



TRANSMITTAL LETTER

PUBLICATION:

Publication 282, Change No. 1

DATE:

August 9, 2018

SUBJECT:

Highway Occupancy Permit Operations Manual, Change No. 1

INFORMATION AND SPECIAL INSTRUCTIONS:

Incorporate the attached revisions into the July 2017 Edition of the Highway Occupancy Permit Operations Manual.

These new guidelines should be adopted on all new and existing highway occupancy permit applications as soon as practical.

The revisions pertain to who can apply for a driveway permit and are consistent with and support the recently promulgated update to the 67 Pa Code Chapter 441 regulations.

The Publication revisions include:

TABLE OF CONTENTS

- Updated for consistency with the revisions made as described below.

SUBCHAPTER 2.2 - REQUIRED APPLICATION INFORMATION FOR ALL TYPES OF PERMITS

- Updated "Driveway Applicant" section in its entirety to clarify who can apply for a driveway permit and to provide procedural guidance.

CHAPTER 9 - USE OF FORMS

- Deleted Form M-950 RFO (Release of Fee Owner) and M-950 RT (Release of Tenant) instructions and replaced with Blank Pages to maintain remaining page numbers.

- Added Form M-950 CFO (Consent of Fee Owner) instructions.

- Incorporated Form M-950 IFO (Indemnification relating to non-fee owner applicants) instructions into the existing Indemnification forms (M-950 IA, ID, IDW) instructions.

- Updated page 189 to include Forms M-950 CFO and IFO, as well as removed Forms M-950 RFO and RT from the list of forms requiring original signatures.

APPENDIX C1 - HOP PROJECT APPLICATION CHECKLIST

- Updated page C1-2 to reflect M-950 CFO instead of M-950 RFO.

APPENDIX C4 - MINIMUM USE DRIVEWAY DESIGN FOR UNCONVENTIONAL GAS DRILLING AND HYDROFRACKING WELL SITES

- Replaced April 29, 2015 driveway template with January 2, 2018 template (Refer to Strike-Off Letter 494-18-06).

NEW FORMS M-950 CFO and M-950 IFO are available on the PennDOT website under Forms, Pubs & Maps.

CANCEL AND DESTROY THE FOLLOWING:

Table of Contents - page vii
Chapter 2 - pages 19-21
Chapter 9 - pages 189, 247-249, 257, 258
Appendix C1 - page C1-2
SOL 494-18-06 (April 5, 2018)

NOTE: Publication 282 is only available electronically via the PennDOT website.

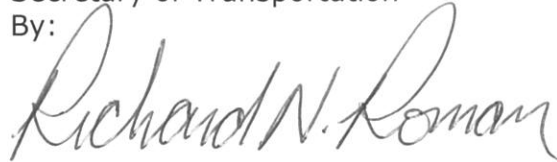
Any comments or questions regarding the above revisions should be directed to the Highway Occupancy Permits Program, Highway Safety and Traffic Operations Division, Bureau of Maintenance and Operations.

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APPROVED FOR ISSUANCE BY:

LESLIE S. RICHARDS
Secretary of Transportation
By:



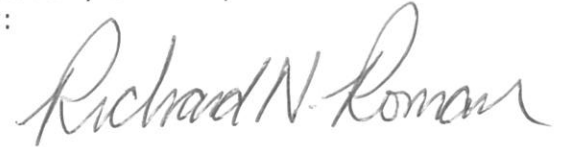
RICHARD N. ROMAN, P.E.
Director, Bureau of Maintenance and
Operations, Highway Administration

OS-299 (11-13)  pennsylvania DEPARTMENT OF TRANSPORTATION www.dot.state.pa.us	TRANSMITTAL LETTER	PUBLICATION: Publication 282 DATE: July 2017
SUBJECT: <p style="text-align: center;">Highway Occupancy Permit Operations Manual</p>		
INFORMATION AND SPECIAL INSTRUCTIONS: <p>The attached edition of the Highway Occupancy Permit (HOP) Manual incorporates changes to policies and procedures relating to access and utility permit programs since the April 2004 edition of this manual. This edition will promote uniformity in the HOP program by incorporating policies and procedures that are necessary and reasonable.</p> <p>HOP policy was previously delivered through two independent publications: Publication 282, designed as guidelines for the public; and Publication 170 designed as a manual for Department staff. Due to substantial overlap between the publications, they have been merged as Pub. 282. Material from Pub. 170 specifically for Department staff has been moved to an appendix of the new Publication.</p> <p>The most sizeable transformation to the HOP program was the deployment of the Electronic Permitting System (EPS) in October 2011. Substantial modifications to the manual were necessary to account for the new electronic permitting process.</p> <p>Two HOP-related documents have been released since 2004: "Policies and Procedures for Transportation Impact Studies," released in January 2009, and "Highway Occupancy Permit Storm Water Facility Guidebook," released in December 2011. Both have been incorporated into the new Publication 282 as appendices.</p> <p>Numerous other changes to HOP policy and procedure have been made through Strike-Off Letters since 2004, through coordination with and feedback from other PennDOT Bureaus and Deputies, the Office of Chief Counsel, the eleven District Offices, statewide committees such as UHLC, and numerous external stakeholder organizations.</p>		
CANCEL AND DESTROY THE FOLLOWING: <p>April 2004 edition of both this publication, and Publication 170, and all revisions thereto dated prior to July 2017.</p>	ADDITIONAL COPIES ARE AVAILABLE FROM: <ul style="list-style-type: none"> <input type="checkbox"/> PennDOT SALES STORE (717) 787-6746 phone (717) 525-5180 fax ra-penndotsalesstore@pa.gov <input checked="" type="checkbox"/> PennDOT website - www.dot.state.pa.us <i>Click on Forms, Publications & Maps</i> <input type="checkbox"/> DGS warehouse (PennDOT employees ONLY) 	

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LESLIE S. RICHARDS
Secretary of Transportation

By:

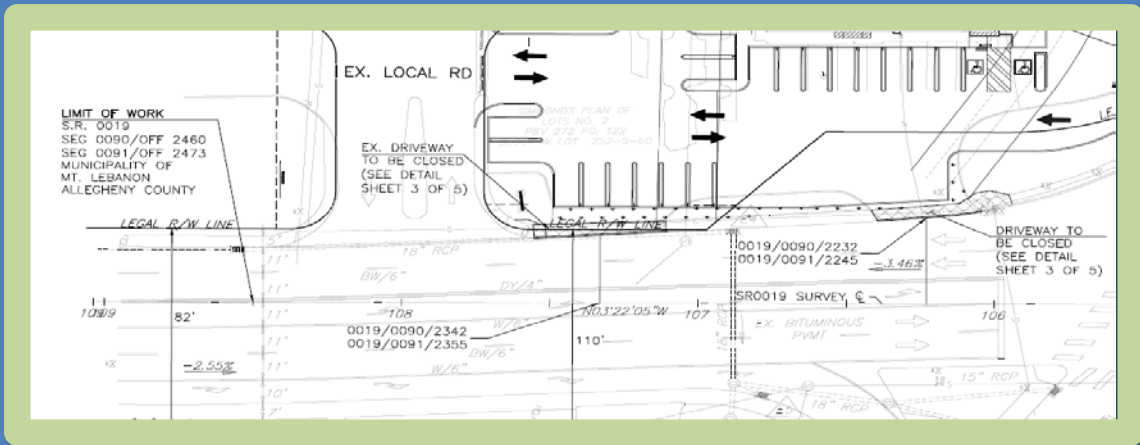
A handwritten signature in black ink that reads "Richard N. Roman". The signature is written in a cursive style with a large initial 'R'.

RICHARD N. ROMAN, P.E.
Director, Bureau of Maintenance and
Operations, Highway Administration

HIGHWAY OCCUPANCY PERMIT OPERATIONS MANUAL



July 2017



Publication No. 282

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PERMIT PROGRAM MISSION STATEMENT

Provide consistent, quality service by efficiently reviewing applications, issuing permits and licenses, and inspecting permit and license work while continually balancing the program goals to protect the State highway and bridge systems to ensure highway safety and facilitate economic development.

PERMIT PROGRAM VISION STATEMENT

Provide a next-generation utility facility, driveway, and local road permitting organization staffed with knowledgeable, proficient and dedicated employees providing fair, consistent, courteous, transparent and efficient public service.

PERMIT PROGRAM PARTNERS

PennDOT

Engineering Design, Construction, Services, District and County Maintenance	
Bureau of Project Delivery	Bureau of Construction and Materials
Bureau of Maintenance and Operations	Center for Program Development
Bureau of Planning and Research	Bureau of Business Services and Solutions
Bureau of Infrastructure and Operations	Bureau of Municipal Services
Bureau of Office Services	Bureau of Planning and Research
Bureau of Fiscal Management	Bureau of Cultural Resources
Policy Office	Legislative Affairs
Office of Chief Counsel	

Government

Federal Highway Administration	PA Governor's Office
PA General Assembly	PA Turnpike Commission
PA Department of Environmental Protection	PA Historical and Museum Commission
Municipalities and Planning Commissions	Municipal Authorities

Public – Private Organizations

Public Utilities	Engineering Firms and Consultants
Utility Highway Liaison Committee	Contractors
Law Firms	Utility, Contractor and Municipal Associations and Organizations

PERMIT PROGRAM CUSTOMERS

General Public	Motoring Public	Developers
Utilities	Property Owners	Municipalities
Authorities	State Agencies	Federal Agencies

DISCLAIMER

This manual is current as of the date of its publication shown on the cover. The user should be aware that policies, regulations, standards and forms may be subsequently revised, added or deleted. PennDOT personnel should contact the Highway Occupancy Central Permit Office (Central Permit Office) with questions pertaining to pending or approved changes. PennDOT personnel should make other users of this manual aware of such changes as they may affect their application, permit or inspection.

*The policies and procedures herein are not an adjudication or regulation. This manual establishes the framework within which PennDOT will exercise its administrative discretion in the future. PennDOT reserves the discretion to deviate from this manual, if circumstances warrant. **This manual is for informational purposes only; it is not regulatory.***

PREFACE

How to Use this Manual

Publication 282 has been developed as an inclusive guide to PennDOT's Highway Occupancy Permit (HOP) Program. Because the information contained within the document is so comprehensive, the following guidance has been prepared to aid readers in the manual's use.

Who is the intended audience for this publication?

This document is intended as an open reference for anyone who wishes to obtain guidance or information on PennDOT's HOP program. Although certain sections of the publication are tailored towards a particular audience (PennDOT staff, permit applicants, interested third parties), the document provides transparent and comprehensive policy guidance on how PennDOT's HOP program operates.

How is the manual organized?

Chapter 1 of the manual provides an overview of PennDOT's HOP program, how it is staffed, and how staff collectively administers the program. Chapter 1 also provides recommendations on public training and outreach, and gives details on public inquiries to PennDOT under the PA Right to Know Law.

Chapters 2-5 provide a detailed walkthrough of the typical Highway Occupancy permitting cycle, from application submission (Chapter 2) to application review (Chapter 3) to permit issuance (Chapter 4) to construction, inspection, and closeout of permitted work (Chapter 5).

Chapter 6 covers PennDOT's policies and procedures governing the permitting process for emergency repair of utility facilities.

Chapter 7 is dedicated to the resolution of HOP-related disputes and complaints.

Chapter 8 is a repository of links to important HOP-related websites, publications, and regulations.

Chapter 9 is a comprehensive guide on use of all HOP-related PennDOT forms. The forms are presented in numerical order.

What information is contained within Publication 282's appendices?

The appendices of Publication 282 contain supplemental guidance on the HOP process. *Appendices A and B* provide guidance on Transportation Impact Studies and Storm Water Drainage, respectively— both appendices also act as standalone PennDOT guidance documents that have been incorporated into the manual.

Appendix C provides various checklists and other reference materials to aid applicants in the HOP process. *Appendix D* offers internal guidance for PennDOT staff. *Appendix E* houses information on collaboration between PennDOT and other governmental entities.

Appendix F is a list of acronyms and abbreviations commonly encountered during the HOP process.

Appendix G provides information on technologies which have been approved for provisional use on HOP projects, such as flowable backfill.

Does Publication 282 provide guidance on HOPs issued under both Chapters 441 (regulations governing driveway and local road access) and 459 (regulations governing utility occupancy)? Yes. This publication provides comprehensive information on both types of permits issued by PennDOT: driveways and local roads; and utilities.

In many cases, information about the permitting process is the same for both types of permit, but certain policies and procedures only apply to driveways/local roads or utilities.

Understanding that many users only have interest in one type of permit or the other, effort has been made to separate driveway/local road and utility HOP-related guidance within chapters whenever practical.

What is the significance of the colored sidebars appearing on certain pages of the Publication? To place additional emphasis on certain concepts which are integral to the HOP process or for additional clarification, sidebars have been created to help call out these pieces of information and concepts in the HOP process.

What happened to Publication 170?

Through the 2004 edition of Publication 282, Publication 170 was also offered as a document that was largely redundant with Publication 282, but contained some supplementary guidance targeted specifically to internal PennDOT staff.

To eliminate confusion and redundancy associated with the two documents, and to provide more transparency, Publication 170 has been consolidated into Publication 282, with the supplementary internal guidance included as an Appendix.

Are there any other new features of Publication 282?

All policy guidance issued as PennDOT strike-off letters issued since the manual's last overhaul in 2004 has now been integrated into the document.

The 2017 edition of Publication 282 has been designed primarily for electronic delivery. As such, the document contains a variety of clickable hyperlinks to aid the user in navigation, both within and beyond the document.

The document is now produced in color, and includes figures, charts, photographs, and tables intended to enhance user understanding.

CHAPTER 1 – PERMIT OFFICE ADMINISTRATION

1.1 – GENERAL ADMINISTRATION

Purpose

This manual is for use by utility facility and driveway owners, PennDOT staff, municipalities, planning organizations, consultants and developers. This manual provides regulatory and technical knowledge, policy, process and procedure for permitting access to or occupancy of the State system of highways.

Engineering District Permit Offices

Each District Executive is directly responsible for management, administration and quality assurance of the Highway Occupancy Permit (HOP) programs within his or her Engineering District, consistent with this Manual. The District Executive insures that the District Traffic Engineer, the District Permit Manager and all supporting staff coordinate activities to comply with the policies, procedures and requirements established here. This includes:

1. Review each Permit application (Including Transportation Impact Studies (TIS) and/or Transportation Impact Assessments (TIA)) consistent with published statewide policy and procedure, to verify the application, studies and plans are complete, accurate, and in compliance with applicable laws and regulations and this Manual.
2. Review any additional studies or technical reports as required or requested in the HOP process.
3. Ensure that, prior to written approval by the District Traffic Engineer, the TIS or TIA included as part of the application package complies with PennDOT TIS Guidelines (see Appendix A of this manual), and that each TIS or TIA conforms to the presentation format established in Attachment C of the *Policies and Procedures for Transportation Impact Studies*.
4. Verify each non-emergency application and plan is consistent with proposed occupancy by conducting initial reviews. Conduct follow-up reviews for each emergency application.
5. Encourage, coordinate with required staff and participate in pre-application informational meetings.
6. Coordinate project scoping meetings as necessary and requested.
7. Coordinate the review of applications and plans between District and Central Office staffs consistent with published statewide policies and procedures.
8. Take timely action on pending applications to: 1) approve and issue the permit, 2) return the application for more information, 3) deny the permit based on the regulations and this manual, or 4) return applications without action if no permit is required.
9. Assist and participate in administrative hearings by providing evidence and testimony.
10. Collect prescribed fees, where applicable, and forward for deposit consistent with published procedures.
11. Process additional permit application review and inspection fees, where applicable, consistent with published procedures.

12. Ensure proper inspection of work performed under Permit authority to monitor compliance with conditions of the permit.
13. Ensure compliance with PennDOT regulations, policies and requirements, and this publication.
14. Take corrective and enforcement actions as required.
15. Ensure permitted work is completed consistent with regulations and the permit, PennDOT policies and requirements, and take appropriate follow-up actions, including establishment of the acknowledgment of completion date (which triggers two-year regulatory “warranty” period) and, if applicable, notice to bank that security associated with a driveway permit may be reduced on completion date.
16. Ensure security is returned promptly after the two-year regulatory “warranty” period has expired if no construction defects have been identified prior to the expiration of the “warranty” period. NOTE: The utility Permittee is still responsible for failures after the two-year period.
17. Retain and maintain accurate and complete record of Permits, applications and related documents for prescribed time periods.
18. Outreach – Develop training, participate in meetings with Applicants, Permittees, consultants, contractors, municipalities, and municipal organizations, as required and requested and promptly respond to inquiries.
19. Monitor and re-certify municipalities which issue access or utility HOPs on behalf of PennDOT.
20. Process individual Bridge Occupancy Licenses in cooperation with the District Bridge Units.
21. Ensure the District staff is adequately trained and cross-trained on HOP program laws, regulations, policies, and procedures, in coordination with the Central Permit Office (CPO).
22. Promptly review RTKL requests received from RTKL Officer/District RTKL Coordinator and coordinate with CPO as necessary.
23. Process consultant agreement invoices.
24. Establish billing accounts for Permittees responsible for reimbursement of inspection costs incurred by PennDOT consistent with published procedures.

These duties involve case-by-case decisions requiring responsive, independent judgment and thought.

Highway Occupancy Central Permit Office

The Highway Occupancy Central Permit Office (CPO) is staffed under BOMO, with oversight by the Chief of the Highway Safety and Traffic Operations Division and supervised and administered by CPO Program manager and CPO staff. The CPO is responsible for the strategic management and administration of the Highway Occupancy Permit (HOP) program, Chapter 441 and Chapter 459 regulations and statewide interpretive guidance.

CPO responsibilities and duties require independent judgment and effective strategic management of the HOP program and staff core competency. They include:

1. Provide direction and guidance to Engineering District staffs consistent with applicable laws, regulations, court decisions, and statewide policies, procedures and program objectives for:
 - a. Policy, procedure and administration.

PennDOT has complete and exclusive jurisdiction over local roads and streets at their intersection with the State highway system.

Generally, PennDOT's jurisdiction over State highways is exclusive. 71 P.S. §512.

Specifically, the State Highway Law provides that PennDOT "may issue permits for the opening of streets and driveways onto State highways and for the opening of the surface and occupancy of State highways on terms and conditions established in PennDOT regulations" 36 P.S. §670-420(b), and further that no "municipality or municipality authority shall open a driveway onto a State highway or open the surface of or occupy a State highway without a permit." 36 P.S. §670-420(b)(2).

Unpermitted Access

There are no statutory or regulatory "grandfather" rights or privileges in PA relating to occupancy of State highways or bridges. As a general rule, an HOP or Bridge Occupancy License (BOL) is required for every highway/bridge occupancy as prescribed in Sections 411, 420 and 702 of the State Highway Law and PennDOT Regulations (Chapters 441 and 459).

