Line Route Permit for the Hiawatha Transmission Project
MPUC Docket No. E-002/TL-09-38
OAH Docket No. 15-2500-20599-2

Dear Mr. Storm:

On January 8, 2010, the Minnesota Office of Energy Security (OES) issued a Notice of Availability of Draft Environmental Impact Statement and request for public comments on the Draft Environmental Impact Statement (DEIS) relating to the route permit application by Xcel Energy for a 115 kV transmission line in south Minneapolis, Minnesota. The Minnesota Department of Transportation (Mn/DOT) has reviewed the DEIS regarding the proposed transmission line project and submits the following comments in response to the Notice.

All of the proposed routes would cross Trunk Highway 55 (Hiawatha Avenue), and alternate route E2 would both cross and run parallel to highways that are part of the state trunk highway system and the National Highway System. Due to the significant magnitude of the impacts on these highways, the enclosed comments provide the background on Mn/DOT's Utility Accommodation Policy. Mn/DOT's policy seeks to permit utilities to occupy portions of the highway rights-of-way where such occupation does not put the safety of the traveling public or highway workers at risk or unduly impair the public's investment in the transportation system. The enclosed comments also provide input on specific impacts associated with the proposed project discussed in the DEIS.

Mn/DOT appreciates the opportunity to comment and wishes to participate in the development of the EIS so that it will contain a thorough evaluation of the effects various route proposals may have on the state transportation system. In addition, Mn/DOT is the owner of land along TH 55/Hiawatha Avenue that may be impacted by the selection of the site for one of the substations that Xcel proposes to construct. Mn/DOT's fundamental interest is to ensure that the EIS identifies and quantifies, to the extent possible, any impacts the proposed high voltage transmission line (HVTL) may have on the safety of the transportation system, the effectiveness of the operations or maintenance of the state trunk highway system, and any additional costs that may be imposed on the state trunk highway fund as a result of the location of the proposed HVTL.

Mn/DOT has adopted a formal policy and procedures for accommodation of utilities on the highway rights-of-way ("Utility Accommodation Policy"). A copy of Mn/DOT's policy can be found at <http://www.dot.state.mn.us/utility/files/pdf/appendix-b.pdf> .

Mn/DOT's approach to the high voltage transmission lines ("HVTL") such as those involved in this proposal is to work to accommodate these HVTLs within or as near as feasible to the trunk highway rights of way, based on an evaluation of the specific locations to ensure that appropriate clearance is maintained to preserve the safety of the traveling public and highway workers and the effective operation of the highway system now and in the foreseeable future. Mn/DOT's Utility Accommodation Policy seeks to guide the balance between accommodation of utility operations in the highway rights-of-way and preserving the safe and efficient operation of the transportation system.

The provisions of the Utility Accommodation Policy are based on the framework of several interrelated state and federal laws that led to its creation. These comments will outline the legal and regulatory structure under which the Policy was adopted, and will then discuss the types of circumstances and concerns that must be considered when applying the Utility Accommodation Policy to a specific situation as Mn/DOT works to accommodate a utility in a highway right-of-way while preserving the safe and efficient operation of the highway. The comments will provide as much specific information as is possible at this time on locations where the HVTL routes proposed in this application either cross or run parallel to the trunk highway system. Finally, these comments will discuss a few specific portions of the DEIS.

I. Legal Framework Applicable to Mn/DOT's Utility Accommodation Policy

Mn/DOT's policy regarding accommodation of utilities is governed by both federal and state statutes and regulations. These comments will first describe the primary federal laws and then the state laws

A. Applicable Federal Laws

Certain highways in Minnesota are part of the National Highway System, which is established under 23.U.S.C. §103. The National Highway System and the Dwight D Eisenhower National System of Interstate and Defense Highways (Interstate System) are together known as the Federal-aid System. 23 U.S.C. §103(a). See also 23 CFR Part 470. In addition to the highways on the National Highway System, other highways also receive federal funding. Together, the highways in the National Highway System, the Interstate System, plus the other highways that receive federal funding are known as "Federal-aid highways." 23 CFR §470.103. The Federal-aid highways in Minnesota that are impacted by the Hiawatha project proposals include I-94, I-35W and TH 55. The Federal-aid highways that would be crossed by the route proposals are I-35W and TH 55.

Congress articulated the transportation policy of the United States in 23 U.S.C. §101(b). Among other things, Congress noted that "it is in the national interest to preserve and enhance the surface transportation system to meet the needs of the United States for the 21st Century," that "the current urban and long distance personal travel and freight movement demands have surpassed the original forecasts and travel demand patterns are expected to continue to change," and that "special emphasis should be devoted to providing safe and efficient access for the type and size of commercial and military vehicles that access designated National Highway System intermodal freight terminals." 23 U.S.C. §101(b)(3)(A), (B) and (E).

Federal law requires that "The real property interest acquired for all Federal-aid projects . . . shall be adequate for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public." 23 C.F.R. §710.201(e). In addition, all real property that is part of the Federal-aid highway system must be devoted exclusively to highway purposes unless an alternative use is permitted by federal regulation or the Federal Highway Administration ("FHWA"). This basic proposition is stated in 23 C.F.R. §710.403, which provides:

"(a) The [State Transportation Department] must assure that all real property within the boundaries of a federally-aided facility is devoted exclusively to the purposes of that facility and is preserved free of all other public or private alternative uses, unless such alternative uses are permitted by Federal regulation or the FHWA. An alternative use must be consistent with the continued operation, maintenance, and safety of the facility, and such use shall not result in the exposure of the facility's users or others to hazards."