- b. Coordination between PennDOT Executive Staff, Bureaus and Offices, Engineering District Offices, Commonwealth Agencies and organizations, municipalities, municipal organizations, legislative contacts, permit applicants and interested private sector organizations and persons.
2. Coordinate the development of and amendments to Chapters 441 and 459, consistent with applicable laws, regulations and court decisions.
3. Develop and revise forms, publications and statewide policies and procedures relating to the access and utility HOP programs and the Bridge Occupancy License (BOL) program, consistent with applicable laws, regulations and court decisions.
4. Develop and implement HOP Program training to ensure District and CPO staffs are adequately trained and cross-trained on HOP and BOL program laws, regulations, policies, and procedures. Coordinate the development and maintenance of software for HOP and BOL programs, consistent with applicable laws, regulations and court decisions.
5. Knowledge Management - Maintain pertinent permit/license program resources on PennDOT Web Site, the PennDOT P: drive, and elsewhere.
6. Process monthly invoices for Applicants who participate in the permit monthly billing system.
7. Provide program information to interested persons consistent with the Right to Know Law (RTKL).
8. Promptly review RTKL requests received from RTKL Officer and coordinate approved RTKL request visitations with Engineering District permit staffs.
9. Process annual BOL invoices.
10. Conduct Quality Assurance reviews, and develop and implement reporting procedures to verify District staffs are complying with laws, regulations, this Manual, other published statewide policies and procedures and published HOP/BOL forms and publications.

1.2 – PERMITTING AUTHORITY

PennDOT has responsibilities to accommodate both Applicants/Permittees and the traveling public. It is in the public interest to regulate the design, construction, drainage and maintenance of accesses, local roads, utility facilities and

other property and structures within the State highway right-of-way in order to preserve safe and reasonable access, safe and convenient passage of traffic, as well as protect the structural integrity of the highway. The Utility and Access regulations balance the reasonable needs of property owners, developers, municipalities, individuals, groups and the traveling public.

Highway Occupancy Permits (HOP)

PennDOT is authorized under Sections 411 and 420 of the State Highway Law to issue HOPs for occupancy of State highway right-of-way, opening the surface, placing a facility or structure, or opening an access.

PennDOT's Permit issuance authority should not be confused with PennDOT's maintenance responsibilities. While PennDOT generally maintains curbed highway sections within municipalities from curb-to-curb only, its Permit issuance authority extends to the right-of-way line (in the case of utilities) and beyond (in the case of access or drainage) where the proposed and permitted work outside the right-of-way may affect the efficiency, operation and maintenance of the State highway.

The following HOP regulations govern occupancy of and access to State highways:

Pa Code, Title 67, Chapter 441: Access to and Occupancy of Highways by Driveways and Local Roads.

Pa Code, Title 67, Chapter 459: Occupancy of Highways by Utilities.

Regulation Outline Format and Text Reference

Following is a guide that may be used when citing specific regulation text:

- 441 or 459 – Chapter
- 1 – Section
- (A) – Subsection
- (1) – Paragraph
- (i) – Subparagraph
- (A) – Clause
- (I) – Subclause

Issuance of a permit under these regulations does not relieve the Permittee from any additional responsibility to secure other Federal, state or local approvals or permits as required by law.

Bridge Occupancy Licenses (BOL)

PennDOT is authorized under Section 702 of the State Highway Law to issue BOLs, as regulated by Section 459.10a. BOL inquiries should be directed to the District Bridge Engineer (if a pending application) or the Central Permit Office (if an annual rental invoice).

Traffic Control

Work Zone Traffic Control within and extending beyond the State highway right-of-way must be consistent with Chapter 212 and Publication 213.

Policy

Laws and regulations will be applied uniformly and without prejudice towards any person's race, sex, age, religion, handicap or nationality.

The following is an excerpt from a 1990 Commonwealth Court opinion (*Popple v. PennDOT*), which provides guidance on PennDOT's authority to interpret its regulations:

"...when reviewing the validity of an agency's interpretation of its own regulations, that interpretation controls unless erroneous or inconsistent with the regulation, or inconsistent with the statute under which the agency promulgated the regulation".

Since laws are enacted by the Legislature and regulations are promulgated by the Secretary through the Independent Regulatory Review Commission (IRRC), they cannot be waived, altered, relaxed or modified unless specifically authorized by law or regulation.

Legal Opinions

The Office of Chief Counsel (OCC) provides Permit Programs legal guidance and opinions upon request by CPO and District staff. The point of contact in the OCC is the Permit Programs attorney. If Chief Counsel is requested to provide a legal opinion and subsequently determines there is a conflict between a law and a regulation, the law takes precedence. If Chief Counsel is requested to provide a legal opinion and subsequently determines there is a conflict between a regulation and a policy or operational guideline, the regulation takes precedence. Engineering judgment and interpretive guidance must be consistent with law, regulation and statewide policy.

Approved Provisional Technologies

Innovations and new technologies that improve productivity without decreasing safety or damaging the highway/bridge infrastructure are desirable. New technologies that do not comport with or are not authorized by regulation, accepted policy or procedure that are proposed for use in the construction of permitted work between revisions to Chapters 441 and 459 may be authorized by the Deputy Secretary for Highway Administration for statewide or limited pilot test use, subject to regulatory requirements for waiver or modification of design criteria.

Initially, one or more pilot projects (authorized under individual District Executive waivers or

modifications) are desirable to verify the new technology does not decrease safety or adversely affect the highway/bridge infrastructure. Experience-based conditions relating to the use of these new technologies will be incorporated into the statewide authorization as appropriate and ultimately the regulations, if required, when revised in the normal rulemaking process.

Each individual HOP application must still request a modification/waiver under the permit regulations to be permitted. In accordance with 459.12(b), Permits issued for the modified procedure are to be signed by the District Executive or higher PennDOT Authority. In addition, the utility permits must comply with 459.12(b)(1) through (3) relating to indemnification, bonding and insurance, unless excused in writing, and permit conditions, which may include use restrictions, special traffic control devices or safety features (see 459.12(b)(4)). Condition Codes 397 and 398 will be included on each Permit authorizing a modification under 459.12.

The “New Technologies” Folder on the PennDOT P: drive will be updated as other new technologies are authorized for use statewide by the Deputy Secretary for Highway Administration.

Refer to Appendix G of this publication for current Approved Provisional Technologies.

1.3 – STAFFING

Staff levels are determined by the District Executive, based on the number of applications processed within established time frames and statewide policy, and also based on inspection necessary to verify compliance by the public, Permittees, their agents and contractors.

District Permit Staff

The following dedicated staff is recommended for the review of applications, issuance of Permits and inspection of work. *Note: Generic Job Descriptions are posted on the PennDOT P: drive.*

1. District Permit Manager – responsible for the overall management, administration and quality assurance of the District Permit Program.
2. Assistant District Permit Manager – assists the District Permit Manager with the District Permit Office operation, where Permit volumes warrant an assistant.
3. County Permit Supervisor – assigned to one or more County organization(s), depending on Permit volumes, to:
 - a. Review applications for compliance with PennDOT Utility and Driveway regulations, including initial on-site reviews of all non-emergency applications.
 - b. Perform "spot" inspections of Permit projects to assist assigned inspectors and issue Departmental Citations as required.
 - c. Maintain complete and accurate County Office Permit records.
 - d. Responsible for work completion inspections of all Permits.
 - e. Perform routine checks of work sites to verify a Permit (or properly completed Emergency Permit Certificate/Card) is at the work site.
4. District HOP staff – Prepares Permits, Supplements, transmittals and correspondence.

Maintains Permit files, ledgers and monitors Emergency Permit process compliance. Generates and maintains computer report(s), and other technical duties as required. Performs duties as directed by the District Permit Manager related to HOP applications.

5. On-site Inspector – assigned to perform resident (full-time reimbursable) inspection on major or critical projects, or spot inspection (non-reimbursable) of other Permit work as required. An inspector (PennDOT employee or consultant) is responsible for verifying that ongoing and completed permitted work is performed in compliance with the applicable regulation (i.e., Chapters 441, 459, 212) as well as any special Permit conditions that may apply on a particular project. The on-site inspector is also responsible for verifying that only permitted work is performed. If unpermitted work is observed, notify the Permittee/violator by Citation (Form M-945 C) of its responsibilities for compliance with the regulations and Permit. Qualifications for an on-site inspector are located in Chapter 5.1 of this manual.

These duties often involve case-by-case decisions which require independent judgment and decision making rendered outside the scope of standard operating procedures.

Supporting District Staff

Other District Office staff members involved in the review of applications involving extensive or critical operations include:

1. Traffic Unit – provides technical assistance in reviewing applications that:
 - a. Involve a local road or commercial driveway. This includes review and approval of a Transportation Impact Study/ Assessment which is part of a driveway application.
 - b. When requested by the Permit Manager, to review an operational or safety concern.
 - c. Include a proposed or modified auxiliary lane(s).
 - d. Include proposed or modified traffic control devices (e.g. signalization, signage or pavement markings).
 - e. Include a detour or complex/unique WZTC Plans.
 - f. Involve a design waiver under Chapter 441.
2. Design Unit – provides technical assistance in reviewing applications involving:
 - a. Proposed or modified curb and/or sidewalk.
 - b. Non-utility work within PennDOT right-of-way such as:
 - i. Storm water facility adjustment.
 - ii. Slope area adjustment.
 - iii. Underground or overhead crossing.
 - iv. Test boring.
 - v. Guide rail installation or modification.
 - vi. Driveway application where design features extend into limited access right-of-way (e.g., widening, acceleration or deceleration lane).

- c. Requests to install highway lighting within highway right-of-way.
- d. Utility facility in limited access highway right-of-way.
- e. Independent roadway improvement (e.g., auxiliary lane)
- f. Hydraulics -- reviewing applications involving the flow of drainage (e.g., into or through highway right-of-way or onto adjacent property) as follows:
 - i. An access – normally other than Minimum Use -- where the development authorized by the permit may increase the drainage flow rate or flow velocity of water onto the property of another person.
 - ii. If existing drainage patterns may be altered or if additional drainage of surface water may be directed into the highway right-of-way or highway facilities as a result of the permitted work.
 - iii. Proposed or modified detention or retention systems.
 - iv. Proposed or modified drainage structures or if an applicant proposes to connect to existing State highway drainage structures.
 - v. If access or occupancy is in an area known to have drainage problems or if an existing drainage system may be unable to accommodate the additional drainage flow rate or flow velocity as a result of the permitted work.

3. Utility Relocation Unit – assists in reviewing applications involving:

- a. The administration of DM-5, which includes the issuance of a Highway Occupancy Permit – Utility Relocation (Form D-4181-P), if a utility facility relocation or adjustment is required within the limits of a PennDOT highway construction project. Coordination as needed with the District Permit Unit and CPO staff.

4. Safety Engineer – assists in reviewing applications involving:

- a. An aboveground utility facility in a recognized accident cluster area, and any other above ground utility facility including utility poles, guiderail and other objects. A permit will not be issued to install aboveground facilities at a location the PennDOT Safety Engineer determines to have a high accident potential.
 - i. The District Safety Engineer will develop and supply utility pole cluster lists to the District Permit Office. Use the lists identified as hit-fixed object, utility poles (8 accidents per 3,000 feet; 5 accidents per 100 feet). The District Permit Office will provide these lists to CPO as required and to each respective County Permit Office. The County Permit Office, upon receipt of an application from an aboveground utility, shall use the lists to determine if the pole is within a cluster list area. If so, identify on the application that a pole is in a cluster area.
 - ii. After the District Permit Office review, the application shall be referred to the Safety Section in the District Traffic Unit for review.
 - iii. The District Safety Unit promptly reviews the proposed pole location(s) for safety concerns such as: unacceptable locations; located within guiderail deflection zones; previously established Clear Zones; roll-over guiderail end sections; gore areas; located

on an accident cluster list but the specific pole location is not hazardous; previous hits on the original pole, conflicts with ADA. Documentation for decisions shall be made part of the Permit file. See Chapter 459 and Design Manual, Part 5.

- iv. The Safety Engineer will advise the District Permit Office whether or not the proposed pole location is acceptable.
 - v. If the HOP application is not approved, the District Permit Office will promptly notify the utility owner and request the owner to submit an acceptable alternate location. If an acceptable alternate location cannot be easily agreed upon, then request that the utility owner attend a field view meeting to discuss acceptable alternate locations. A representative from the District Safety Unit will attend the field view, document communications and share with appropriate District staff.
 - vi. If mutual agreement is reached at the field view regarding the owner's proposed pole location(s), the District Permit Office may then issue the Permit to the utility owner after a properly revised application and plan are submitted.
 - vii. If an agreement cannot be reached, the District Permit Office will send a certified letter (see 'Form Letters' Folder (posted on the PennDOT P: Drive)) to the utility owner rejecting the Permit application and referring to the alternate locations discussed at the field view. The form letter will advise the owner of the right to request an administrative hearing before PennDOT to contest the rejection. In the case of an existing facility which is not approved, follow-up action is required after 30 calendar days unless a hearing was requested.
- b. An accident damaged pole.
- i. Applications to replace an accident-damaged pole shall first be reviewed by the District Permit Office for completeness and compliance with Chapter 459, and then routed to the District Safety Improvement Unit for review.
 - ii. The District Safety Unit will review the application as described in letter a, items iii and iv.
 - iii. After the application is returned, the District Permit Office will either issue a Permit (if application was approved) or proceed as described in letter a, items v, vi and vii. If it becomes necessary to send a certified letter, use the letter in the 'Form Letters' Folder (posted on the PennDOT P: drive). Follow-up action is required after 30 calendar days.
5. Bridge Unit – reviews applications for a Bridge Occupancy License, provides technical assistance in reviewing applications involving an overhead or under-grade structure, work near a bridge footing, and any proposed blasting plan for impact on structures.
 6. Geotechnical Engineer – assists in reviewing applications involving mine activity, activities which affect support of the highway, and all slope work for impact on the highway.
 7. Construction Unit – assists in identifying potential conflicts with contractors where Permit work could conflict with contract construction work, advises Permit Unit so that conflict can be

avoided or cost of conflict can be mitigated. Coordinates with Permit Unit for Permit driveway/access work authorized to be included/conducted and/or reimbursed in contract construction work.

8. Maintenance Unit – Program 213 coordination (e.g., planned surface improvements, road widening, overlays). In coordination with District Permit Unit staff, provides enforcement related corrective action as required.
9. Posted and Bonded Road Coordinators – coordinates with District Permit Unit staff for permits involving Unconventional Oil & Gas (UOG) development.
10. Right-of-Way Unit – assists in appraisals, acquisitions, and other right-of-way plan review in addition to providing support for restrictions to access.

Central Office Staff

Central Office staff (e.g., administrative, engineering, legal) participates in the review of applications involving limited access highways, as well as unique or critical designs or operations and when requested by the District or the Highway Administration Deputate. When requested and as required, the central office staff coordinates between PennDOT Executive Staff, Bureaus and Offices, Engineering District Offices, municipalities, municipal organizations, legislative contacts, permit applicants and interested private sector organizations and persons. These duties often involve case- by-case decisions which require independent judgment and decision making rendered outside the scope of standard operating procedures.

1. Bureau of Maintenance and Operations (BOMO) – The following HOP applications require review by BOMO staff:
 - a. Signals having alternate or experimental devices or procedures (consistent with PA Code, Title 67 Chapter 212, Section 212.10).
 - b. If the Executive staff, Bureau staff or District Office staff believes that a review by CPO would be appropriate or helpful (e.g., Strategic management, complex HOP applications, multi municipal or District HOP applications, traffic signal plans with railroad preemption).
 - c. Alternative Transportation Plan – See Appendix A
 - d. Utility facility in limited access highway right-of-way in accordance with the following:
 - i. Should District staff determine that a utility application not in accordance with DM-5 is appropriate for approval, they must route the application to CPO for review and approval. Note: The District Permit Office may utilize the “General Checklist for Request to Occupy Limited Access Highway Right-of-Way” in Appendix D7 of this manual, or consult the District Utility Relocation Unit if they are considering an exception to DM-5.
 - ii. CPO will review the application and determine if the exception to DM-5 is warranted. Note: FHWA concurrence is required, and consultation with the Central Office Utility Relocation Unit may be recommended.

- iii. CPO will notify the District Permit Office of either an approval or denial of the exception to DM- 5.
2. Bureau of Project Delivery (BOPD) – All proposed non-utility occupancy of limited access right-of-way must be approved by the BOPD. This includes:
 - a. Drainage facility adjustment.
 - b. Slope area adjustment.
 - c. Underground or overhead crossing.
 - d. Test boring.
 - e. Driveway application where design features extend into limited access right-of-way.
 - f. Additional Interchange, Access Point or Ramp on completed Interstate and other limited access highways. See Design Manual, Part 1X, Appendix Q. Such requests may also require the disposal of a property right owned by PennDOT (e.g., via “before and after” appraisals). PennDOT had already paid severance damages for the loss of property value when limited access right-of-way was acquired.
 - g. Any other non-temporary occupancy of limited access right-of-way.

Note: Bureau of Project Delivery staff may request BOMO staff to coordinate review for a proposed non-utility access or other traffic issue on an application involving **limited access** or **Interstate** right-of-way. HOPs involving permanent work on the Interstate System require review and approval by FHWA.

See: <http://www.fhwa.dot.gov/federalaid/stewardship/agreements/pa.pdf>

Prior to submitting the application to FHWA, National Environmental Policy Act (NEPA) clearance must be obtained in accordance with Federal regulations (23 CFR, Chapter 1, Part 771).

HOPs for temporary occupancy of limited access right-of-way (Interstate and non-Interstate) may be approved by PennDOT.

District Permit Managers who identify a need for clarification of regulations, policies or procedures relating to the statewide HOP and BOL programs should contact CPO directly. After pertinent facts are provided, CPO staff will determine if it is necessary to involve administrative, engineering or legal staff in providing a clarification which is consistent with statewide program objectives.

District Office staffs should contact OCC, Assistant Counsel-in-Charge, Permits Section, for legal matters, requests for legal opinion or guidance relating to an individual HOP or BOL application or Permit/License, such as a highway right-of-way issue; a third-party issue; co-preparation of an HOP agreement or condition statement; co-preparation of non-routine or critical correspondence; co-preparation for an administrative hearing or court case; co-collection of a delinquent reimbursable Permit inspection invoice (contact Office of Chief Counsel, Highway Construction and Claims Division, Collections Attorney); acceptability of "proof" of ownership for a driveway application; re-denial of an HOP application within one year; a non-routine or critical Citation (e.g., filing a complaint before a District Justice); certification of a document; if an Applicant/Permittee is

represented by counsel; applicability of the RTKL; and clarification of legal provisions of Chapters 441 and 459.

When corresponding with and e-mailing OCC on an HOP or BOL matter, District staff will copy the Program Manager, CPO.

When Central Office staff is involved, District staffs will provide CPO with all available information relating to the matter. Applicants and other persons should not simply be referred by any District Office staff to make direct or initial contact with CPO or OCC staff, nor should relevant information be withheld.

Consultant Staff

If there are insufficient PennDOT staff resources available for application review or resident inspection, each District and CPO may utilize open-end agreements to enter into a contract with a consultant firm for application review and/or inspection services. See Publication 93, Policy and Procedures for the Administration of Consultant Agreements.

1.4 – TRAINING

Public Training

District Permit Managers, staff and CPO staff should meet with representatives of non-PennDOT agencies (e.g., public utilities, land developers, engineers, municipalities) if requested, to inform and provide guidance to the organizations and interested persons of their responsibilities, PennDOT's HOP related laws, regulations, policies and procedures.

District Permit staff, and when requested or required, CPO staff, should attend project “Scoping” meetings, pre-bid meetings, pre-construction meetings, semi-final restoration meetings, final inspection meetings and other meetings pertaining to the HOP Program, to facilitate and explain PennDOT's requirements and address potential concerns.

1.5 – PUBLIC INQUIRIES – (RTKL)

Persons verbally requesting information about PA’s Right to Know Law (RTKL) should be referred to the PennDOT Web Site or to the following address link:

<http://www.penndot.gov/ContactUs/Pages/Right-to-Know.aspx>

This site provides current information on PennDOT’s policies and procedures relating to the RTKL.

Any correspondence received referencing an open records law, including the Freedom of Information Act (FOIA), or even a simple request for records in writing, should be treated as a RTKL request and forwarded to the resource account maintained for RTKL requests (PENNDOT-RightToKnow@pa.gov).

A copy of Management Directive 205.36, which contains detailed Commonwealth policies and procedures on the RTKL, can be accessed from the site listed above.

Pre-decisional PennDOT deliberative records that fit within the exception under 65 P.S. § 67.708(b)(10), such as internal correspondence, memos, comments, and engineering reviews may not be released without the approval of the RTKL Office.

Pre-decisional documents sent to or from OCC, in addition to the exception contained in 65 P.S. § 67.708(b)(10), may also qualify under the attorney-client privilege and may not be released without the approval of the RTKL Office. Any pre-decisional document or privileged record should be provided to the RTKL Office with notes as to the Attorney involved in the matter and any such documents should be clearly identified for review by the RTKL Office and Attorney responsible for reviewing RTKL responses, who will be consulted prior to issuance of response.

Section 3751 of the Vehicle Code, 75 Pa. C.S. § 3751 and Chapter 95.2 of the regulations, 67 Pa. Code

§ 95.2, protect police crash reports from access, while PennDOT in-depth accident investigations and safety studies are subject to an absolute privilege under 75 Pa. C.S. § 3754. Investigatory material is exempt from access under the RTKL's criminal and non-criminal investigations exceptions under 65 P.S. § 67.708(b)(16) and § 67.708(b)(17).

Portions of bridge inspection reports, bridge analyses, and the information contained therein are traditionally considered to be confidential and may not be released without the approval of the RTKL Office.

Refer inquiries from the news media through the Community Relations Coordinator.

Do not charge persons for blank preprinted forms, such as Applications (M-945 A, M-950 A and M-906 A).

Requests for permit records from PA enforcement personnel (e.g., local police, State Police Commercial Vehicle Enforcement Teams, Motor Carrier Enforcement personnel) should be honored promptly. Such requests typically involve time sensitive investigations and hearings. The Office of Chief Counsel should be consulted prior to releasing the requested records.

In general, if there is a concern that there is sensitive information, facts or circumstances in regard to a particular request that requires further review, be sure to convey that information to RTKL personnel.

It is essential that staff do not share their opinions or thoughts or advice when any person requests information relating to one or more pending citations. PennDOT staff may provide non-attorney requestors with specific sections of State Highway Law or regulations relating to their inquiry. Attorneys should always be referred to OCC.

CHAPTER 2 – APPLICATION SUBMISSION

This chapter provides guidance for applicants and District staff for driveway, utility facility, drainage facility and other miscellaneous structure HOP applications.

Subchapters 2.1 – 2.3 applies to all types of permits.

Subchapters 2.4 – 2.6 provide specific guidance for Driveway/Local Road HOP applications.

Subchapters 2.7 and 2.8 provide specific guidance for Utility Facility HOP applications.

Subchapter 2.9 provides guidance for Miscellaneous Structure HOP applications, including sidewalk, curb, storm water drainage, traffic signals, highway lighting, and other proposed occupancies on the State highways.

2.1 – INTRODUCTION TO EPS

The Electronic Permitting System (EPS) is a web-based application that provides PennDOT customers and staff the ability to process applications for HOPs online, and to store and retrieve Permit Records.

EPS replaced the manual process that required Applicants to complete a paper form and deliver multiple copies of documentation to a PennDOT District or County office. EPS is designed to increase review efficiency and decrease the time from initial application submission to permit issuance.

The electronic application process starts with completion and submission of the HOP application with required electronic attachments. The result of the review process is a response from PennDOT notifying an Applicant that their application has been approved and their HOP is available to print, that additional information is needed, that the application is denied, or that an HOP is not required.

Applicants should visit PennDOT's website (www.penndot.gov, Doing Business, Permits, Highway Occupancy Permits (HOP)) for EPS registration information, as well as EPS training material.

Occupancy Regulations On-Line

PennDOT's Highway Occupancy Permitting regulations can be found on-line on the PennDOT website > Doing Business > Permits > Highway Occupancy Permits (HOP), and at www.pacode.com.

Chapter 441

A Permit is not required for maintenance of a permitted access, such as surfacing a Minimum Use driveway or resurfacing an access, nor for maintenance of a structure, such as cleaning a pipe, provided the maintenance does not alter the design of the permitted access or structure, or otherwise violate a requirement of the Permit or the Regulations. Refer to 441.3(a).

Chapter 459

A permit application is not required for modifying parts of existing permitted facilities, such as cable within conduit on non-limited access highways, cross arms or transformers on poles, or manhole riser rings prior to roadway resurfacing, if no surface opening is required.

Permit applications are not required for stringing overhead utility lines on non-limited access highways.

Permit applications are not required for accessing an existing utility facility through a manhole except in limited access highway medians or interchange areas.

Work performed on or across a limited access highway requires a permit.

Refer to 459.3.

Pre-Application Reviews

When planning on submitting an HOP application, the Applicant or Applicant's engineer should contact the District to set up a project scoping meeting. The scoping meeting is vital for outlining the expectations of the project and design in accordance with this chapter. The Transportation Impact Study Guidelines (Appendix A) provides a scoping meeting checklist of items to be covered and addressed during the meeting for a successful application.

District staffs will honor requests made by developers for preapplication reviews. These reviews have a positive impact and increase the likelihood that the formal HOP application package will be acceptable, and will reduce the number of issues that would otherwise need to be addressed by PennDOT during the 60-day statutory time limit for formal driveway application reviews.

Some of the items that may be appropriate to address in the pre-application review stage include methods to determine trip generation, pass-by trip percentages, background traffic growth rate, Transportation Impact Study area boundaries, and conceptual design issues (e.g., number and location of driveways).

Scoping meetings are also a good opportunity to facilitate early coordination with municipalities and planning commissions which may have recommendations or requirements impacting PennDOT's review of the project.

Comments for pre-application recommendations are not binding on PennDOT.

2.2 – REQUIRED APPLICATION INFORMATION FOR ALL TYPES OF PERMITS

The initial formal step in the issuance of the HOP is the submission of a properly completed application by the Applicant (e.g., an Applicant in Chapter 441 (Driveways/Local Roads) or Chapter 459 (Utilities)) via EPS or, at the discretion of PennDOT, a properly completed application (Form M-945 A or M-950 A) to the PennDOT County Permit Office in the county where the proposed work will be performed. Non-electronic paper applications are not routinely accepted; these applications will only be accepted as a last resort at the discretion of the District.

A properly completed application is one that is in full compliance with the regulations, particularly 441.3 or 459.3, as applicable.

The application should be submitted at least 30 calendar days in advance of the anticipated start of routine utility work and work on Minimum Use driveways. For substantial utility projects or complex driveway/local road applications, the application will likely require multiple reviews and longer permit issuance timeframe. Upon receipt of an application, by the District or County Office, the date received shall be documented in either EPS or in writing.

When submitting via EPS, an *authorized agent* may submit the HOP application on behalf of a permit Applicant if a properly completed M-950 AA (Applicant's Authorization for Agent to Apply for HOP) form is provided and accepted as part of the application package submission. For guidance on the proper use of this form, please refer to Chapter 9 of this manual.

When submitting applications, application information must be correctly completed by the Applicant before submitting. PennDOT staff will assist Applicants while also verifying each application complies with applicable laws, regulations and statewide policy. See Appendix C1 for an HOP Project Application checklist.

For additional information on completing an HOP application using EPS, Form M-945 A, or Form M-950 A, refer to Chapter 9. Also see [Publication 312 - Guide for Obtaining Minimum Use Driveway Permit](#).

Name of Applicant – Driveways

Driveway applications must be submitted in the name of the *property owner*, as defined in 441.1.

Proof of ownership must be submitted with the application. The proof must be in the form of a copy of the valid legal document or court order verifying the applicant's legal estate or interest in the property that includes the access requested in the permit. The right to access should be clearly established in the legal document submitted to verify ownership. If the right to access is not clear on the face of the document, the permit application will be denied.

The highway occupancy regulations provide: “Permit applications shall be submitted in the name of the owner of the property.” See Subsection 441.3(b). The regulations further provide: “Permits will be issued only to the owners of the property. Permits will not be issued to contractors of the property owner nor to any person other than the owner of the property.” See Subsection 441.5(b). The term owner is defined as: “A person holding: (i) fee title to property, (ii) an estate or other legal interest in property, such as an easement, a lease, a license or subsurface rights, or (iii) an equitable interest in property under a sales agreement or an option to purchase; provided that the estate or other legal or equitable interest in property includes the use requested in the permit.” See Section 441.1.

Driveway Applicant other than a Fee Owner

If the Applicant is not the fee title holder, the Applicant must include the following items:

1. Proof of one of the following:
 - a. The fee title holder’s consent to the application (see form M-950 CFO); or
 - b. Applicant’s written notice of the submission of the application to the fee title holder apprising the fee title holder of the administrative rights relative to the permit application under 1 Pa. Code §§ 35.23, 35.24 and 35.27 - 35.32 (relating to protests and interventions). The Department will not grant or deny the permit application until 30 days after receipt of the written notice by the fee title holder. The applicant must provide evidence that

Title 75, Chapter 61 on exemptions from additional requirements for an HOP

§ 6103.1. Exemption from additional requirements for highway occupancy permits for agricultural purposes.

The Department shall waive all additional requirements for a highway occupancy permit in a fifth through eighth class county when all of the following conditions exist:

The State highway has an overall width of at least 33 feet.

Not more than 25 combination vehicles per week will access the highway.

The lack of sufficient land is not the result of a subdivision within ten years by the applicant.

The waiver is necessary for the expansion or creation of an agricultural operation which lacks other highway access points that could be permitted without waiver.

The applicant does not hold fee simple title to land necessary to provide access without this waiver.

The State highway has an average daily travel of less than 6,500 vehicles per day.

The highway access point has a sight distance of at least 500 feet.

PennDOT will not issue a pre-application approval or conceptual approval for planned future access.

PennDOT determined in the matter of *In Re Application for HOP SR 0019, Washington Twp, JCP Associates, Inc. no. 147 AD 1990, July 22, 1992* that Department regulations do not provide for 'conceptual approval' of HOPs.

Conceptual or pre-application approval granted by PennDOT in writing to a potential future Permittee can affect future plans of PennDOT for highway improvement, as well as the access plans of abutting and adjacent property owners. Formal approval for an access must be granted consistent with PennDOT Chapter 441 only.

Section 441.3 requires a permit application including plans and submittals sufficient to meet the requirements of the Regulation before PennDOT can initiate the formal review process leading to approval of an access.

PennDOT's Authority over Local Roads.

The regulations reflect the Department's intention to regulate the location, design, construction, maintenance and drainage of local roads to provide safe and reasonable access to the State highway system. 67 Pa. Code Section 441.2 (Purpose and application). All local roads must be designed in accordance with the Department's current standards governing the design of local roads contained in Publication 70, and all requirements of the regulations must be complied with before the local road will be allowed access onto a State highway. 67 Pa. Code Subsection 441.7(d) (Local roads).

the fee title holder received the notice. The preferred evidence is in a form of a certified mail return receipt.

2. A signed written statement, whereby the applicant agrees to indemnify and defend the Commonwealth (if requested) from all suits, damages, claims and demands of any type whatsoever by the fee title holder of the property because of granting the permit to the applicant, such as a failure of the permittee or other person to comply with the permit or any other statutes, ordinances or regulations in connection with the HOP (See form M-950 IFO).
3. Proof that the applicant executed and recorded in the Office of the Recorder of Deeds in the appropriate county or counties, a covenant running with the land providing that all subsequent purchaser, heirs, assigns or transferees of the property take the property subject to the above-mentioned indemnification, unless released by the Department (See form M-950 IC).

At its discretion, the District may also require the Applicant to provide additional security in a form and amount acceptable to PennDOT.

Applicants – Joint Use Driveways – Local Roads – Co-Applicants

A Joint-use driveway is a driveway shared by and constructed to provide access to two or three properties. The owners of properties that abut the highway right of way and are served by the driveway should be Applicants. Applicants must meet property ownership requirements. See 441.1, definition of owner.

A Local Road is an access intended to serve more than three properties or to act as a connecting link between two or more roadways. These accesses are considered a local road for design purposes, and they are designed in accordance with PennDOT's Publication 70M, which contains standard elements of design for local roads. If a proposed access must be designed as a local road but is or will not be a public road owned and maintained by a municipality, any or all of the owners of an interest in a property served by the local road may, but are not required to be Applicants. At least one owner must be an Applicant.

Applicants and District staff may consider others for Co-Applicant status. Co-Applicants are not required to meet property ownership requirements. However, every Co-Applicant is responsible and accountable for compliance with all applicable PennDOT regulations and all the terms and conditions of the permit, unless otherwise provided in the permit upon issuance. When the permit is issued, Co-Applicants are Co-Permittees. Upon issuance, the Permittee is principally responsible for compliance with all terms and conditions of the permit by its employees, agents, and contractors, including Co-Applicants.

Name of Applicant – Utility Facilities

An Applicant for a utility Permit must be the owner or operator of a utility facility. See 459.3(b). PUC-regulated utilities are only one type of allowable Permittee. Other Public and Privately-owned facilities are eligible for permits if they directly or indirectly serve the public or any part thereof. See 459.1 (definition of "Utility Facility or facility"). If the Applicant is not in the business of providing utility service, special provisions apply to secure the performance of duties under the Permit and indemnify PennDOT in the event of actions against it. See 459.3(b)(2).

Utility facility or facility is specifically defined to include privately owned, as well as publicly or cooperatively owned lines, facilities and systems. See 459.1. The line, facility or system must "directly or indirectly serve the public or any part thereof." PennDOT interprets this "serving the public" requirement in a broad manner, subject to the facility being of the type set forth in the definition and to the restrictions set forth in 459.3(b) relating to who may execute applications. Subject to these restrictions, if the facility in any way directly or indirectly results in service to the public or any part thereof, the "serving the public" requirement is met.

There are two basic types of Applicants – those in the business of providing utility service and those not in the business. If a corporation, authority, political subdivision or other person in the business of providing utility service owns, operates or intends to operate the facility, the application must be submitted by that party. See 459.3(b)(1). This is the typical situation subject to the general permitting rules and regulations.

An application may not be submitted in the name of contractors of the owner or operator of a utility facility, nor in the name of persons only being serviced by a facility. See 459.3(b)(1). These prohibitions apply to facilities owned or operated by those in the business of providing utility service, as well as those owned or operated by those not in the business. Mere contractors or customers cannot be an Applicant.

Utility facility Applicants who are “in the business of providing utility service”

When a District is unsure of whether to classify an Applicant as “in the business”, as defined in 459.3(b)(1), or not, the Permit Manager shall consult with the Bureau of Maintenance and Operations. Generally, if the Applicant’s core business function is to provide, manufacture, produce, deliver, mine, transmit, gather, process, or distribute a consumer utility product (communications, power, electricity, light, heat, gas, oil, crude products, coal, water, steam, waste, storm water not connected to PennDOT drainage facilities, and other similar commodities including fire and police signal systems and street lighting systems, which directly or indirectly serve the public or any part thereof), then that Applicant qualifies as “in the business” of providing utility service.

Utility facility Applicants who are “not in the business of providing utility service”

Where the District receives applications from a facility owner that does not qualify as being “in the business” of providing utility service under 459.3(b)(1) and the guidance above, Districts will use the following additional guidance to determine how to treat such utility Applicants under 459.3(b)(2). This portion of the regulation includes both mandatory requirements and discretionary considerations. The District may determine the application with the minimum submission required, after considering the following:

1. Has the Applicant demonstrated past practice of ability/capability of properly restoring the highway in accordance with Chapter 459 and Publication 408?
2. Has the Applicant demonstrated ability to respond timely under an Emergency Permit Certificate/Card and to effectively and properly restore the pavement and/or shoulder?
3. Has or will the Applicant be applying for a substantial number (approximately 25 or more) of utility permits annually?
4. Does the Applicant qualify or has it established a monthly billing account?

Where the Applicant has not demonstrated the ability to install facilities in compliance with PennDOT regulations/policies, or most importantly, has not demonstrated the ability to respond to emergencies associated with its facilities in a timely and effective manner, the District should exercise all appropriate options in 459.3(b)(2) to preserve and assure proper maintenance and restoration of the State highway right-of-way.

If a facility owner is not “in the business,” the Applicant automatically indemnifies and holds harmless PennDOT from claims by anyone claiming residual property interests in the permitted area. See 459.3(b)(2). The Applicant is also subject to the following requirements that do not specifically apply to facility owners in the business of providing utility service:

1. The Applicant must provide PennDOT with satisfactory evidence of ability to completely discharge construction, maintenance and financial duties imposed by the regulations, see 459.3(b)(2)(i). Examples of such evidence would be prior permit work successfully performed and maintained by the Applicant; the name of the contractor who would perform the work and any maintenance (assuming the contractor is a responsible one); a list of the Applicant's assets; and/or an analysis of the profits that are expected, if any, from the facility.
2. The Applicant must provide PennDOT with satisfactory evidence that the proposed facility will not be inconsistent with the structural integrity of the right-of-way, PennDOT's maintenance responsibilities, or the safe and convenient passage of traffic, See 459.3(b)(2)(i). This would reasonably entail a narrative tied to the construction plans and include additional design information such as: the facility would be encased, located at a depth not to interfere with PennDOT activities, and placed by drilling, boring, driving or tunneling across improved areas of the highway rather than trenching across improved areas.
3. The Applicant must submit a detailed traffic control plan for the permitted work, see 459.3(b)(2)(ii).
4. The Applicant must cause the permit to be recorded in the appropriate recorder of deeds office, see 459.3(b)(2)(iii). In most situations, the permit would be indexed to the Applicant's deed or other document showing ownership or the right to use the property abutting the highway.
5. The Applicant is not authorized to place a facility longitudinally within the pavement. The Applicant is also not authorized to place a facility longitudinally within the shoulder unless the Applicant provides detailed plans which verify there is no feasible space outside the shoulder for placing the facility. See 459.3(b)(2)(iv).
6. If after completion of the work authorized by the permit, an entity in the business of providing utility service assumes operation and maintenance of the facility, PennDOT may, upon proper application, approve assignment of the permit to the provider of the utility service, which will release the Applicant from the construction, maintenance and financial duties imposed by the permit. See 459.3(b)(2)(v).