Similarly, 23 C.F.R §1.23 restricts use of the highway right-of-way unless otherwise permitted. This section provides:

"(a) Interest to be acquired. The State shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation and maintenance of a project.

(b) Use for highway purposes. Except as provided under paragraph (c) of this section, all real property, including air space, within the right-of-way boundaries of a project shall be devoted exclusively to public highway purposes. No project shall be accepted as complete until this requirement has been satisfied. The State highway department shall be responsible for preserving such right-of-way free of all public and private installations, facilities or encroachments, except (1) those approved under paragraph (c) of this section; (2) those which the Administrator approves as constituting a part of a highway or as necessary for its operation, use or maintenance for public highway purposes and (3) informational sites established and maintained in accordance with Sec. 1.35 of the regulations in this part.

(c) Other use or occupancy. Subject to 23 U.S.C. 111, the temporary or permanent occupancy or use of right-of-way, including air space, for nonhighway purposes and the reservation of subsurface mineral rights within the boundaries of the rights-of-way of Federal-aid highways, may be approved by the Administrator, if he determines that such occupancy, use or reservation is in the public interest and will not impair the highway or interfere with the free and safe flow of traffic thereon."

(Emphasis added.)

Federal law recognizes accommodating the placement of utility facilities as a permissible exception to the general mandate that all of a highway right-of-way, including the air space above the right-of-way, must be used solely for highway purposes. Section 109(l) of Title 23 of the U. S. Code provides:

"(1) In determining whether any right-of-way on any Federal-aid highway should be used for accommodating any utility facility, the Secretary shall—

(A) first ascertain the effect such use will have on highway and traffic safety, since in no case shall any use be authorized or otherwise permitted, under this or any other provision of law, which would adversely affect safety;

(B) evaluate the direct and indirect environmental and economic effects of any loss of productive agricultural land or any impairment of the productivity of any agricultural land which would result from the disapproval of the use of such right-of-way for the accommodation of such utility facility; and
(C) consider such environmental and economic effects together with any interference with or impairment of the use of the highway in such right-of-way which would result from the use of such right-of-way for the accommodation of such utility facility. “

The U.S. DOT has implemented this statutory directive by adopting the rules relating to accommodation of utilities found at 23 C.F.R. Part 645, Subpart B. These regulations require that each state transportation department submit its policies for accommodating utilities within highway rights of way to the FHWA. 23 C.F.R §645.215(a). See also 23 C.F.R §645.209(c). The FHWA will approve the policy upon determination that it is consistent with federal statutes and regulations, and any changes to the policy are also subject to FHWA approval. 23 C.F.R §645.215(b) and (c). Once a state's policy has been approved by the FHWA, the state transportation department can approve requests by a utility to use or occupy part of the right-of-way of a highway that is part of the Federal-aid highway system if the request is encompassed by that policy. Exceptions to the policy can be granted, but if a state proposes to grant to a utility an exception to its utility accommodation policy, the exception is subject to review and approval by the FHWA. 23 C.F.R § 645.215(d). This may be considered a federal action which would need to meet all requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. §4321 et seq., to be in conformance with federal regulations.

B. Applicable Minnesota Laws

In addition to these federal laws, Mn/DOT's policy on utility accommodation must also conform to laws of the State of Minnesota. Article 14 of the Minnesota Constitution establishes the state trunk highway system. It also establishes “a trunk highway fund which shall be used solely for the purposes [of constructing, improving and maintaining the trunk highway system].” Minn. Const. Art. 14, §5. Under Minn. Stat. §161.20, the Commissioner of the Department of Transportation is charged with the responsibility to carry out the directive of Article 14 to construct, improve and maintain the trunk highway system, subject to the directive that trunk highway funds may be used only for trunk highway purposes. All of the Federal-aid highways identified above as impacted by this proposal are part of the trunk highway system.

Minnesota has several statutes relating to use of highway rights-of-way by utilities. Minn. Stat. §222.37, Subd. 1, provides in part:

“Any . . . power company . . . may use public roads for the purpose of constructing, using, operating, and maintaining lines . . . for their business, but such lines shall be so located as in no way to interfere with the safety and convenience of ordinary travel along or over the same; and in the construction and maintenance of such line . . . the company shall be subject to all reasonable regulations imposed by the governing body of any county, town or city in which such public road may be.”

Minn. Stat. §161.45 provides additional obligations for utility facilities occupying portions of a trunk highway right-of-way. Section 161.45, Subd. 1 provides in part:

“Electric transmission . . . lines . . . which, under the laws of this state or the ordinance of any city, may be constructed, placed or maintained across or along any trunk highway . .

. may be so maintained or hereafter constructed only in accordance with such rules as may be prescribed by the commissioner who shall have power to prescribe and enforce reasonable rules with reference to the placing and maintaining along, across, or in any such trunk highway of any of the utilities hereinbefore set forth.”

Subdivision 2 of §161.45 specifies the general rule that if the relocation of a utility placed in a trunk highway right-of-way is necessitated by a construction project on the trunk highway, the utility bears the costs associated with the relocation of its facility. However, if a utility facility is located on the Interstate System, then the cost of relocation of such facility is to be paid out of the state Trunk Highway Fund. See Minn. Stat. § 161.46.