The above requirements are mandatory if the Applicant is not "in the business" of providing utility service (i.e., these requirements must be met.) If properly administered, these requirements are sufficient to prohibit private facilities that would be injurious to the highway, the traveling public or PennDOT, and to adequately protect those interests when private facilities are permitted.

The following security measures may be required at the discretion of the District Permit Manager (for a facility owner not "in the business" of providing utility service):

1. Indemnification satisfactory to PennDOT, see 459.3(b)(2)(i)(A). Use Form M-945 I.
2. Insurance in a form and amount acceptable to PennDOT, see 459.3(b)(2)(i)(B). ACORD forms are preferred.
3. Surety bonds in a form and amount acceptable to PennDOT to guarantee necessary restoration and maintenance costs for the facility and the right-of-way in which it is located for a period of at least two years after the acknowledged completion of the permitted work, see 459.3(b)(2)(i)(C) and (D). Use Form M-945 K; however, Form M-945 L is also acceptable.
4. The deposit of sufficient currency in an escrow account acceptable to PennDOT to fully secure the obligations in 3 above as an alternative to surety bonds, see 459.3(b)(2)(i)(E). This option would

require an agreement between the Applicant, PennDOT, and an escrow agent (usually a bank).

5. The use of bonded contractors, as well as consultants and engineers having professional liability insurance. See 459.3(b)(2)(i)(F).

Implementing these discretionary provisions will be appropriate if there is a question on the ability of the Applicant to fulfill the construction, maintenance and financial duties imposed by the regulations. Whether to apply any of these provisions will depend upon the evidence submitted by the Applicant on its ability to completely discharge those duties.

In connection with or separate from the stated security measures permitted by 459.3(b)(2), PennDOT could require an agreement or condition statement if the permit will authorize a substantial amount of work within the highway right-of-way. See 459.5(b). The legal agreement or condition statement could address any special construction, maintenance, future relocation, and security requirements not thought to be adequately addressed by the general and special conditions of the permit regulations. See 459.7, 459.8, and 459.9.

Work authorized by any permit is subject to all applicable laws, rules and regulations, the rights of any person and the conditions, restrictions and provisions of the permit in accordance with 459.7(2).

Monthly Billing Account Program

For utilities that anticipate making several applications annually, the Permit Manager should recommend that the utility consider utilizing the monthly billing account program and refer the utility to CPO. Participation streamlines the application process by eliminating the need to obtain and submit individual insurance and security for each application the utility applies. Refer to Subchapter 2.10 for additional information.

Other Laws with Application to Utility Occupancy Permitting

- 23 U.S.C. 109(l) (accommodation of utilities on the right-of-way of Federal-aid highways)
- The Limited Access Highway Law, 36 P.S. §2391.3 (No commercial enterprise or activity shall be located ... on any public property which is part of the right-of-way of any limited access highway)
- The Public Utility Code, construction, relocation, suspension and abolition of crossings, 66 Pa. C.S. §2702 (PUC has jurisdiction over highway-rail crossings)
- The Business Corporation Law, 15 Pa. C.S. § 1511 (public utility corporations have the right to occupy State highway rights of way for placement, maintenance and removal of aerial, surface and subsurface public utility facilities subject to PennDOT permitting)
- 23 CFR Part 645, Subpart A covers Utility Relocations, Adjustments and Reimbursement and Subpart B covers Accommodation of Utilities)
- The Pipeline Act (Act 127)
- 49 CFR 191, 192 (federal standards design, operation, maintenance, and construction of gas pipelines)

- The Pennsylvania Underground Utility Line Protection Law, Act 287 of 1974, as Amended, known as the Pennsylvania One Call Law (prevents damage to underground facilities through a communications network of designers, excavators, and facility owners and in certain situations, PennDOT)
- American Association of State Highway Transportation Officials (AASHTO) Policy
- Applicable utility industry codes

District staff should coordinate questions regarding the application of other laws through the Program Manager, CPO and OCC, Permit Programs attorney.

Name of Applicant – Storm Water Facilities

PennDOT has statutory authority to maintain adequate highway storm water facilities (State Highway Law, 36 P.S. Section 670 - 417) and to regulate the use of State highways (State Highway Law, 36 Section 670 - 420; 67 Pa. Code Section 441.2). Refer to Chapter 8 of PennDOT Publication 23 (Maintenance Manual) for additional information related to maintenance responsibilities.

Pipe culverts placed under a driveway to accommodate the property owner enables safe vehicular access without adversely affecting highway storm water. If the driveway did not exist, a pipe culvert would not be necessary to maintain highway storm water. Pipe culverts can become blocked and cause more potential problems than driveways constructed to utilize drainage swales instead of pipes. Use swales, where feasible, across driveways. If swales are not feasible, pipes may be authorized.

Pipe culverts placed under a driveway benefit the property owner as well as the traveling public. A pipe culvert can reduce the property owner's cost of maintaining the driveway. Maintenance of a pipe culvert installed under an access is the property owner's responsibility (under 441.6(12)). Although PennDOT may initially install a pipe culvert under a driveway as part of a construction or maintenance project, it is primarily the property owner's responsibility to maintain the pipe culvert just as it is primarily the property owner's responsibility to maintain safe sight distance and to remove snow from the driveway. These responsibilities are not limited to "permitted" driveways; thus, whether a valid permit exists does not alter the owner's responsibility to maintain the access.

If a nonfunctioning pipe culvert is creating or has the potential to create a hazardous roadway condition, PennDOT may, after appropriate notice to the property owner, act to eliminate the hazard. District Permit Unit and Maintenance Staff should coordinate to eliminate hazardous conditions as needed, and invoice the property owner for all costs under Program 612, using the applicable Object Codes.

Note: Under 441.10, PennDOT has the authority to remove, sever or block drainage structures constructed or altered without a permit or in violation of the regulations.

Where storm water structures (other than a pipe culvert under a minimum use driveway) are permitted in PennDOT right-of-way or are permitted to connect to PennDOT storm water facilities, the Permit shall state that the Permittee is responsible for future maintenance of the storm water structures being installed (see HOP Condition Code #388). Permits that allow the above types of storm water facilities must be recorded.

It is recommended that every new land development project be designed to retain the site development storm water runoff or a design that does not require storm water to be directed to the State highway right-of-way. However, this is not always possible and PennDOT is faced with site development storm water designs that are directing and discharging storm water toward and within the State highway right-of-way.

In addition, many municipalities, by ordinance and as part of the local land development process require installation of curbing along the site frontage adjacent to a State highway. When curbing is introduced, there is often a new need to manage storm water with enclosed surface storm water facilities.

PennDOT prefers open ditch/swale design for open surface storm water systems to reduce the cost of highway projects and future maintenance.

New land development should be designed to ensure that the quantity and volume of storm water directed onto the State highway right-of-way is eliminated, or minimized and properly managed.

Who is the proper applicant for a Storm Water Facility?

PennDOT *is not obligated to issue an HOP for the use of its right-of-way for storm water purposes*, but may do so in such situations within its discretion for economy of maintenance, as well as supporting land development.

- Permits related to new land development are to be issued to private applicants for *open surface storm water facilities*.
- Permits for *enclosed surface storm water facilities connecting to highway storm water facilities* will be issued only to a local government or a local government and as appropriate, with the private owner of the new land development, as co-Applicants. Condition Code #389 should be used if there is a private co-Applicant.
- Permits for enclosed surface storm water facilities *not connected to highway storm water facilities* can be issued to public or private Applicants if they are a “utility facility” as defined Pa Code, Title 67, Chapter 459. Note: Local governments are townships, cities, boroughs, incorporated towns, home rule municipalities, and counties.

Guidance for implementation follows. Storm water facilities are presented in five different scenarios, with guidance indicating who the permit Applicant shall be for a particular type of proposed storm water facility within PennDOT right-of-way:

1. Storm water facilities draining or conveying drainage under a proposed driveway or local road.

- a. Permittee – driveway/local road Applicant.
- b. Examples – driveway pipes, culverts, ditches, swales and/or associated open and enclosed surface storm water facilities under or appurtenant to the driveway or local road that serve to drain the driveway or local road or convey drainage under the driveway or local road.

2. Open Surface storm water facilities draining more than a proposed driveway or local road, whether connected to a highway storm water facility or not.

- a. Permittee – driveway/local road Applicant.
- b. Examples – ditches, curbing, swales and inlets servicing development of the land in general and typically not under or appurtenant to the driveway or local road.
- c. Local government approval is required if a local ordinance addressing storm water exists. If a local ordinance does not exist, county government should be consulted to determine if there are any county imposed requirements for which approval must be obtained from the county. [As a matter of policy for local coordination purposes.]
- d. PennDOT is not required to allow use of its right-of-way for this general land development storm water, but may do so within its discretion for economy of maintenance as well as supporting land development.

3. Enclosed surface storm water facilities draining more than a proposed driveway or local road and physically or hydraulically connected to an existing or new highway storm water facility.

- a. Permittee – local government or local government and landowner as co-Permittees. [The local government may pass responsibility onto landowner through land development process.]
- b. Examples – pipes servicing development of the land in general and typically not under or appurtenant to the driveway or local road.
- c. PennDOT is not required to allow the use of its right-of-way for this general land development storm water, but may do so within its discretion for economy of maintenance as well as supporting land development.
- d. The following conditions will be added to the permit if there is a private co-Applicant (Condition Code #389):
 - 1) STORM WATER FACILITIES INSTALLED BY THIS PERMIT ARE THE PRIMARY RESPONSIBILITY OF THE LOCAL GOVERNMENT TO CONTINUALLY MAINTAIN OR REPLACE.
 - 2) LANDOWNER CO-PERMITTEE IS RESPONSIBLE FOR PROVIDING FUNDING TO THE LOCAL GOVERNMENT TO OFFSET FUTURE MAINTENANCE COSTS ASSOCIATED WITH THE PERMITTED STORM WATER FACILITY(IES).
- e. Maintenance responsibilities under the permit only apply to the storm water facilities installed as part of the permit.
- f. A local maintenance indemnity and funding agreement (co-Applicant agreement) is recommended to be recorded so that the agreement will legally bind any subsequent owner of the property serviced by the facility.

4. New or modified enclosed surface storm water facilities draining the highway and/or adjacent properties.

- a. Permittee – local government or local government and landowner as co-Permittees. [The local government may pass responsibility on to developer through land development process.]
- b. Examples – enclosed surface storm water facilities created due to the installation of curbing along the highway. [This scenario is different from scenario three because the facility is draining the highway and/or adjacent properties rather than the landowner’s property.]
- c. PennDOT is not required to allow the use of its right-of-way for this general land development storm water, but may do so within its discretion for economy of maintenance as well as supporting land development.
- d. The following conditions will be added to the permit if there is a private co-Applicant (Condition Code #389):
 - 1) STORM WATER FACILITIES INSTALLED BY THIS PERMIT ARE THE PRIMARY RESPONSIBILITY OF THE LOCAL GOVERNMENT TO CONTINUALLY MAINTAIN OR REPLACE.
 - 2) LANDOWNER CO-PERMITTEE IS RESPONSIBLE FOR PROVIDING FUNDING TO THE LOCAL GOVERNMENT TO OFFSET FUTURE MAINTENANCE COSTS ASSOCIATED WITH THE PERMITTED STORM WATER FACILITY(IES).
- e. Maintenance responsibilities under the permit only apply to the storm water facilities installed as part of the permit.
- f. A local maintenance indemnity and funding agreement (co-Applicant agreement) is recommended to be recorded so that the agreement will legally bind any subsequent owner of the property serviced by the facility.

5. Enclosed storm water drainage facilities not connected to a highway storm water facility.

- a. Permittee - landowner or local government. [These are utility facilities under Pa Code, Title 67, Chapter 459.]
- b. Examples – pipes servicing the development of the land in general that are independent of highway storm water facilities.
- c. The system must be deemed to directly or indirectly serve the public or any part thereof. §459.1(definition of utility facility). [This is an easier determination if the Permittee is the local government.]

The above scenarios have been developed in view of several circumstances: Section 421 of the State Highway Law, 36 P.S. § 670-421, which indicates: “It is unlawful for any person to discharge sewage or drainage, except surface drainage, on, or within the legal limits of, any State highway”; the constitutional right of access held by landowners abutting non-limited access highways; the public nature of local governments, as well as their historic and statutory responsibility for storm water

management within their geographic boundaries and their review and approval of land development plans, which frequently include storm water management; Chapter 441 and Chapter 459; and PennDOT's Maintenance Manual, PennDOT Publication 23, Chapter 8.

Other Commonwealth agencies have statutory duties that sometimes require installation of storm water facilities. For example, the Department of Environmental Protection must occasionally install storm water facilities for remediation projects within PennDOT's right-of-way. Similarly, the Pennsylvania Turnpike Commission must occasionally install or replace storm water facilities as part of a Turnpike project within PennDOT's right-of-way. These installations are a by-product of the statutory and regulatory duties of the entity.

PennDOT has a duty to cooperate and coordinate with the Commonwealth's administrative departments. 71 P.S. §§ 181, 182. Accordingly, PennDOT has authority to issue HOPs for storm water facilities to other Commonwealth agencies. PennDOT should do so as long as the discharge does not contain pollutants, is at a volume that can be handled within the right-of-way, and maintenance responsibility of the facilities is assumed by the Commonwealth administrative department including a covenant running with the land where appropriate.

For additional guidance on who should be the applicant for storm water installation as part of HOP work, alternative storm water designs for landowners and local governments to consider, and how to prepare an agreement between developer and local government should the local government be an applicant, refer to the *Highway Occupancy Permit Storm Water Facility Guidebook* in Appendix B2 of this manual.

Asset Management of Pipes

Storm water maintenance responsibilities will be recorded by District staff in the Roadway Management System (RMS) along with other Systematic Techniques to Analyze and Manage Pennsylvania Pavements (STAMPP) inventory and condition data as defined in Publication 73, the Drainage Condition Survey Field Manual. Use a "0" for non-PennDOT maintained, and a "1" for PennDOT maintained pipes. This will allow the facility to be plotted on the straight line diagrams. Field data indicating ownership of pipes can be found in the RMS database.

New pipe information will be provided to the District RMS Coordinator when other HOP pavement related data is provided.

2.3 – ADDITIONAL APPLICATION INFORMATION FOR ALL TYPES OF PERMITS: UTILITIES, DRIVEWAYS, LOCAL ROADS, HIGHWAY DRAINAGE FACILITIES AND OTHER STRUCTURES

441.3(k) and 459.3(j) of the regulations require PennDOT to determine the genuineness, regularity and legality of every application and authorize PennDOT to reject an application if not satisfied of its genuineness, regularity or legality, or the truth of any statement contained in the application.

The regulations also authorize PennDOT to make such investigations and require such additional information as PennDOT deems necessary.

Additional information includes engineering studies to help identify necessary measures to (1) protect the traveling public, (2) ensure the structural integrity of the highway system, (3) preserve proper drainage, (4) provide operational characteristics satisfactory to PennDOT, and (5) satisfy other regulatory purposes as outlined in 441.2 and 459.2.

Studies that identify available options and compare their respective advantages and disadvantages and recommend remedies may also be required from Applicants in order to make a final decision on some applications.

PennDOT staff should request corroborating information whenever the reviewer is not satisfied as to the genuineness, regularity, legality or truthfulness of an application.

Applications in Slope Easements

Section 210 of the State Highway Law defines a slope easement as an easement for support or protection of the highway. It includes the right to place drainage structures for the protection of the highway, as well as contouring the land to support the highway. *Rapetta Appeal 405 Pa. 287, 175 A2d 77 (1961)*. The interest allows the owner use of the area which is not inconsistent with support or protection of the highway. In an appropriate case, this may include placement of utility and access facilities within a slope area. Utility and access facilities within slope easements require an HOP because Section 411 of the State Highway Law prohibits occupancy by a utility of any portion of a State highway except under such conditions, restrictions and regulations established by PennDOT. Likewise, Section 420 of the State Highway Law prohibits the opening of the surface of the State highway without a Permit. In this circumstance, a slope area is usually considered an integral part of the State highway, and the Permit process is an appropriate and available mechanism to determine if a proposed occupancy of a slope easement is inconsistent with the support or protection of the highway.

Where slope easements extend outside the State highway right-of-way, a Permit may be required by PennDOT for (1) adjustments to the slope, or (2) occupancy of the slope.

Although the property owner has *surface rights* within the required limit of slope, these rights are subordinate to the purpose for which the slope easement was taken (i.e., stability and general maintenance and protection of the highway, including drainage facilities).

Applications for slope adjustments adjacent to limited access highway right-of-way require prior approval of the Central Office Bureau of Project Delivery.

Applications for utility occupancy of slopes adjacent to non-limited access highways may be processed if accompanied with either (1) a deed for the utility's easement, or (2) a release from the property owner authorizing utility occupancy.

Applications in Limited Access Right-of-Way

Consistent with Chapter 441, permits will not normally be issued for occupancy of or access to any limited access highway. In special cases, PennDOT, with the written approval of the FHWA, where applicable, may make exceptions.

1. Point(s)-of-Access – A point-of-access is any interchange, ramp, at-grade intersection or locked gate that provides access between a limited access roadway and a non-limited access roadway including local road systems, or between two intersecting limited access roadways. All such requests for new or revised interchanges, ramps, at-grade intersections or locked gates within limited access right-of-way, must be submitted to the Bureau of Project Delivery for review consistent with Design Manual, Part 1X (Publication 10X), Appendix Q “POINTS OF ACCESS.”

All POA request Reports affecting the Interstate system or routes approved as a future part of the Interstate system require FHWA review and approval upon PennDOT's recommendation for approval. POA Request Reports on all other limited access facilities require review by the Bureau of Project Delivery and approval by the Deputy Secretary for Highway Administration. After a point-of-access request report has been approved and the limited access right-of-way has been properly disposed of, consistent with PennDOT's Right-of-way Manual, an access permit application may be considered by the District. Applications will normally only be considered from a municipality, since according to the Design Manual, Part 1, new interchange, ramp and at-grade access to a limited access highway must initially terminate at a public road. Except for gated emergency or special circumstance access, an access/driveway permit will not be issued authorizing an access point to a private property owner along a limited access highway.

Historically, PennDOT has paid significant monies for the right to limit access to properties. Accordingly, when an approved POA recommends re-designating part of the limited access right-of-way to free access right-of-way, and disposal of access right previously acquired by PennDOT will result, a "before" and "after" appraisal must be made to determine whether, and if so by what amount, the proposed change in access has enhanced the value of the property. Any enhancement value determined will then serve as the basis for the remuneration requested from the property owner. PennDOT staff shall refer to Pub 378, *The Right-of-Way Manual*.

2. Occupancy of Limited Access Right-of-Way – HOP applications involving work, drainage facilities, utilities when applicable (see additional guidance under Subchapter 1.3 – Central Office Staff) and other encroachments within limited access highway right-of-way that does not involve a point-of-access also requires Central Office review. FHWA approval, upon PennDOT's recommendation for approval, is also required for any permanent occupancy within Interstate limited access right of way.

See: <https://www.fhwa.dot.gov/federalaid/stewardship/agreements/pa.pdf>.

Work within limited access includes but is not limited to permanent embankment alterations, underground or overhead crossings, installation of or adjustments to drainage facilities, test borings, resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, adding auxiliary lanes, changes in access control, signs, pavement markings, traffic signals, bridge rehabilitation, reconstruction, or replacement.

To conform to the Code of Federal Regulations (CFR) 23 CFR §1.23, applicants for a permit may not normally be permitted to encroach on or occupy the right-of-way unless:

- a. It is in the "public interest", and
- b. The encroachment will not impair the highway (as defined) or interfere with the safe and free flow of traffic and drainage.

The encroachment may be considered as in the **public interest** if it has a net benefit for the safety of the traveling public and/or benefit to the construction, reconstruction or maintenance of the roadway on that particular route. Examples of safety of the traveling public include, but are not limited to the following: removing physical barriers within the clear zone, improving the recoverable slope area, improving highway sight distance, improving highway sign visibility, improving roadway

design. Examples of the benefit to the roadway include, but are not limited to, the following: capacity adding projects, reducing drainage to or within the right-of-way, and public, private partnership with net benefit of improving the roadway's surface or structural condition.

Both conditions must be satisfied; it is not permissible to allow right-of-way occupancies solely for the convenience of the Permittee. Also, it is not permissible to allow abutting property owners to occupy highway right-of-way with their site improvements if there are reasonable alternatives regardless whether it benefits the public in a manner other than safety or construction, reconstruction or maintenance of the roadway.

A proposal for encroachments (including pipes and end treatments) must document that the two conditions cited above are satisfied. If this justification is not included with the permit application, promptly return the application to the Applicant as incomplete.

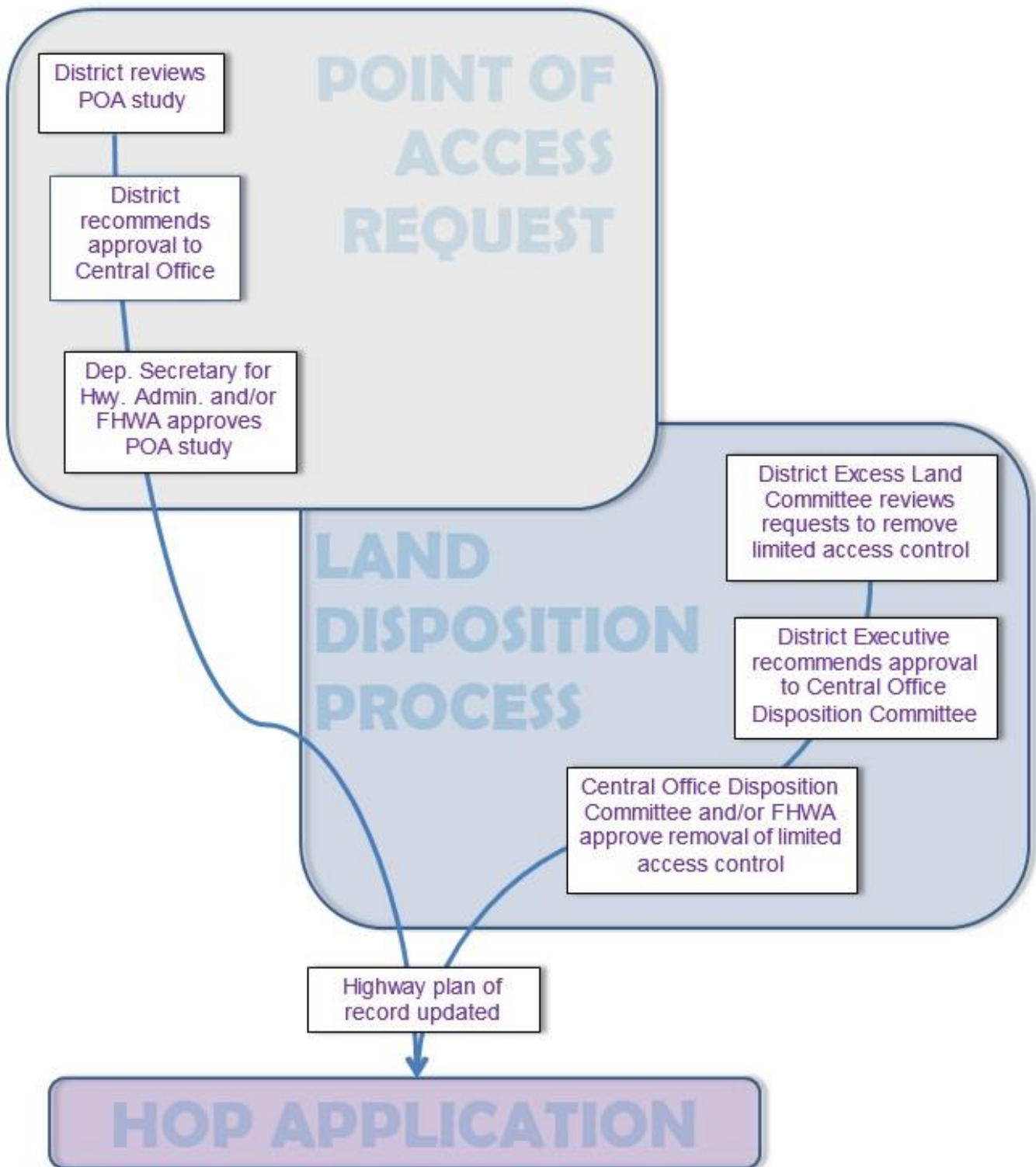
An application for a drainage facility not altering or connected to a PennDOT drainage facility that proposes to occupy limited access right-of-way must be consistent with the Design Manual, Part 5, as specified in Pa Code, Title 67, Chapter 459.

HOPs involving permanent work on the Interstate System requires review and approval by FHWA.

National Environmental Policy Act (NEPA) clearance must be obtained in accordance with Federal regulations (23 CFR, Chapter 1, Part 771) involving permanent work on the Interstate System (except utility crossings). The NEPA document would be prepared by the Applicant and submitted to PennDOT and FHWA, if applicable, for review and approval. For activities that would qualify as a Level 1 Categorical Exclusion, NEPA clearance would be obtained from PennDOT prior to FHWA's review of the HOP application. For activities that would qualify as a Level 1 Categorical Exclusion, NEPA clearance would be obtained from PennDOT prior to FHWA's review of the HOP application. For activities that would qualify as a Level 2 Categorical Exclusion, Environmental Assessment or Environmental Impact Statement, the document would be provided to both PennDOT and FHWA for review and approval. Refer to PennDOT Design Manual 1B (Publication 10B) in Chapter 3 for guidance on the preparation of documentation required under NEPA.

HOPs for temporary occupancy of limited access right-of-way (Interstate and non-Interstate) may be approved by PennDOT.

This flowchart outlines the relationship of Point of Access Studies, Land Disposition Process, and HOP Application:



Work Zone Traffic Control for maintenance when a supplement to a driveway HOP is not required

A work zone traffic control (WZTC) plan may be required in accordance with Publication 213 for maintenance operations conducted in the right of way. The permanent WZTC plan is submitted with the driveway HOP application when required by the District.

Traffic Control Plan

Under 441.3(f) and 459.3(f), a Traffic Control Plan must be submitted when:

1. Work is performed on a limited access highway.
2. It is necessary to close a portion of a travel lane during darkness when work is not in active progress.
3. Work will require closing a highway as defined in Chapter 441 and 459 (e.g., traffic detour).
4. Required for other special circumstances.

Special circumstances which may require a Traffic Control Plan include:

1. When a figure from Publication 213 will not or cannot apply to the proposed operation.
2. Applications from facility owners who are not in the business of providing utility service are required to submit a detailed Traffic Control Plan under 459.3(b)(2)(ii).
3. When a closed lane will also be used to store material (459.8(f)) or equipment (459.7(6)).
4. If it is anticipated that a potential hazard or interference to vehicular or pedestrian traffic will result from performance of the work (441.3(f)(2)).

Applicants need to submit applicable figures from Publication 213 with a permit application to provide the Permittee's work crew direct access to the traffic control requirements.

Requirements for a Traffic Control Plan are in 212.403, 441.3(f)(3), 459.3(f)(4), and Publication 213, *Temporary Traffic Control Guidelines*.

On Permits where a reference to a figure is approved, HOP Condition Code #369 may be used. On Permits where a copy of a figure is attached to the Permit, HOP Condition Code #372 may be used.

Note: The Pennsylvania State Police (PSP) do not provide assistance to private entities, including utilities to establish rolling roadblocks required by a Permit. There are approved Pennsylvania Typical Applications (PATA) in Publication 213 without the use of PSP.

Where complex Traffic Control Plans are submitted or where requests to detour traffic are submitted, the Traffic Control Plan will be forwarded to the District Traffic Unit for review.

Requests to use municipal roads as part of a detour route must be accompanied by a letter from the affected municipality approving the use of local roads and must acknowledge that the municipality will hold PennDOT harmless for any damage incurred by such use.

HOP projects determined to be “Significant Projects”, as defined in PennDOT Publication 46, may require the development and implementation of a Traffic Management Plan (TMP), consistent with the above-mentioned publication.

2.4 – DRIVEWAY HOP PLAN REQUIREMENTS

Driveway Classification

Driveway classification is determined from anticipated access ADT for the property, as defined in 441.1 (i.e., one vehicle = two trips = ADT of two):

Minimum Use = less than or equal to 50 ADT Low Volume = 51 to 1500 ADT

Medium Volume = 1501 to 3000 ADT High Volume = 3001 ADT and higher

Local Road = three or more properties served, Pub. 70 design criteria

Driveway Classification Determinations

The Institute of Transportation Engineers' (ITE) publication entitled "Trip Generation" is used nationwide and by PennDOT, applicants and consultants to determine the number of trips generated by specific types and sizes of land uses. This publication contains information on numerous types of facilities and information is continually added to this publication to address new types of land use. If an Applicant's claimed driveway classification is not supported by ITE standards (e.g., if access for an ice cream store is identified as Minimum Use), and the Applicant is unwilling to modify or provide further support for its application, forward the application to the District Traffic Unit to resolve the matter. Past experience and local data will also be considered, as appropriate.

441.8(g)(2) – Parking areas

Authorizing and prohibiting parking along the highway in connection with an access/driveway is an important element of design requiring careful consideration of its impact on safety and operational efficiency of the highway.

While PennDOT may prohibit or authorize parking along property frontage boundaries as a Permit condition, other parking restrictions along State highways are normally imposed by local ordinance.

Normally, PennDOT defers to municipalities whether to adopt an ordinance to enforce parking restrictions.

The Vehicle Code Section 6109(a) grants PennDOT, and local authorities within their boundaries, authority to impose parking restrictions on State highways. Section 6109(e) requires local authorities to conduct a traffic study in accordance with PennDOT regulations prior to adopting parking restrictions by ordinance.

Section 6109(d) grants PennDOT the right to require its approval of the study before the parking restrictions can be imposed. Districts may decide if parking restrictions are appropriate after a municipality rejects or tables a property owner's request to accommodate an HOP application. Likewise, nothing in the Vehicle code requires PennDOT to place or allow such restrictions to facilitate an HOP application. The District Executive may choose to defer to the municipality's decision to reject or table an Applicant's request. PennDOT's decision could find further support in correspondence from the municipality stating the reasons for its decision.

441.6(10) – Restoration – Guiderail

At the end of the workday, disturbed traffic control devices and guiderail systems must be replaced. Also, appropriate end treatments must be installed on guiderail systems where existing guiderail was removed to gain access. See Permit Condition Codes #330 and #331.

441.8 (j) – Auxiliary Lanes

Pavement widening is often necessary to accommodate auxiliary lanes. When this occurs, through-travel lanes must transition from old to new pavement. The longitudinal joint created between the old and new pavement crosses the through-travel lane at an angle and can cause driver confusion. To eliminate this potential hazard, the District Permit Manager should consider requiring, as a Permit Condition, a full width overlay covering both old and new lanes consistent with Publication 408, 401.3(k). Pavement markings will also need to be reinstalled.

Minimum Use Driveways

PennDOT Form M-950A may be used for a Minimum Use Driveway submission. A properly completed Form M-950A is acceptable as both an application and plan. Applicants for Minimum Use Driveways are strongly encouraged to apply through EPS to reduce application processing time.

Access Plans (Other Than Minimum Use Driveways)

441.3(i) lists minimum plan requirements for Low, Medium and High Volume driveways. An explanation of each plan requirement follows, and is arranged by reference to the respective paragraphs in 441.3(i).

1. In addition to illustrating highway features such as pavement, right-of-way and medians, plans are to be dimensioned (e.g., widths and lengths where practical). Show existing, proposed and relocated utilities. Show highway appurtenances such as stop signs, speed limit signs, guiderail and existing highway drainage structures.
2. Show and reference existing and proposed buildings (including outside dimensions). Label proposed use of building (e.g., a bank, service station, or office building).
3. Use arrows to denote traffic circulation. Show parking stalls to help identify internal traffic patterns and to verify that parking is not permitted in highway right-of-way (441.6(17)(ii)). For drive-in-service developments, request information listed in 441.8(f)(3). Also show disability parking spaces and signs.
4. Show design features for existing and proposed driveways, depressed curbs and dimensions, acceleration and deceleration lanes including lengths, widths, radii and tapers.
 - a. More than one width dimension may be required if driveway contains tapers and/or medians.
 - b. Radii must extend a full quadrant (i.e., 90 degrees) not just a segment.
 - c. Grades may be either a profile or labeled with a percent of grade (e.g., one inch per foot slope is approximately an 8% grade).
 - d. Driveways must be constructed at 90 degrees to centerline whenever feasible (441.8(b)(1)). The proposed driveway angle must be labeled (e.g., 90 degrees, 45 degrees, 87 degrees).

- e. Traffic island lengths, widths, distances from centerline, radii, and radius from centerline or left turn lane must be shown.
 - f. Typical section sketch or table must show depths of wearing course, binder, base course, and subbase material in flexible pavement; and depth of concrete subbase, and depth of overlays if existing slab is overlaid, in rigid pavement.
 - g. Plan must identify exact locations where all traffic signs, signals, markings, etc. will be placed.
 - h. Plan must show location and design for ADA compliant curb ramps. Refer to Design Manual, Part 2 ,Chapter 6 and 7.
5. Show distances from each existing and proposed driveway consistent with 441.3 (*plans for other than minimum use driveways – paragraph (5)*):
- (i) A single statement is satisfactory for this location requirement (e.g., Wayne St. 450 feet).
 - (ii) Same as 5 (i).
 - (iii) These features must be shown on plan.
 - (iv) Attach a complete property plat showing all property lines.
 - (v) All buildings and appurtenances (e.g., overhangs, canopies, and covered walkway) must be shown.
6. Sight distances in each direction must be shown for each access point.
7. The application requires total property ADT to be shown but the plan must show ADT expected for each driveway.
8. Include general permit and maintenance and protection of traffic (MPT) notes on the plans. See Appendix C2 of this manual for standard notes and desired format.
9. Provide a scale for the drawing. It is recommended that plan view sheets be 1" = 25'.

All plans for driveway HOPs that include related roadway improvements such as turn lanes, traffic signal installations, etc. must be compliant with Publication 14M (Design Manual, Part 3).

Additional plans and documents such as a Municipal preliminary or final subdivision plan, Traffic Control Plan, Drainage Impact

Coordination between Municipalities and PennDOT

PennDOT's rules do not necessarily supersede a municipal decision to not allow access to a State highway. However, municipal decisions related to access must be based on traffic safety, not other issues.

Commonwealth Court has reviewed PennDOT's regulations and enabling law and held that the regulations do not preempt local land use ordinances and restrictive covenants, stating: "a landowner seeking access to a state highway must be given permission for this access by both governmental entities." The court also pointed out that 67 Pa. Code §441.6(2)(i)(F) recognizes that the Department's highway access permits are subject to ordinances enacted by local municipalities which may contain more stringent minimum safety requirements. (36 P.S. §670-420 and 67 Pa. Code §§441.2, 441.3(j), 441.6(2)(i)(F)) see: *Ice v. Cross Roads Borough*, 694 A.2d 401 (Pa. Cmwlth. 1997), appeal denied, 702 A.2d 1062 (Pa. 1997).

Authority under the MPC

Municipalities have statutory authority under the Municipalities Planning Code to require improvements to abutting State highways in the land development process. Section 503 of the MPC, 53 P.S. §10503(2) (Contents of Subdivision and Land Development Ordinance) authorizes municipal governments to regulate and coordinate the widths and grades of streets bordering a subdivision or land development. The term 'street' is defined broadly under the MPC to include State highways and free-ways. 53 P.S. §10107 (Definitions). Approval of a land development may be conditioned upon the construction, dedication or payment of onsite improvements. 53 P.S. §10503-A(b) (Grant of Power).

'Onsite improvements' are defined to include improvements constructed on property abutting the land development applicant's property necessary for the ingress and egress to the applicant's property, and required to be constructed by municipal ordinance. 53 P.S. §10502-A *Definitions*.

Report (a.k.a. Drainage Control Report), Transportation Impact Study, Transportation Impact Assessment, Erosion and Sedimentation Control Plan, NPDES Permit or Traffic Signal Plan may be required as determined by Chapter 441 or the District Permit Office. Traffic signal plans must comply with Publication 149M, Traffic Signal Design Handbook.

Review by Local Agencies

441.3(j) provides for local agencies to review driveway applications within their jurisdictions. The list is maintained in EPS under the local government portal page, and an agency must be registered in EPS to be on the list.

Each submission of an application for a driveway within one of these jurisdictions must be accompanied by evidence (e.g., dated letter or signed and dated plan) which indicates that the location and type of access being requested has been submitted for review by that agency.

Where an affected municipality has requested in writing a desire to review a particular application, the Applicant will also be required to furnish evidence that the access proposal has been submitted to that municipality for review.

PennDOT will consider any comments or recommendations resulting from that review prior to making a final decision on the driveway permit application.