Minnesota Rules part 8810.3100 through 8810.3600 contain rules relating to placement of utility facilities in trunk highway rights of way. Under part 8810.3300, a utility must obtain a permit for any construction or maintenance work in a trunk highway right-of-way, and special rules apply to Interstate System highways. Part 8810.3300, Subp. 4 provides in part as follows:

“Utilities along the interstate highways shall be located outside the control-of-access lines except as outlined below. Where the control-of-access lines coincide with the right-of-way lines, the utilities shall generally be located on private property. Where the control-of-access lines and right-of-way lines do not coincide, utilities may in general be located in the area between them. All utilities shall be serviced and maintained without access from the ramps, loops, and through traffic roadbeds. Utilities may be serviced from frontage roads and roads other than another interstate highway which cross either over or under the interstate highway. At aerial crossings of an interstate highway, supporting poles may be located on interstate highway right-of-way if they are a minimum of 30 feet beyond the shoulders of all through traffic roadbeds; however, in no event shall they be located in a median unless its width is 80 feet or more. . . .

There may be extreme cases where, under strictly controlled conditions, a utility may be permitted inside the control-of-access lines along an interstate highway. In each case there must be a showing that any other utility location is extremely difficult and unreasonably costly to the utility consumer, that the installation on the right-of-way of the interstate highway will not adversely affect the design, construction, stability, traffic safety, or operation of the interstate highway and that the utility can be serviced without access from through traffic roadbeds, loops, or ramps.”

In addition, Subp. 6 of part 8810.3300 requires that, except for the negligent acts of the state, its agents and employees, the utility shall assume all liability for and save the state harmless from any and all claims arising out of the utility's work and occupation of a portion of the trunk highway right-of-way.

C. Mn/DOT's Utility Accommodation Policy

Mn/DOT has adopted a policy statement regarding the circumstances and methods under which it will grant permits to utilities to occupy a portion of a trunk highway right-of-way. Mn/DOT's Utility Accommodation Policy is in conformance with the federal and state statutes and regulations described above, and is also consistent with the American Association of State Highway and Transportation Officials (AASHTO) publications, A Guide for Accommodating Utilities Within Highway Right-of-Way and A Policy on the Accommodation of Utilities Within Freeway Right-of-Way. Mn/DOT's Utility Accommodation Policy has been reviewed and approved by FHWA under 23 CFR §645.215(b). Therefore, with respect to Federal-aid highways, further review and approval by the FHWA is required for Mn/DOT to grant an

exception to the general application of the Policy, but FHWA review and approval is not necessary for permits granted within the scope of the Policy.

Mn/DOT's Utility Accommodation Policy recognizes that it is in the public interest for utility facilities to be accommodated on highway rights-of-way when such use does not interfere with the flow of traffic and safe operation of vehicles or otherwise conflict with applicable laws or impair the function of the highway. The Policy applies to all utilities, both public and private. Therefore it speaks in somewhat generic terms to cover as many anticipated situations as possible.

The Policy was developed with integrated sections, and two or more sections usually need to be read together when applying the Policy to the context of a utility accommodation circumstance. Some of the provisions most relevant to this HVTL route application include:

- Part I.F – articulates the general policy of accommodation of utilities;
- Part I.G – contains provisions for granting exceptions to the Policy;
- Part V – addresses the location requirements for utilities occupying a portion of a highway right-of-way that apply to most highways;
- Part VI – contains special rules for utility accommodation requests along freeways;
- Part X – contains specific requirements relating to overhead power and communication lines.

Mn/DOT is expressly required by 23 CFR §645.209(c) to include in its Utility Accommodation Policy some provisions that apply specifically to freeways. Freeways are characterized by the fact that they are subject to full control of access – i.e., preference is given to through traffic by restricting areas where any person, including vehicles that use the highway, may enter or leave the freeway. By implementing full control of access, through traffic can safely achieve higher speeds and encounter fewer stoppages or slowdowns of the flow of traffic. On freeways, all crossings at grade are prohibited, and fencing is installed along the right-of-way to prevent other persons (including snowmobilers, bicyclists, walkers, etc.) or animals from entering the freeway right-of-way. Freeways also require special design considerations, such as the wider clear zones adjacent to the roadway due to the higher speeds achieved by through traffic on freeways.

The control of access aspect of freeways is a key consideration underlying the special rules regarding utility accommodation requests on freeways. The Utility Accommodation Policy states: "The installation of new utility facilities shall not be allowed longitudinally within the right of way of any freeway, except in special cases under strictly controlled conditions." Under Utility Accommodation Policy, Section VI.C, the utility seeking to establish that special circumstances exist to justify an installation on a freeway must demonstrate to Mn/DOT's satisfaction the following:

- a. The accommodation will not adversely affect the safety, design, construction, traffic operations, maintenance, or stability of the freeway.
- b. Alternate locations are not available or are cost prohibitive from the standpoint of providing efficient utility services.
- c. The accommodation will not interfere with or impair the present use or future expansion of the freeway.
- d. The location of the utility facility outside of the right of way would result in the loss of productive agricultural land or loss of productivity of agricultural land. In this case, the

utility owner must provide information on the direct and indirect environmental and economic effects for evaluation and consideration by the Commissioner of Transportation.

e. Access for constructing and servicing utility facility will not adversely affect safety and traffic operations or damage any highway facility.”

Concurrence by the FHWA is also required before the permit for a longitudinal installation on a freeway can be granted.