EPS includes a "Local Government Partner" (LGP) role to enhance lines of communication among PennDOT, permit Applicants, and local agencies. Using the LGP Portal, local agencies who require documentation can provide contact information directly to Applicants in the system. EPS also allows for local agencies to receive e-mail notifications when driveway permit applications located within their jurisdictions are received or responded to by PennDOT.

Linking Sound Land Use Planning and the HOP Process

Please refer to the Land Use and Transportation Planning page on the PennDOT website at:

<http://www.penndot.gov/ProjectAndPrograms/Planning/Pages/Land-Use-and-Transportation-Planning.aspx#.VuOC6PD8y8> for web links and additional guidance and information on this important topic.

Amendments to the Pennsylvania Municipalities Planning Code (MPC) through Acts 67 & 68 of 2000 require Commonwealth agencies, including PennDOT to *consider* local land use planning in reviewing funding and permitting applications. Sections 619.2 and 1105 of the MPC state the conditions for Commonwealth agencies to *consider and rely upon* local comprehensive plans and zoning in the review of these applications. The Land Use Questionnaire (Form M-950 MPC) asks six land use related questions of the HOP Applicant. As specified in the MPC, where general consistency exists among certain local planning documents, PennDOT *has the authority to consider land use and to rely upon such* in the approval or denial of the application.

Generally, the changes to the MPC grant State agencies *authority to consider and rely upon* local comprehensive plans and zoning ordinances when reviewing funding or permitting or infrastructure. This means that PennDOT has authority to link HOP issuance and denial determinations to conflicts between proposed off-site highway improvements under the HOP application and the local comprehensive plan and zoning ordinances. This linkage may be accomplished through consideration of the metropolitan planning organization's and PennDOT's Transportation Improvement Plan for the region, as well as existing transportation infrastructure concerns based upon inconsistencies between the land use proposed by the HOP Applicant and the local comprehensive plan and zoning scheme.

Form M-950 MPC must be submitted for *Low, Medium and High Volume Driveway applications*. This action allows PennDOT to meet the statutory requirement "*to consider*" land use issues as part of the driveway application review process, where applicable. Form M-950 MPC accurately reflects the MPC requirements.

District Permit Managers are encouraged to use the MPC authority to approve or deny applications based on zoning considerations when appropriate. District Permit Managers should consult with the municipality when appropriate and will notify the municipality as required if Form M-950 MPC identifies a zoning conflict.

Engineering District Process

1. If a zoning conflict is identified on Form M-950 MPC, the MPC Form must be promptly completed and forwarded to Central Office (Program Center, with copies to the Office of Chief Counsel, Permits Section staff and Central Permit Office) for

Traffic Signals Permitted to Municipality

PennDOT regulations require that the permit to own and operate a power operated traffic control device shall be requested by and issued to only the appropriate municipality.

Although inter-related, a driveway HOP and a traffic signal permit are two separate items. The HOP application must be submitted in the name of the property owner seeking a driveway controlled by a traffic signal, accompanied by an engineering study, signal plans and phasing and timing diagrams. 67 Pa. Code §441.8(o)(2)(ii).

The above mentioned accompanying documents are also all components of the traffic signal permit application. The engineering study is a prerequisite to Department approval to erect a traffic control device under the Vehicle Code. 75 P. S. §6109 (e). Although supporting plans and the engineering study for the traffic signal must accompany the separate driveway HOP application, the traffic signal permit must be requested by the municipality. 67 Pa. Code §441.8(o).

evaluation, along with a copy of the HOP application (without attachments) and Form M-950 MPC (with attachments). Alternatively, the form can be added as an attachment in EPS and distributed as needed.

2. Identify known facts on the MPC Form or on attachments thereto.
3. Identify the District's opinion/recommendation (i.e., approve, return for correction, deny) on what action is appropriate, including reason(s) therefore.

Access Management – A Core Function of the HOP Process

Districts should coordinate with internal and external planning and programming partners to implement effective access management and permitting strategies along critical State highway corridors.

The Transportation Research Board engages transportation professionals worldwide in a broad range of interdisciplinary, multimodal activities to lay the foundation for innovative transportation solutions. According to its website, the TRB's mission is to promote innovation and progress in transportation through research. TRB facilitates the sharing of information on transportation practice and policy by researchers and practitioners; stimulates research and offers research management services that promote technical excellence; provides expert advice on transportation policy and programs; and disseminates research results broadly and encourages their implementation.

Access Management, according to the Transportation Research Board's (TRB) *Access Management Manual*,

"...is the systematic control of the location, spacing, design, and operation of driveways, median openings, interchanges, and street connections to a roadway. It also involves roadway design applications, such as median treatments and auxiliary lanes, and the appropriate spacing of traffic signals.

The purpose of access management is to provide vehicular access to land development in a manner that preserves the safety and efficiency of the transportation system.

...

Access Management programs seek to limit and consolidate access along major roadways, while promoting a supporting street system and unified access and circulation systems for development."

The TRB *Access Management Manual* identifies 10 principles of access management:

- **Provide a specialized roadway system** – it is important to design and manage roadways according to the primary functions that they are expected to serve;
- **Limit direct access to major roadways** – roadways that serve higher volumes of regional through traffic need more access control to preserve their traffic function;
- **Promote intersection hierarchy** – an efficient transportation network provides appropriate transitions from one classification of roadway to another;
- **Locate signals to favor through movements** – long, uniform spacing of intersections and

signals on major roadways enhances the ability to coordinate signals and ensure continuous movement of traffic at the desired speed;

- **Preserve the functional area of intersections and interchanges** – *the functional area is where motorists are responding to the intersection, decelerating, and maneuvering into the appropriate lane to stop or complete a turn;*
- **Limit the number of conflict points** – *drivers make more mistakes and are more likely to have collisions when they are presented with the complex driving situations created by numerous conflicts. Traffic conflicts occur when the paths of vehicles intersect and may involve merging, diverging, stopping, weaving or crossing movements;*
- **Separate conflict areas** – *drivers need sufficient time to address one potential set of conflicts before facing another;*
- **Remove turning vehicles from through-traffic lanes** – *turning lanes allow drivers to decelerate gradually out of the through lane and wait in a protected area for an opportunity to complete a turn, thereby reducing the severity and duration of conflict between turning vehicles and through traffic;*
- **Use non-traversable medians to manage left-turn movements** – *they minimize left turns or reduce driver workload and can be especially effective in improving roadway safety; and*
- **Provide a supporting street and circulation system** – *a supporting network of local and collector streets accommodate development, and unify property access and circulation systems.*

Access management is difficult to accomplish through access permitting or roadway improvements alone. A successful access management program also involves careful attention to access issues when land use and development decisions are made.

Chapter 441 and Access Management

Chapter 441 has traditionally included access design principles that are now also included as access management principles. For example, Transportation Impact Study reviews of major traffic generators ensure optimal access design, 441.7(c) relating to specific location restrictions, 441.8(c) relating to driveways adjacent to intersections, 441.8(e) relating to multiple driveways, 441.8(h) relating to sight distance, 441.8(j) relating to auxiliary lanes, 441.8(l) relating to driveways relative to ramps, and 441.8(m) relating to median openings all include criteria important to safe and operationally sound highway access.

441.6(2)(i)(F) currently stipulates that all work authorized by the permit shall be subject to ordinances enacted by local municipalities which contain more stringent minimum safety requirements than this chapter (i.e., Chapter 441). Thus, if a municipality enacts an *ordinance* which contains a *safety* requirement which is more stringent than Chapter 441 (e.g. driveway spacing), the Permittee must comply with PennDOT's permit and the local safety ordinance and (unless a waiver/modification is granted) Chapter 441.

Some local agencies have developed ordinances to apply access management principles. PennDOT has developed a handbook to help Pennsylvania's local governments better understand access management and guide them in the development and implementation of an access management program for their community. The handbook is titled "Access Management Model Ordinances for

Pennsylvania Municipalities Handbook” (PennDOT Publication 574), and is available at:

http://www.dot.state.pa.us/public/PubsForms/Publications/PUB_574.pdf

Access Management ordinances often categorize highways by their functional classes. The Federal Functional System classifies highways as follows (PennDOT Maintenance Functional Class (MFC) is also shown):

Functional Classifications

Interstate System. The Interstate system consists of all presently designated freeway routes meeting the Interstate geometric and construction standards for future traffic. The Interstate System is the highest classification of arterial roads and streets and provides the highest level of mobility, at the highest speed, for a long uninterrupted distance. (MFC “A”)

Description	Rural	Urban	Fed Aid	MFC
Interstate	01	11	Yes	A
Other Freeways and Expressways	N/A	12	Yes	B
Other Principal Arterial	02	14	Yes	B
Minor Arterial	06	16	Yes	C
Major Collector	07	17	Yes	D
Minor Collector	08	N/A	No	D
Local	09	19	No	E

Other Arterials. These consist of limited-access freeways, multi-lane highways, and other important highways supplementing the Interstate System that connect as directly as practicable, the Nation’s principal urbanized areas, cities, and industrial centers; serve the national defense; and connect at suitable border points with routes of continental importance. (MFC “B” and “C”)

Collectors. The collectors provide both land access service and traffic circulation within residential neighborhoods, commercial and industrial areas, and downtown city centers. Collectors connect local roads and streets with arterials and provide less mobility than arterials at lower speeds and for a shorter distance. (MFC “D”)

Local roads. The local roads and streets provide a high level of access to abutting land but limited mobility. (MFC “E”)

By law and regulation, access is strictly controlled on the Interstate System, freeways, and other limited- access highways in Pennsylvania, whereas access, subject to permitting, is expected onto free-access State highways classified as “Local” (consistent with regulation 441). Access management ordinances administered by various Local Agencies are not often identical to statewide Chapter 441 driveway access permit regulations administered by PennDOT, particularly in regards to access to non-limited access highways classified as “Arterials” and “Collectors”.

2.5 – DRIVEWAY HOP DESIGN REQUIREMENTS

HOP project plans and construction, must comply with all PennDOT design requirements, standards and criteria, including but not limited to, Design Manual, Part 2 where the design values are consistent with specific regulatory requirements in Chapter 441.

Driveway Geometric Requirements

Driveways are the physical interface between a site and the abutting roadway. Therefore, it is essential that access connections be designed to ensure safe ingress and egress for the development and to minimize adverse impacts on the roadway.

Various interrelated geometric factors act together as a vehicle turns into or out of a driveway. A successful design should conform to the path of a turning vehicle, allowing the vehicle to avoid encroaching on other lanes or impeding the upstream flow of through traffic on the state road. The information included in this section was derived from the TRB *Access Management Manual*.

Throat Width and Return Radii

Throat width and return radius are interdependent. Where a radius is less than the minimum inside turning radius of a vehicle, drivers are displaced to the left in the driveway throat when completing the entry maneuver. A depressed curb design requires a wider throat for an entry maneuver than a return radius design. The trajectories of right-turning vehicles are less dispersed when a long curb return radius is used. Thus, a narrower throat width can be used on driveway connections that have larger radii.

Selection of a design type (depressed curb, return radius) and dimensions must be evaluated to design and construct the safest and most efficient access onto the State highway. Numerous combinations of throat width and return radius provide equivalent operations.

Driveway Throat Length

The driveway throat length is defined as the distance from the outer edge of the traveled way of the intersecting roadway to the first point along the driveway at which there are conflicting vehicular traffic movements.

Driveway throat length is important for safe and efficient traffic operations on the site and the abutting roadway. The driveway throat needs to be of sufficient length so that vehicles may enter, exit, or circulate on the site without interfering with each other or with through traffic on the abutting highway.

Inadequate throat length produces a complex pattern of closely spaced conflicts. This results in high collision potential and low capacity. Throat length and cross section are interrelated; the wider the cross section, the longer the exit throat length. This is because weaving becomes more complex and requires more length as the number of exit lanes increases.

Different sources have established different approaches to establishing minimum throat lengths. As a general rule, at least 50 feet of throat length should be provided for non-minimum use driveways, while 200 feet or more may be necessary to accommodate traffic associated with larger commercial developments.

Driveway Profiles

For significant grade changes, vertical curves are used to provide a transition between changes in grade. When the elevation of the site is below the roadway elevation, a crest vertical curve (where the high point is above the top of the curb) can be used to keep storm water from flowing onto an abutting property.

Islands

Various types of islands, including medians in the roadway at the intersection with the driveway, and medians or islands in the driveway itself, are sometimes incorporated into driveway designs. Benefits of channelization include: separating conflicting movements; controlling the angle of conflict; reducing excessive pavement area; regulating traffic; providing pedestrian refuge/protection; and providing for protection and storage of turning and crossing vehicles.

A restrictive median in the roadway should be utilized when there is a need to restrict movements into or out of a driveway to enhance safety and operations. In cases where left turns into a site are prohibited, alternative means of site access, such as a downstream signal, should be provided.

Restrictive medians or channelization islands in driveways may be appropriate when: the driveway has two or more entrance and/or exit lanes; the driveway operates as a right-in/right-out; the driveway serves a high volume of traffic; or the driveway will be signalized. When medians are installed in driveways, they must meet length and width criteria as defined by the AASHTO Green Book.

Channelization islands and medians should be sufficiently large to command attention, but not excessively so. For additional guidance on island size and designation, refer to PennDOT Publication 13M and AASHTO's *Policy on Geometric Design of Highways and Streets*.

Other Design Considerations

In urbanized settings, bicyclists and pedestrians should be given more consideration during the design process. Although adding width to a driveway may enhance traffic operations, it also increases the distance across a driveway that pedestrians and bicyclists must cross.

Wide-open, undefined driveways, such as those often seen at older gas stations, are particularly unfriendly to bicyclists and pedestrians. Because of the lack of lane definition, vehicles enter and leave such sites in random positions and are more likely to cross paths. Such designs should be avoided.

Particular land uses or situations, such as central business districts, farms, fields, or industrial parks, may require deviations from standard requirements to accommodate the types of traffic accessing sites. Refer to the driveway design illustrations below for examples of these types of driveways.

Special consideration should be given to driveways which will be constructed in the area of a roundabout. Driveways should not interfere with the operation of the roundabout, although in general, driveways may be closer to a roundabout (relative to conventional intersections) because of shorter queuing.

Driveway Design Tables and Illustrations

The following tables and figures illustrate and supplement the minimum design requirements described in Chapter 441. Although site conditions may not allow strict adherence to the dimensions shown in these illustrations, every effort must be made to design and construct the safest and most efficient access onto the State highway. These tables are intended as policy guidance, not regulatory requirement, for the geometric design of driveways.

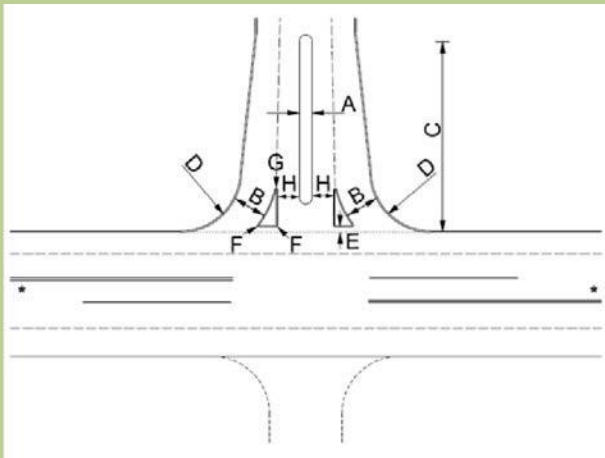
High Volume Driveways

A typical high volume driveway will provide access to multi-use commercial developments, urban activity centers, large office complexes, or large industrial sites with consistent traffic volumes during hours of operation. Most high volume driveways require the use of a traffic signal to control traffic movements between the state road and the driveway.

These driveways should be designed as a street intersection. Typically separate left- and right-turn lanes will be required depending on turn lane warrants. Radii and distances provided in the diagram below are recommended values and design vehicle turning movements should be used to verify their applicability. Americans with Disabilities Act (ADA) compliance is required.

The first internal access point should be located as far away from the driveway's intersection with the State road as possible.

Design Details



Letter	Measurement
A	10' Recommended, 4' Min
B	23'
C	150' Min
D	50' Radius
E	4' Min
F	3' Radius
G	2' Radius
H	19' Min

*Can be raised concrete median or striped left-turn lanes

Typical Installations



State Road with Dedicated Left Turn Lane



State Road with Concrete Mountable Median

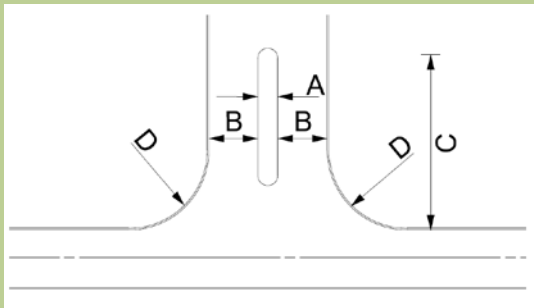
Medium Volume Driveways

A typical medium volume driveway will provide access to commercial developments of moderate size similar to community shopping centers, medium-sized office complexes, public schools, assemblies of worship, and parking lots for employees or transit. Most medium volume driveways require turning lanes on the state road to help remove the traffic from interfering with the through movements.

These driveways should use curb radius design, and allow for ingress and egress at one location or provide ingress at one location and egress at another location. Should the latter be the case, proper signage is required. Radii and distances provided in the diagram below are recommended values and design vehicle turning movements should be used to verify their applicability. Americans with Disabilities Act (ADA) compliance is required.

Letter	Measurement
A	10' Recommended, 4' Min
B	14' Min, 28' Max
C	120' Desirable
D	Cars/Single Unit Trucks: 15' Min Buses/Combination Trucks: 45' Min (<45 MPH) 50' Min (≥45 MPH)
E	10' Min

Design Details



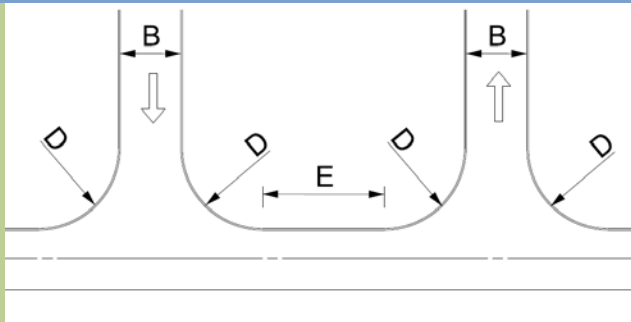
Typical Installations



Single Point of Access



Multiple Points of Access

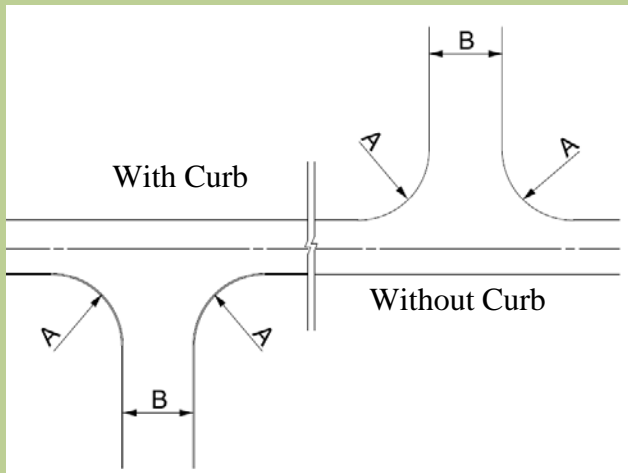


Low Volume Driveways

A typical low volume driveway will provide access to small offices or single entity retail that has occasional driveway use during hours of operation. Some small and medium sized apartment complexes also fit into this category.