II. Overview of Transportation-Related Impacts of HVTLs on Trunk Highways

The preferred and alternate routes under consideration in this matter either cross over or run parallel to trunk highways in a number of locations. When a route is ultimately selected by the Minnesota Public Utilities Commission (MPUC), Xcel will need to obtain a valid permit from Mn/DOT in any location where the HVTL will occupy any portion of the highway right-of-way.

In connection with other proposals by electric utilities to construct HVTLs in Minnesota, Mn/DOT has engaged in an ongoing dialogue with representatives of the electric utilities, including Xcel, and the OES in an effort to identify information that will be needed to assess the permit applications and, to the degree that specificity is possible at this stage of the proceedings, areas where specific concerns will need to be addressed along various potential route/alignment scenarios. Mn/DOT believes these discussions have been beneficial for all participants. The discussions have been challenging due to the large number of locations where the proposed HVTL routes and the trunk highways potentially intersect, the variety of unique circumstances that exist along each of these potential locations, and the number of unknowns and uncertainties surrounding the selection of the actual locations where the electric utilities will eventually apply for permits from Mn/DOT.

One of the concepts that has been discussed with Xcel and the OES is the importance of recognizing that highway rights-of-way do not have a uniform width. The width of the right-of-way, and the distance from the centerline of the roadway to the boundary of the right-of-way, varies from highway to highway, and even from mile to mile along a given highway. The reasons for this variability are many, and include considerations such as the time when the right-of-way was purchased, the topography and geology of the area, the negotiations with the individual landowners from whom the right-of-way was acquired, and the timing and nature of changes and upgrades to the highway that have occurred over the years.

Therefore, a uniform policy that an HVTL can safely be located "X" feet or "Y" feet outside the highway right-of-way boundary line generally does not work well. A two-dimensional map does not provide sufficient information to determine a suitable alignment for a HVTL. Rather, Mn/DOT's approach is to evaluate the type of activities that regularly occur on and along highways. These activities can be evaluated in three groups – (a) traffic that uses a highway, (b) maintenance, repair and related activities and structures associated with the ongoing operation of the highway, and (c) construction activities that are likely to occur in the foreseeable future. These functions or uses of the highway each have a zone – i.e., a height and width – in which they take place either along the roadway surface or in the ditches, near bridges, intersections or interchanges where the maintenance and construction activities take place.

Once the zones of these recurring highway activities are identified, a safety buffer zone from the location of the energized wires of the HVTLs must be applied. The Occupational Safety and Health Administration (OSHA) and the National Electric Safety Code (NESC) can provide guidance on the safety clearances for activities near various voltages of HVTLs. The OSHA or NESC safety buffer should be applied between the zones of transportation activities and the location of the energized lines.

1. Traffic That Uses a Highway

Minnesota's trunk highways are designed to facilitate both personal travel and the distribution of freight throughout the state. Pursuant to Minn. Stat. §§169.80 and 169.81, vehicles that do not exceed 13 feet 6 inches in height and 8 feet 6 inches in width can be operated on Minnesota's highways without a permit. Vehicles with larger dimensions, excluding farm vehicles, must obtain a permit. Over the past 5 years, Mn/DOT has issued 233,376 permits for oversize vehicles to operate on state trunk highways. These do not include oversize farm machinery (which do not require a permit) nor movements of houses or other buildings such as grain bins. The number of building moves varies between 400 and 600 per year. Of the oversize vehicle permits issued, 73 were for vehicles over 18 feet 5 inches high, with the largest reaching nearly 37 feet high. An example of the type of oversize loads frequently transported over trunk highways are the blades, base sections and nacelles used in constructing wind turbines.

In addition to freight and building moves, other traffic on the roadway portion of trunk highways includes such activities as snowplows, which operate on both the roadway and the shoulder. Snowplows are about 13 feet tall, and when their boxes are raised to distribute sand and salt, their height can reach as high as 18 feet. The relative size of snowplows on a typical highway surface is depicted in the drawing enclosed as Attachment 1.

2. Maintenance, Repair and Operational Activities

In addition to the zone associated with traffic traveling on a highway, there is another zone associated with maintenance and operational activities alongside the roadways. Examples of maintenance activities performed by highway workers, and the types of equipment commonly associated with those activities, include the following:

- guardrail and fence installation and repairs, using augers, loaders and skidsteers (which commonly have raised buckets for pulling posts, etc.).
- vegetation control, using mowers, bucket trucks for tree trimming, and equipment for applying herbicides.
- cleaning ditches, culverts and drains, using backhoes and excavators of various sizes that have boom arms that are used to scoop dirt and vegetation and deposit it into a dump truck that will be parked alongside the highway. Mn/DOT's larger ditch dredging equipment has a horizontal reach as long as 60 feet and a vertical operating dimension of up to 47 feet.
- vehicular accidents on highways often require special equipment to retrieve vehicles and repair damage. For example, when large vehicles such as trucks or buses run off the road or go down large ditches or into wetlands, large equipment with booms or winches may be used to pull them out.
- bridge inspections, using snoopers which have articulating arms that can lift a worker out over the side and then underneath the bridge structure.

Occasionally there is a need for immediate medical transport from roadside locations due to accidents and illnesses. For these situations there are a number of air medical helicopters stationed throughout Minnesota that will land in the roadside environment. These aircraft require clear approach and departure paths as well as an area large enough for the helicopter to land. Given the dimensions of the helicopters used in Minnesota, an area with a diameter of 90 feet should be considered the minimum requirement for landing. There should be two approaches to this area from different directions separated by an arc of at least 90° so that the aircraft can land and take off without a tailwind. Powerlines can be a particularly difficult obstruction for helicopter landings at night. The lines themselves are nearly invisible to the pilot, who must use the presence of poles as evidence that the lines exist. Most helicopters operating in this environment have line cutters installed on the aircraft to cut powerlines they encounter. Even so, helicopter crashes occur when powerlines get entangled in their rotor system or landing gear.

Mn/DOT also maintains a number of structures alongside highways necessary for the safe and efficient operation of the highway, each of which requires periodic installation, maintenance and repair work. Examples of these structures include:

- road signs. The largest signs tend to be on freeways. Signs that extend out over the travel portion of a freeway must have 17.33 feet of clearance to the bottom of the sign, and the top of such signs can be 30.5 feet tall and may require boom trucks, bucket trucks or cranes to install or maintain such signs. Roadside guide signs along freeways can reach 13 feet tall and tend to be located as far out in the clear zone as practical.
- light posts, traffic control signals and poles for traffic monitoring cameras exist at various locations along highways, and range in height from 20 to 50 feet.
- high mast light towers are used along some freeways, and range in height from 100 to 140 feet.
- noise walls, which can be up to 20 feet high, are becoming increasingly common along freeways.

The relative size of some of these structures on a typical highway surface is depicted in the drawing enclosed as Attachment 2.

3. Future Construction Activities

Mn/DOT continually evaluates the future needs for the trunk highway system and has construction projects in varying stages of development. Some have been designed and funded and are ready for construction. Others have been identified as needed or are anticipated due to development trends but have not yet been funded. The types of construction projects Mn/DOT performs that could be impacted by the location of a HVTL range from relatively minor changes to the width of a highway to major reconstruction projects. Examples of such construction projects might include:

- widening a roadway by addition of travel lanes or turn lanes, installation of a roundabout, or widening a shoulder area;
- rebuilding a highway in a way that changes the location or grade of a roadway; and
- addition of an overpass or interchange on a freeway or other highway.

In addition to changes in the configuration of a highway, consideration must be given to the equipment used during the construction process. Construction projects often involve the use of large excavators and cranes similar in size to the equipment described above which Mn/DOT uses for its maintenance activities. The equipment used in bridge work is especially large, usually requiring cranes with long booms to lift material into place. The equipment used on construction projects also needs to be refueled at the job site, which requires consideration of the safety precautions necessary for this procedure.

The activities associated with vehicular traffic using the roadway surface have a zone in which they typically occur. The drawings enclosed as Attachments 1, 2 and 3 do not depict a specific location on a specific highway. Rather, they are illustrative of the zones or areas on any given highway where transportation-related activities may take place. The lighter shaded area above the roadway surface in the drawing enclosed as Attachment 3 depicts the zone or area in which vehicular traffic on the roadway may operate. The zone within which the activities associated with maintenance work take place is depicted by the darker shaded area on the drawing enclosed as Attachment 3. In addition to evaluating these zones of activity, Mn/DOT will also consider factors such as the width of the right-of-way, the topography of the land and the geometry of the roadway in a specific location when assessing the suitability of that location for an HVTL to occupy a portion of a highway right-of-way.

Location of a HVTL in close proximity to a highway right-of-way limits future expansion or reconstruction of highways due to the complex and extremely costly nature of either moving the transmission lines or moving the path of the highway. In order for the Minnesota Public Utilities Commission to make a fully-informed selection of a route based on all the pros and cons of the various alternatives, these costs should be recognized and evaluated in the EIS evaluation of the impacts of the proposed routes. The EIS should include an evaluation of the risk of trunk highway funding liabilities, and the potential magnitude of such liabilities, that may be imposed on the Trunk Highway Fund resulting from various proposed alignments along trunk highway rights-of-way.

III. Specific Comments on Matters Discussed in the DEIS

Once a route is selected by the MPUC, Mn/DOT may play a role in two contexts. First, if a substation site that is selected involves land owned by Mn/DOT, then a land sale transaction will be required. Second, Xcel will need to submit applications to Mn/DOT for any locations where the route intersects with a trunk highway. In applying its Utility Accommodation Policy to a permit application, Mn/DOT must evaluate each proposed pole location individually in relation to the topography of the land, the geometry of the roadway, the width of the highway right-of-way, the design of the HVTL structures, and other factors. Given the variability of these factors, Mn/DOT can, for the most part, provide only preliminary assessments on whether permits can be issued. As referenced earlier, Mn/DOT's approach to the HVTL route proposals is to work to accommodate these HVTLs within or as near as feasible to the highway rights of way, based on an evaluation of the specific locations to ensure that appropriate clearance is maintained to preserve the safety of the traveling public and highway workers and the effective operation of the highway system now and in the foreseeable future.

A. Proposed Hiawatha Substation Locations

Section 1.5.1 of the DEIS describes the locations that have been proposed for the Hiawatha substation that Xcel proposes to construct. In addition to the Hiawatha East and

Hiawatha West sites proposed by Xcel, the DEIS identifies five additional sites proposed for the substation by the ATF, known as Sites G-1, G-2, G-3, G-4 and G-5. Four of the sites (Hiawatha West and G-3, G-4 and G-5) are located adjacent to TH 55/Hiawatha Avenue, and Mn/DOT either has or had ownership interests in parts of all of those sites. In the comments that follow, Mn/DOT will describe the property it owns and then the process that would be required for Mn/DOT to transfer ownership of the property.