A curb radius design is preferred for this type of driveway. Radii and distances provided in the diagram below are recommended values and design vehicle turning movements should be used to verify their applicability. Providing curbs with aprons is also considered an acceptable design. Americans with Disabilities Act (ADA) compliance is required.

Design Details



Typical Installations



Driveway Without Curb



Driveway With Curb

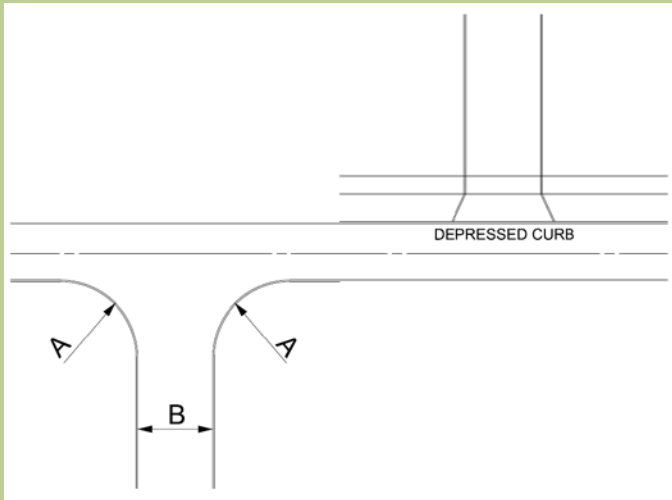
Letter	Single Unit Trucks & Passenger Cars				Buses & Combination Trucks			
	<45 MPH		≥45 MPH		<45 MPH		≥45 MPH	
	Min	Max	Min	Max	Min	Max	Min	Max
A	10'R	15'R	15'R	25'R	35'R	50'R	45'R	55'R
B (One Way)	10'	20'	12'	20'	12'	20'	12'	20'
B (Two Way)	20'	24'	20'	24'	22'	24'	22'	24'

Minimum Use Driveways

A typical minimum use driveway will provide access to an individual single-family home or a duplex home. Certain other low use driveways may apply, and not all rural residential driveways may apply to this category.

Either a curb radius design or a flare/taper design is acceptable for this driveway design. Radii and distances provided in the diagram below are recommended values and design vehicle turning movements should be used to verify their applicability. Americans with Disabilities Act (ADA) compliance is required. Driveway design should also conform to RC-67M.

Design Details



Typical Installations



Driveway Without Curb



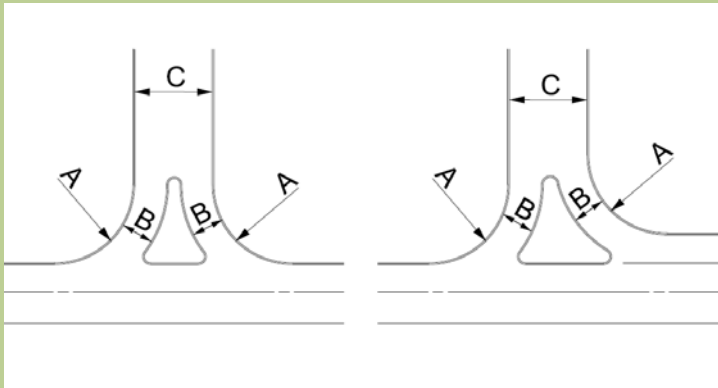
Letter	Single Unit Trucks & Passenger Cars				Buses & Combination Trucks			
	<45 MPH		≥45 MPH		<45 MPH		≥45 MPH	
	Min	Max	Min	Max	Min	Max	Min	Max
A	5'R	15'R	10'R	25'R	35'R	50'R	40'R	55'R
B	10'	20'	10'	20'	12'	15'	12'	20'

Restricted Access Driveways

A restricted access driveway may be used in concert with another full-access driveway to provide traffic relief, or when a driveway is to be placed in a location that does not meet certain geometric or sight distance requirements for full access or faces certain obstacles (located within turning bays, median separated, etc.). These driveways are typically designed to prohibit left turns entering the driveway and/or left turns exiting the driveway.

A curb radius design is preferred for this type of driveway. The islands should be designed in a manner to prohibit the disallowed turning movements. Radii and distances provided in the diagram below are recommended values and design vehicle turning movements should be used to verify their applicability. Any restrictions must also be accompanied with the appropriate signage. Americans with Disabilities Act (ADA) compliance is required.

Design Details



Typical Installations



Left turns entering and exiting restricted

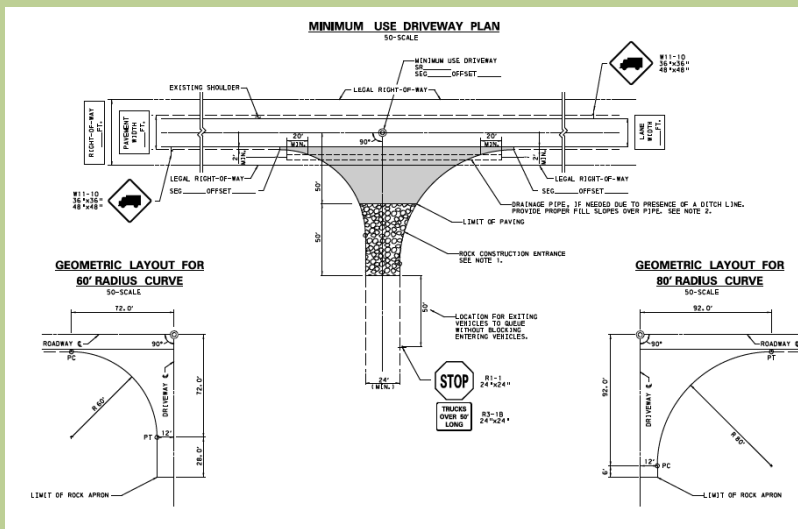


Letter	Measurement
A	Cars/Single Unit Trucks: 15' Min Buses/Combination Trucks: 45' Min (<45 MPH) 50' Min (≥45 MPH)
B	12' Min, 18' Max
C	22' Min, 28' Max

Special Situation Driveways

Driveways located in Central Business Districts, providing access to farms, ranches, or fields, driveways for unconventional oil and gas operations, emergency access, or part of certain industrial developments may require special design criteria. Americans with Disabilities Act (ADA) compliance is required.

In the event that the throat length is not able to be provided on a driveway and wider radii are required for vehicle turning movements, consideration should be given to providing rumble strips outside the designate travel lanes to alert drivers that they are not driving where design. Refer to PennDOT RC- 22M and RC-24M for the installation details.



Refer to Appendix C4 for more information on Unconventional Oil and Gas Operations Driveway Detail



2.6 – ADDITIONAL DRIVEWAY APPLICATION REQUIREMENTS

In addition to a properly completed application, certain circumstances may require the submission of additional forms or information, as discussed below.

Applications Requiring a Transportation Impact Study or Assessment

441.8(a)(1) requires that all driveways be designed to accommodate the amount and type of traffic they will serve considering the type and character of roadway the driveway will access. 441.3(k) authorizes PennDOT to make such investigations and require such additional information from Applicants as it deems necessary.

Refer to *Policies and Procedures for Transportation Impact Studies Related to Highway Occupancy Permits* in Appendix A of this manual.

The final Transportation Impact Study report should be submitted to the involved municipality and PennDOT for review. Transportation Impact Study reports which do not contain essential information or which were not done consistent with PennDOT guidelines will be returned to the developer for correction and resubmission.

Applications Requiring an Access Covenant (Form M-946)

The Access Covenant is an access management planning tool for State highways. The Access Covenant restricts access to the currently approved locations if the property is later subdivided or if the land is sold to another person.

An Applicant should be asked to execute an Access Covenant when it is determined that at a future date a property may be subdivided, resulting in an unacceptable number or location(s) of driveway(s), consistent with 441.6(16).

Subdivision is a local land use procedure adopted by a municipality through its Subdivision and Land Development Ordinance in accordance with the Pa. Municipalities Planning Code.

The decision to require an Access Covenant should consider and be consistent with municipal zoning, local access management and local safety-based permitting ordinances.

Once imposed on land as a condition of Permit issuance, the Department is no longer required to consider additional or redesigned access to a property. However, the Department may consider and grant future access to the land and newly subdivided tracts on a discretionary basis, consistent with efficient operation and maintenance of the highway(s) being accessed, and local ordinances and zoning. The removal or modification of an existing access covenant should be discussed with OCC by the District prior to any approvals, and an updated Access Covenant should be prepared and recorded to reflect the changes.

Examples include:

1. Where future development may add additional roads and streets. Evidence of this may include when the land development plan shows dedications or other areas to be developed in the future under an amended plan.
2. Where future development may change cul-de-sacs to through streets.
3. Where the developer may subdivide and sell "out parcels" which would generate requests for additional driveways.

The Access Covenant must be executed and recorded before a Permit is issued. Instructions for completing this form are in Chapter 9 of this manual.

Driveways for Unconventional Oil & Gas Development Drilling and Fracking Operations

Driveways constructed for drilling and fracking operations have unique characteristics. These driveways may generate large volumes of truck traffic for several weeks and then dissipate to volumes in PennDOT's minimum use driveway range. As such, driveways constructed for the purpose of drilling and fracking operations only shall be classified as minimum use driveways but must be designed to accommodate the type and volume of traffic generated by these operations. When identifying new well sites, Applicants are strongly encouraged to consider transportation logistics early in the process. At a minimum, Applicants should consider roadway infrastructure and traffic, mitigating traffic impacts on surrounding communities, site access, and staging equipment, materials and vehicles during operations, especially when actively drilling and fracking.

If the proposed driveway is located on a posted state route, the Permittee shall notify the District Posted and Bonded Roads Coordinator and provide copies of any application submissions and the issued Highway Occupancy Permit.

PennDOT's standard driveway design for driveways used to support drilling and fracking operations safely accommodates the traffic generated and insures turning vehicles do not conflict with other public traffic at the driveway entrance. The standard driveway design template is located in Appendix C4 of this manual. The design is based on specific criteria:

- The site is used exclusively for unconventional oil and gas well drilling/fracking operations. Any other uses, such as impoundment sites, will need to be evaluated independently.
- The design vehicle is a 48' trailer/tanker (WB-62) used for hauling water or sand.
- The driveway accommodates full movements in all directions for the design vehicle.
- Truck turning overlaps are permitted on the driveway approach (if appropriately controlled). Conflicts from truck turning overlaps on PennDOT's right-of-way are strictly prohibited.

In addition to other required documentation as part of a submission, the standard design template shall be attached to the HOP application. Not all well sites will require a driveway design that incorporates these design criteria. For example, a well site which has water piped to the well and smaller trucks are used to transport the sand or a well site where trucks will not make right turns out of the site may not require construction based on the standard design. In these cases it may be appropriate to submit a modified driveway design with the application. Applicants should note that

modified design submissions must include justification for the modification and documentation of the ability of the driveway to accommodate the drilling and fracking traffic without creating a safety issue or traffic conflict on the State highway.

Note that all Permittees must comply with all other applicable Pennsylvania and Federal Laws, Rules, and regulations pursuant to 441.6(2)) including those governing State and Federal environmental approvals and permits. As a reminder, the following condition may be added to the HOP:

The Permittee must comply with all applicable Pennsylvania and Federal Laws, Rules, and Regulations pursuant to 67 Pa. Code §441.6(2)) including environmental approvals and permits prior to beginning hauling operations related to unconventional oil and gas development.

Impacts on Sensitive or Unique Property

The following process applies to HOP applications submitted to PennDOT in accordance with Title 67 Chapter 441 of the Pennsylvania Code, in regards to access and occupancy of State highways by driveways and local roads, in accordance with the Memorandum of Understanding between PennDOT and the Pennsylvania Historical and Museum Commission (PHMC), see Appendix E2.

The Applicant and/or PennDOT shall determine whether the permitted work will include construction of an auxiliary lane or other widening of the improved area or whether additional right-of-way will be required by PennDOT. If so, the Applicant must submit information to PHMC for its review. The submittal should specifically identify the proposed access location and provide the PHMC a United States Geological Survey (USGS) 7.5 minute topographic quadrangle map specifically identifying the property as well as copies of plans of both proposed and existing conditions. The cover letter should include narrative that describes the project in detail. The PHMC will provide a written response to the Applicant within 15 calendar days of this initial notification and copy the appropriate PennDOT district.

If an existing archaeological site or a location having high potential for an archaeological site will be affected by the project's area of ground disturbance, an archaeological survey may be required of the Applicant. If a site is located in the area of ground disturbance, additional requirements may include a significance evaluation of the site and avoidance, minimization or mitigation efforts if the site proves significant in terms of National Register criteria. If a historic building, site, structure or district will be affected, and the effect is adverse, additional consultation will be necessary to avoid, minimize or mitigate that effect. The PHMC will respond within 30 day time frames to all of the Applicant's submittals beyond the initial notification. PennDOT will be copied on all correspondence and invited to participate in any consultation to resolve adverse effects.

Access Approval Procedures – Impacts to Access of Neighboring Owners

Background

There are two specific regulations which require PennDOT to recognize the access rights of neighboring owners when reviewing an application:

1. If an auxiliary lane must be located in front of property of another person the Applicant must secure the approval of the other person or indemnify the Commonwealth against any action the other person may bring against the Commonwealth. 67 Pa. Code §441.8(j)(5). An auxiliary lane is defined as either acceleration or deceleration lanes, or left turn stand by lanes, including center left turn lanes. 67 Pa. Code §441.8(j). Transition areas are not considered an auxiliary lane for purposes of this regulation; that is, approval or indemnification is required under this regulation only where any portion of the full width of the lane is located in front of the other person's property.
2. A Permittee is responsible to pay all fees, costs and expenses incident to or arising from the permit work, including the cost of related highway improvements which increased traffic necessitates. 67 Pa. Code §441.6(4)(i). The Commonwealth Court has determined that this regulation allows PennDOT to require an Applicant to construct improvements to preserve the access rights of those owners impacted by permit work. *Popple v. Department of Transportation*, 575 A.2d 973 (Pa. Cmwlth. 1990). Examples of such a restriction requiring correction would include where installation of a median barrier, new signalization or the taper at the end or beginning of an auxiliary lane limits turning movements from a pre-existing driveway.

These regulations and the constitutional right of access held by property owners are the basis of PennDOT's policy, when reviewing an application, to balance the rights of an Applicant and those of property owners whose access will be impacted by permit work. The procedures set forth below, which may require an engineering study of alternative access options or an appraisal or loss assessment of impacts on the value of affected property, provide that balance. PennDOT may not automatically accept indemnification when the access rights of another are implicated.

The access rights of landowners abutting public highways are twofold: a right to ingress and egress on and off the highway and a reasonable right to connect to the public road system. PennDOT is liable for damages if it unreasonably interferes with these property rights. Liability in condemnation is more readily recognized for direct impacts to the ability to get on and off the highway than indirect impacts to the landowner's connection to the road system. That is, circuity of travel, in some cases, may be determined to be unreasonable.

The situations that fall within the procedure are categorized as follows:

1. Existing driveways (whether they have a permit or not) that are impacted by permit work, but need not be reconstructed or have turning movements restricted. For example, an auxiliary lane will be located at the driveway or there is an impact other than reconstruction or a turning movement restriction due to permit work not involving an auxiliary lane.
2. An auxiliary lane will be located along property frontage at which there is no existing driveway;
and
3. Existing driveways (whether they have a permit or not) that must be reconstructed or have turning movements restricted due to permit work. A reconstruction is where the driveway must be physically reconfigured, modified, relocated or removed. A turning movement restriction is where there is a loss of turning movement due to permit work.

The Applicant in the first two situations can address the neighboring owner's access by obtaining either an approval letter, or a signature on the HOP plan signifying approval. In the third category, however, the Applicant will first be required to ask the impacted landowner to obtain a permit for the

reconstructed/restricted driveway. Except for this difference the procedure applicable to the three situations is the same.

These procedures do not apply when additional land is required, either permanently or temporarily, from the neighboring landowner. The rights of the neighboring owner are dealt with in the acquisition process in those situations. Nor do the procedures apply to frontage without an existing driveway unless an auxiliary lane is being located along the frontage. In this situation the neighboring landowner has not yet exercised their right of access; therefore, only the very specific auxiliary lane regulation is applicable.

Approval Procedures

1. Identify impacted properties.

The Applicant must identify in its initial submission of the HOP plans all properties within the limits of the permit work that may be impacted using Form M 950R1, a worksheet for identifying impacted properties. This will include all properties along which an auxiliary lane would be located as well as those properties whose existing driveways would be: (1) reconfigured, modified, relocated or removed, or (2) operationally affected by the permitted work (e.g., loss of turning movement, limited to right in right out, median limitations, traffic signal proximity limitations, etc.).

2. PennDOT review of impacted properties.

The District, upon receipt of the HOP plans and Form M-950 R1, must review and approve the initial determination of the Applicant as to impacted properties. This may result in the addition or deletion of properties to be considered.

3. Obtain approval letters or applications for HOPs; document contacts.

The Applicant must attempt to obtain the required approvals or have the property owner submit an HOP application (M-945A or M-950A), as appropriate, from the affected property owner(s). If an affected property owner refuses to apply for a permit or supplement if there is an existing permit for the driveway, the Applicant must seek to obtain an approval letter or plan signature from the property owner. In all cases, written and personal contacts with affected property owner(s) must be documented if subsequently needed to justify the approval of action other than obtaining a new application or approval. Alternatives proposed by the affected property owner(s) should also be documented.

4. Provide engineering study of alternatives and contact information if necessary.

If an approval (letter, plan signature, or HOP application submission as applicable) cannot be obtained from an affected property owner, the Applicant must explore remedies to mitigate the adverse impact on the property through the design process at his/her own expense. This may lead to reasonable mitigation alternatives or a conclusion that such measures are unreasonable from a design or economic standpoint.

The engineering study of alternatives (or mitigation plan) is intended to assist PennDOT in determining the reasonableness of the Applicant's attempt to provide an engineering solution to the access impact on the third party. It must contain sufficient detail to document the impact of the permit work on the property and identify possible design alternatives or other mitigation for the impact. Alternatives proposed by the affected property owner must be considered. One of three conclusions must ultimately be recommended:

- a. The design has been modified such that there is no longer any impact on the initially affected property;
- b. The design has been modified through reasonable and prudent engineering alternatives to mitigate but not eliminate the impacts on the property; or
- c. Justification is provided that no mitigation is feasible from an engineering or economic standpoint. The study should include or have attached to it documentation of the contacts with affected property owners. The study should be a standalone document sealed by an engineer.