In preparation for the expansion and reconstruction of TH55/Hiawatha Avenue, Mn/DOT acquired a number of parcels of property adjacent to the old highway right of way. In the area being considered for the substation site, much of the property was acquired from the Soo Line Railroad. The reconstruction of the highway is now complete, and in some areas there are remnants of land that could be severed from the highway right of way and sold. Mn/DOT's ownership interest in the four parcels adjacent to TH 55/Hiawatha Avenue is as follows:

- Hiawatha West: it appears that the entire area being considered for the substation at this location is on land owned in fee title by Mn/DOT. This plot of land could be considered as surplus and sold.
- Site G-3: it appears that Mn/DOT owns in fee title a portion, though not all, of the area proposed for the substation at this location. A portion of this property could be considered as surplus and sold.
- Site G-4: it appears that Mn/DOT owns in fee title a portion, though not all, of the area proposed for the substation at this location. This property is under lease to the Met Council for use as parking associated with the LRT station, which is situated directly across TH 55/Hiawatha Avenue.
- Site G-5: it appears that this site is, at least in part, on land that was previously owned by Mn/DOT. The land owned by Mn/DOT in this area has been deeded to the Met Council to use for public purposes associated with light rail transit. Ownership would revert to Mn/DOT if the site ceases to be used for the stated public purpose.

Any transfer of ownership of these parcels would need to follow the requirements of Minn. Stat. §161.44. Under this statute, Mn/DOT is not permitted to immediately sell the property to a third party such as Xcel. Rather, this statute establishes a hierarchy of persons to whom the land can be conveyed. Under Subd. 1, the property can be conveyed "for public purposes" to any political subdivision or agency of the State. If Mn/DOT were to convey the property to a political subdivision such as the City of Minneapolis, the City would have the option of selling the property to a third party such as Xcel. Subds. 2, 3 and 4, the land must be offered for sale to the previous owner, or to the surviving spouse of successor of the previous owner. Under these subdivisions, the prior owner/spouse/successor has 60 days to accept Mn/DOT's offer to reconvey the land. If the steps outlined in subdivisions 1 through 4 do not result in a sale of the property, then Mn/DOT may, under Subd. 5 offer the land for sale to the highest responsible bidder upon three weeks published notice, or under Subd. 6 offer the land to be sold in a public auction upon at least two weeks public notice. As custodian of public funds, Mn/DOT will seek a sales price of the appraised market value of the property. If the land remains unsold after being offered for sale to the highest bidder, then under Subd. 6a Mn/DOT can retain the services of a licensed broker to find a buyer, and the sales price must be not less than 90% of appraised market value.

With any of these parcels of land, another factor that is important to consider is the possibility that environmental contamination exists on the property. When Mn/DOT reconstructed TH 55 several years ago, a number of contaminated sites were identified along

the project corridor, including the CMC Heartland Partners Superfund site at 28th Street west of TH 55. Therefore, Mn/DOT would likely request that any site it owns that would be sold be investigated for possible contamination prior to the sale. The purchaser typically completes such an investigation, and the condition of the property can be documented as part of the sale process. If a cleanup would be needed as part of future development, Mn/DOT would likely require that the purchaser provide a Response Action Plan for site development, and a Minnesota Pollution Control Agency Voluntary Investigation and Cleanup Program letter approving the Response Action Plan before conveying the property. This ensures that the purchaser is working with the MPCA, and provides a measure of reassurance to Mn/DOT that any contaminated materials on the site will be managed properly during and after site development.

B. Hiawatha Avenue Highway Crossing

Each of the preferred and alternate route proposals would need to cross TH 55/Hiawatha Avenue to make the connection between the Hiawatha substation and the Midtown substation. Xcel will need to obtain a permit from Mn/DOT to complete this crossing. Highway crossings, both overhead and underground, generally do not pose insurmountable difficulties in issuing a permit. Mn/DOT routinely grants such permits to a variety of types of utilities. These permits usually have conditions associated with them, such as placement of the poles so that they do not become a physical obstruction that might be struck by an errant vehicle or block the visibility of traffic. Mn/DOT also does not permit utilities to run diagonally across intersections, and prefers that crossings occur as close to right angles as possible. Mn/DOT has a long history of working with utilities, including Xcel, to establish appropriate conditions in locations where the utility seeks to cross a trunk highway. Mn/DOT does not anticipate encountering that would prevent it from being able to grant a permit, with appropriate conditions, for the HVTL proposed in this matter to cross TH 55/Hiawatha Avenue.

C. Locations Parallel to Highway Rights of Way

Section 1.4.5 of the DEIS describes the pathways suggested for Route E1, as originally proposed by the ATF, and Route E2, which is evaluated in the DEIS. Route E1 as described and as depicted on Appendix B.1 would not be granted a permit by Mn/DOT because it seeks to run down the center of I-94. As noted in the DEIS, Route E1 is inconsistent with Minn. Rules part 8810.3300, subpart 4, as well as Mn/DOT's Accommodation Policy.

As discussed above, in the locations where a proposed HVTL route would run parallel to a freeway, under normal circumstances the poles and arms of those poles must be located so that they are outside the right-of-way boundary line. This would apply for Route E2, which is proposed to run parallel to I-35W and I-94, as well as to the portion of TH 55 north of Cedar Ave., as it has been constructed to freeway standards in that area. It is difficult at this time to determine from the route depicted in Appendix B.7 where the poles and wires would be located for which permits would be required. If the poles or arms would be located so as to occupy a portion of the freeway right-of-way, Xcel would need to seek an exception to the standard rule, and concurrence by the FHWA would be required for any exception that may be granted. In Section 5.16.2.1, the DEIS describes how narrowly constrained I-35W and I-94 are in the locations associated with proposed Route E-2. The highway clear zone is quite narrow, and noise walls have been installed along most of the route. There are also a number of bridges, both over and under the freeways along proposed Route E-2, and the abutments of these bridges are generally close to the freeway right-of-way line. The location of the transmission line would significantly impact future maintenance and construction activities on these bridges.

Thus, it is unlikely that Mn/DOT would be able to grant the exceptions to the standard rule that would be required for the proposed HVTL line to occupy portions of the interstate right-of-way parallel to I-35W or I-94.

In addition to Route E2, it appears that both Route B and Route C are proposed to run on Mn/DOT property along the east side of TH 55/Hiawatha Avenue before crossing over the highway. Permits from Mn/DOT would be required for these locations. Mn/DOT does not at this time have sufficient information about the locations proposed for the HVTL poles for Route B or Route C to state with specificity where or under what conditions permits might be granted. However, if one of these routes is selected, Mn/DOT anticipates working with Xcel to find locations for the poles that could be permitted without sacrificing the safe and efficient operation of the highway.

Finally, Mn/DOT wishes to underscore the importance of preserving sufficient flexibility for Mn/DOT to work with the applicant to determine an appropriate specific location for each pole to be placed along a trunk highway right-of-way. As the selection of the final route is made, in all locations where the route will either cross or run parallel to a trunk highway it is imperative that the designated route be sufficiently wide so that Mn/DOT and the applicant can work collaboratively to address the circumstances at each location and determine a specific alignment that can be permitted consistent with the considerations described in this letter.

Mn/DOT has a continuing interest in working with the OES to ensure that possible impacts to highways and other transportation infrastructure are adequately addressed. We appreciate the opportunity to provide these comments. Please feel free to contact me if you have any questions regarding the information provided.

Sincerely,

for 

David G. Seykora
Office of the Chief Counsel

cc: Deborah R. Pile, OES
Karen Hammel, OAG
Lisa Agrimonti, Xcel Energy
Michael Barnes, Mn/DOT
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Jon Chiglo, Mn/DOT
Val Svensson, Mn/DOT
John Griffith – Mn/DOT Metro District

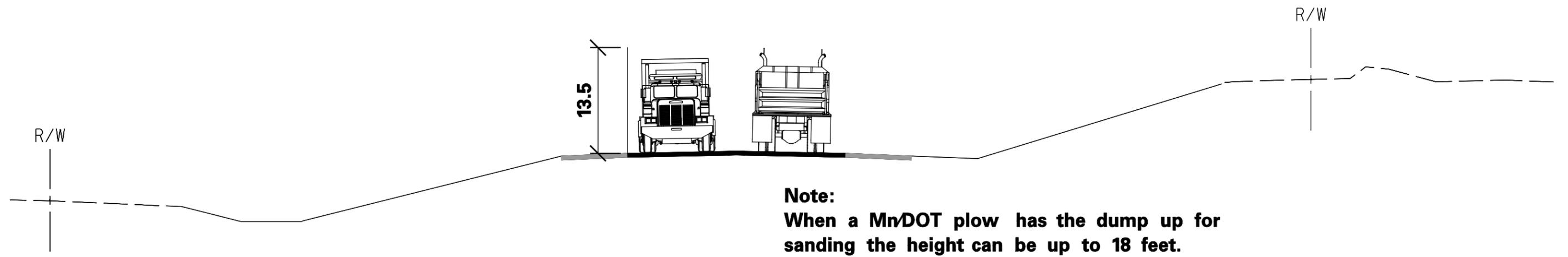
Enclosures

Attachments 1, 2 and 3

Federal Regulations (See [Code of Federal Regulations](#).)

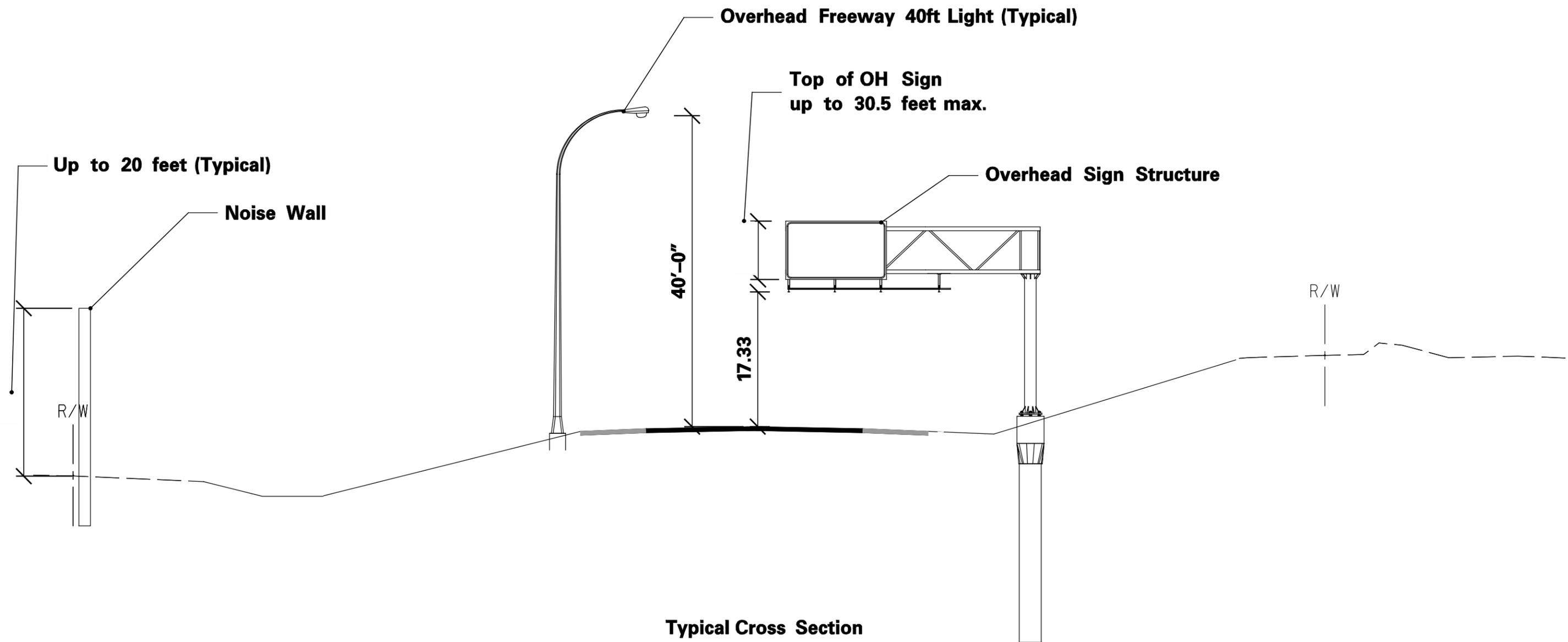
2009 MN Statutes Ch. 161. (See [MN Statute 161.44](#), [MN Statute 161.45](#) and [MN Statute 161.46](#))

Mn/DOT Utility Accommodation Policy (See <http://www.dot.state.mn.us/utility/policy/index.html>)



Typical Cross Section

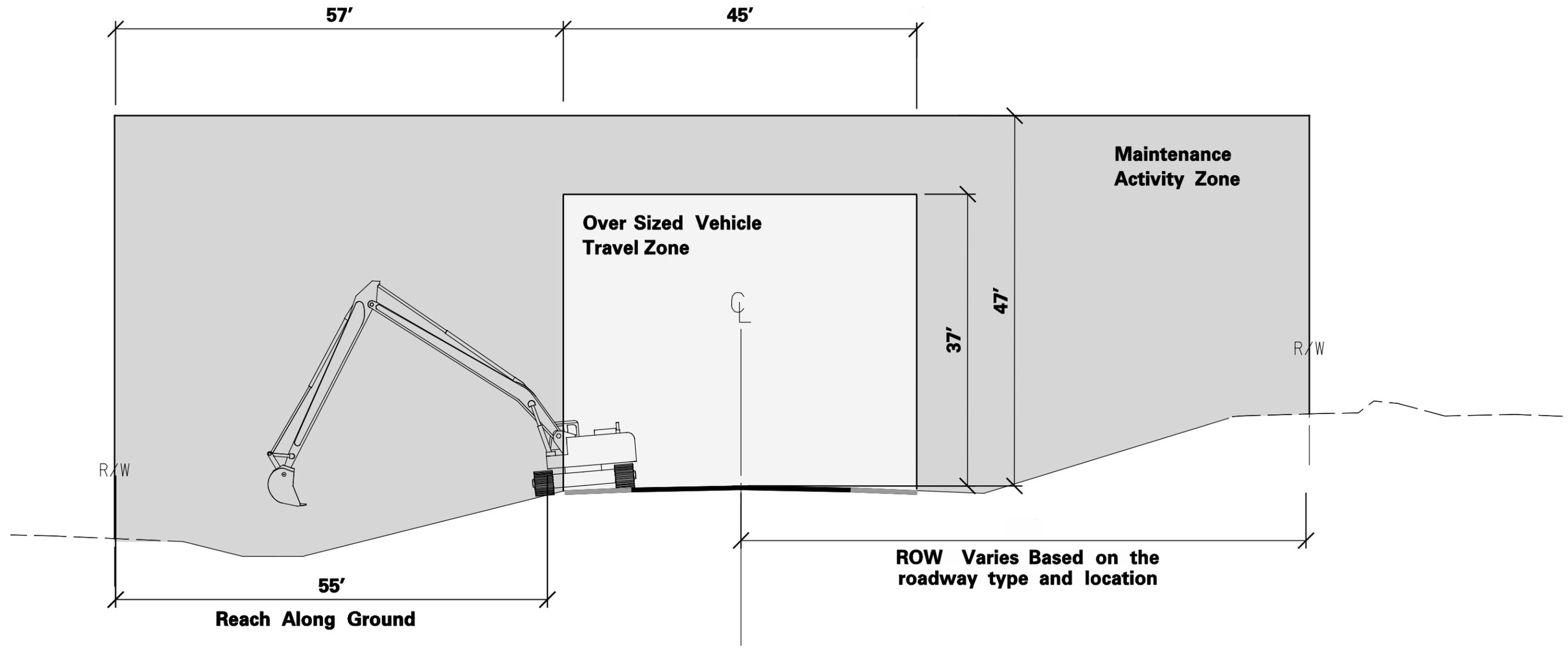
Note:
 When a MnDOT plow has the dump up for sanding the height can be up to 18 feet.



Typical Cross Section

Note:

All Zones vary based on roadway types and locations



Typical Cross Section