5. PennDOT review of engineering study and contact documentation.

PennDOT must review the engineering study and contact documentation to determine whether the recommendations are acceptable. The reasonableness and availability of an engineering solution must be evaluated on a case by case basis.

- a. No impact due to design changes.
If the design has been altered to eliminate any impact on the initially affected property PennDOT must determine if the new design is acceptable. If so, the Applicant should be requested to inform the property owner of the design change. No further action must be taken by the Applicant in this situation.
- b. Mitigation alternatives proposed.
Proposed mitigation alternatives must be both reasonable and constructible. The intent is to ensure the affected property will ultimately be provided safe and reasonable access. If accepted as such by PennDOT the Applicant must share the design changes with the affected property owners in a new attempt to obtain approval. An example that may be considered reasonable and constructible but will not completely eliminate the impact of the property would be if the Applicant proposes a median along a property frontage that restricts an existing full-access driveway to a right-in/right-out only driveway, the Applicant may propose a secondary full-access driveway onto a side street that abuts the impacted property.
- c. No mitigation feasible; loss assessment.
A conclusion that no mitigation is feasible must be adequately justified. To accept such a recommendation PennDOT must agree that the documentation and evidence submitted by the Applicant proves there is no reasonable and prudent engineering design alternative available to reduce or eliminate the adverse impact to the affected property. If the recommendation is accepted PennDOT must then determine whether the impact may result in an unconstitutional deprivation of access to the affected property.

The District right-of-way unit should be consulted to assess whether the impact on the affected property may give rise to a condemnation claim for unreasonable interference with access, i.e. may be unconstitutional. This review should consider that direct interference with ingress and egress is considered more substantial under the law than circuitry of travel impacts and that the work will be performed by a private property owner, albeit within public right-of-way. For instance, a proposed left turn lane for low volume driveway in front of a minimum use driveway along low ADT rural collector could have minimal impact on the operational effect on existing driveways and therefore be reasonable. But a proposed median barrier adjacent to a signal for a new high volume driveway, converting an existing medium volume retail store full movement access to right-in/right-out only access, would be a significant impact and may therefore be an unreasonable interference with access.

If a determination is made that the interference with access is not unreasonable, the District should request the Applicant to execute the M-950 IA Indemnification Access. Refer to Chapter 3 (Indemnification) for guidance on completing the M950 IA. If the interference is determined to be potentially unreasonable, PennDOT should request the Applicant to perform a loss assessment or appraisal.

In no event should an engineering solution to remedy a third party owner's property be imposed on an Applicant that would render the Applicant's property valueless for its intended use, impose an unreasonable economic burden, or result in an unconstitutional deprivation of access. For example, where the cost of the engineering solution alone exceeds the anticipated post development fair market value of the property, it could be unreasonable to impose the cost of remediation on the Applicant because this result could be unconstitutionally confiscatory. On the other hand, an increase in construction or engineering expense alone will not justify accepting indemnification rather than requiring an approval on a purely economic rationale.

Where there are no feasible engineering alternatives to a situation in which another's driveway must be relocated or removed or property acquired from the landowner, indemnification is not an option. Condemnation is an option if the municipality will agree to do so in accordance with a right-of-way delegation plan approved and executed by PennDOT. If the affected property owner has threatened legal action against PennDOT and/or the Applicant as a result of PennDOT's determination to authorize condemnation by the municipality, PennDOT may also condition issuance of the permit on provision of appropriate security in the form of a letter of credit, cash, bond or other security acceptable to PennDOT.

6. Provide loss assessment or appraisal of impact, if necessary.

When the District Permit Office determines that a loss assessment or appraisal of the impacts on value is required, the District Permit Manager will consult the Central Permit Office for a final determination. If an assessment or appraisal is required, the Applicant must submit the assessment or appraisal to the District Permit Office for review prior to making an offer to the property owner. Any loss assessment or appraisal prepared by or for an affected property owner should also be provided to PennDOT for review. Although PennDOT need not approve loss assessments or appraisals submitted to it the results of reviews will be considered in determining whether the Applicant and affected property owner have acted reasonably.

7. Share alternative plan or compensation offer with impacted owners.

Where a mitigation recommendation in an engineering study or a loss assessment or appraisal has been accepted by PennDOT the Applicant must again seek to obtain an approval from the affected property owner. Again, written and personal contacts with affected property owners must be documented if subsequently needed to justify the property owner should be documented.

8. PennDOT review of contact documentation.

If approval is not obtained the Applicant must present all contact documentation for review by the District. If the District determines that reasonable mitigation and/or offers of compensation have been unreasonably rejected by the affected property owner then the District should request the Applicant to execute the M-950 IA Indemnification unless the interference with access is unreasonable. The District may require that the reasonable mitigation be implemented even if the property owner does not provide approval.

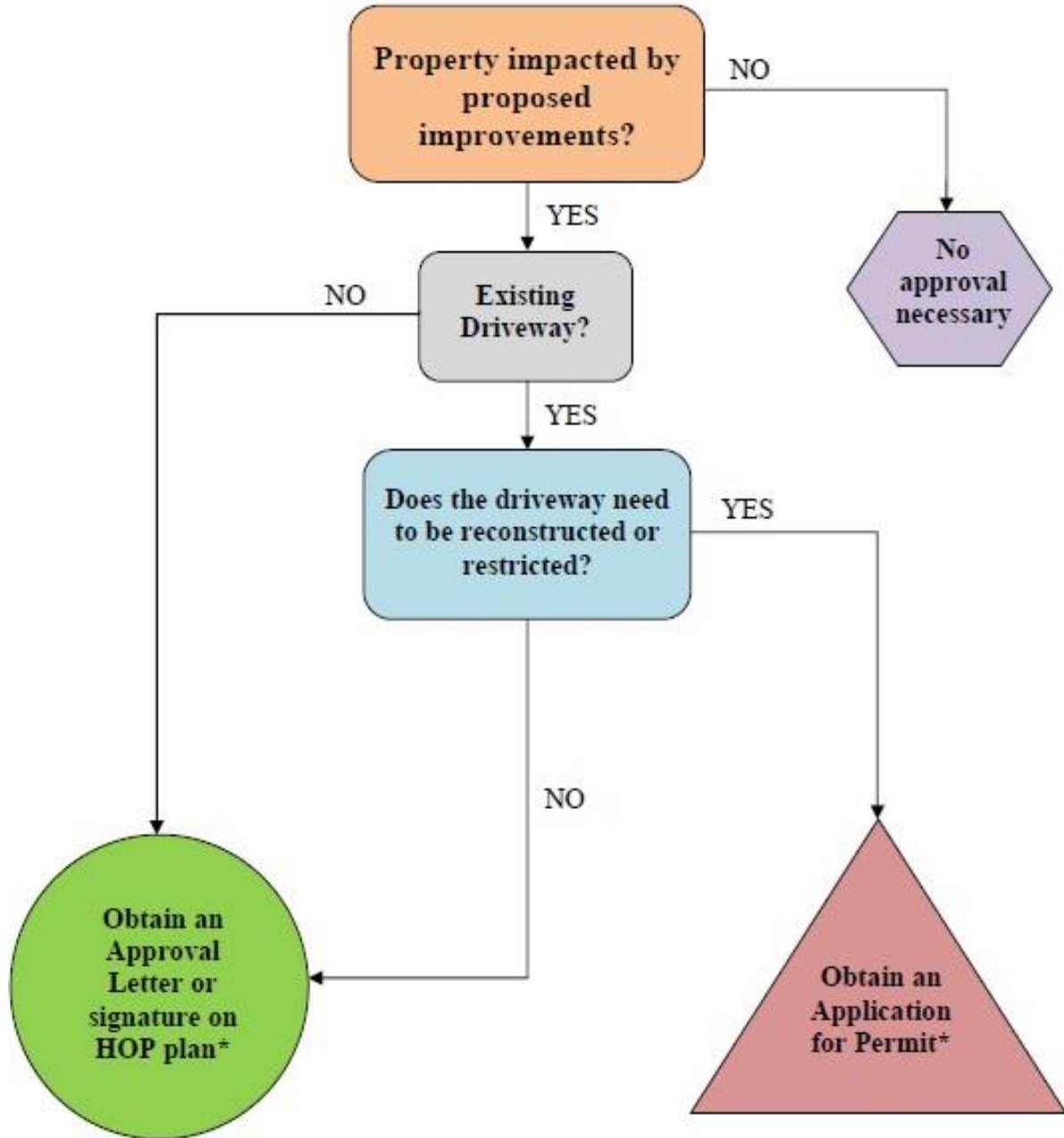
If the interference with access is determined unreasonable by PennDOT or entry onto the land of the property owner is required, condemnation is an option if the municipality will agree to do so in accordance with a right-of-way delegation plan approved and executed by PennDOT. If the affected property owner has threatened legal action against PennDOT and/or the Applicant as a result of PennDOT's determination to authorize condemnation by the municipality, PennDOT may also condition issuance of the permit on provision of appropriate security in the form of a letter of credit, cash, bond or other security acceptable to PennDOT.

The application should be denied if: 1) the permit work requires entry onto land of another that has or will not be acquired by condemnation or otherwise; 2) the permit work requires the relocation or removal of another's driveway and his access rights have not or will not be acquired by condemnation or otherwise; 3) the interference with access is determined constitutionally unreasonable and his access rights have not or will not be acquired by condemnation or otherwise; 4) the efforts of the Applicant to obtain approval and to provide mitigation or compensate an affected property owner are determined not to have been reasonable; or 5) the Applicant refuses to execute the M950 IA Indemnification.

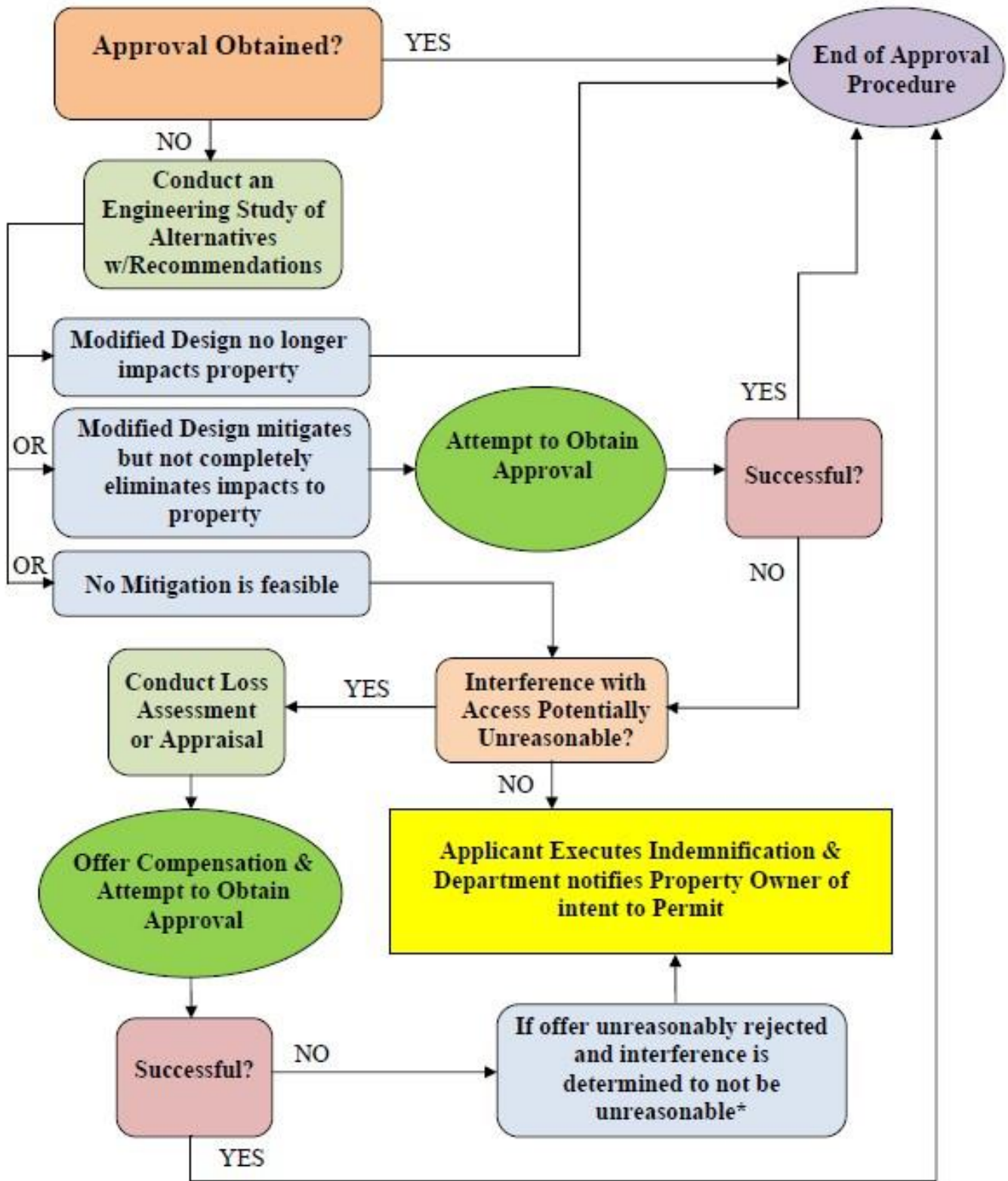
9. PennDOT notice to impacted landowners.

If the District determines that the Applicant has proposed reasonable mitigation and/or compensation which is unreasonably rejected by the affected property owner, written notice of its intention to issue the permit should be sent to the property owner prior to issuance of the permit. If the affected property owner's driveway is permitted, the letter to the property owner should include notice of the procedure to seek intervention in the permit process and/or to object to issuance of the permit. 1 Pa. Code sect. 35.23-27, Protests and Intervention. If the affected driveway owner has been granted intervention, the District should provide 15 calendar days advance written notice of its intention to issue the permit.

FLOW CHART FOR APPROVAL PROCEDURES – IMPACTS TO ACCESS OF NEIGHBORING OWNERS



*If unsuccessful at obtaining an Approval Letter, signature on HOP Plan or Application, continue to next page.



* If interference is unreasonable, refer to Section 8 of the text under Approval Procedures.

Drainage Control Plan/Drainage Impact Report

A Drainage control plan (for other than Minimum Use Driveway) is required under 441.3(g) in order (1) to enable the appropriate review agencies to identify the potential impact of proposed site development, and (2) to determine if existing drainage facilities are adequate or if new or additional facilities will be required.

Not all developments will have a significant enough impact to require a Drainage control plan. The use of reasonable engineering judgment is necessary in making this determination. PennDOT should notify the Applicant to submit a Drainage control plan when any of the following conditions are anticipated:

1. If it can be reasonably anticipated that there will be an increase in the flow of water onto the highway right-of-way or into PennDOT drainage facilities. This would include drainage that initially flows away from the highway but may affect the highway downstream.
2. The proposed site development may cause an increase in flow rate or flow velocity of water onto another owner's property (as a result of action authorized by the Permit), either abutting the site development or across the highway.
3. In an area of known drainage or flooding problems.

If it has been determined that a Drainage control plan is required for a proposed site development, it is the responsibility of the Applicant to ensure the report is developed consistent with PennDOT guidelines.

Drainage control plan/Drainage Impact Report guidelines can be found in Appendix B1 of this manual.

Design Manual, Part 2 and Publication 584 "PennDOT Drainage Manual" hydrologic and hydraulic criteria must be used if the Applicant is designing for PennDOT drainage facilities, such as storm pipes or culverts. However, other recognized methods (such as the U.S. Soil Conservation Service method) are acceptable for designing other storm water management facilities, such as detention basins.

A Drainage control plan/ Drainage Impact Report must be prepared under the supervision of a registered professional engineer (licensed by the Pennsylvania State Registration Board for Professional Engineers), except as noted below:

1. Registered Landscape Architects (registered by the State's Board of Landscape Architects) cannot be excluded from preparing and submitting Drainage Impact Reports and storm water management plans under their own seal if they are approved to do so by the Bureau of Professional and Occupational Affairs.
2. Professional Land Surveyors cannot be excluded from preparing and submitting Drainage Impact Reports and accompanying plans under their own seal if they are approved to do so by the Bureau of Professional and Occupational Affairs.
3. Other persons authorized by law.

When PennDOT approves a Drainage Control plan/Drainage Impact Report that contains any of the following, the Permit must be recorded prior to issuance:

1. Where the Permittee will construct and/or maintain drainage facilities.
2. Permits authorizing drainage to connect to existing State drainage facilities of any type (e.g., pipe, ditch, inlet, outlet).
3. Permits containing Drainage Releases (Form M-947) under 441.6(16).

Applications Requiring a Drainage Release (Form M-947)

Under Subsection 441.3(h), an Applicant is required to submit a Drainage Release (Form M-947) – for other than a Minimum Use driveway – if it can reasonably be anticipated that there will be an increase in the flow rate or flow velocity of water onto another property as a result of action authorized by the Permit.

A Drainage Release will be required if a Drainage Impact Report confirms that an increase in flow rate or flow velocity will be generated onto another property.

If the affected property owner(s) will not execute a release, alternative solutions are to use the Indemnification (Forms M-950 ID & M-950 IC) or to request the Applicant design for a zero increase in flow. This can usually be accomplished by detention or retention of the proposed increase in flow.

When a Drainage Release is executed, both the Permit and the Drainage Release must be recorded. Instructions for completing Form M-947 are in Chapter 9.

Access Security

Section 420 of the State Highway Law (36 P.S. § 670-420) authorizes PennDOT to condition issuance of driveway and local road highway occupancy permits on the posting of appropriate security. The State Highway Law does not impose a two-year limit on security for other than "surface openings". However, the duration of all permit security should be two years after PennDOT's acknowledgment of completion of highway occupancy permit work unless special circumstances dictate otherwise. Security amounts must be based on PennDOT's anticipated cost to complete construction or to modify unpermitted construction. Such costs may include anticipated inspection costs, inflation, and attorney's fees.

Following are guidelines for determining when to consider security on an access permit:

1. Work involving inspection on a more than spot inspection basis. See 67 Pa. Code §441.4(d).
2. Work involving auxiliary lanes (e.g., acceleration, deceleration, left turn standby) or additional thru- lanes.
3. Substantial work requiring an agreement. See 67 Pa. Code §441.5(f).
4. Substantial work requiring a Highway Occupancy Permit condition statement.
5. Work involving a situation which requires extreme care as determined by PennDOT (e.g., work involving a design waiver).

Note: Do not require security on minimum use driveways without the prior approval of the BOMO Director.

Acceptable forms of security for access permits are:

1. Irrevocable Letter of Credit (Form M-950L): A letter of credit is required absent compelling reasons. Compelling reasons include, but are not limited to the following:
 - a. Prior permit work history with the Permittee - If a Permittee has a substantially proven track record of being reliable in completing their HOP obligations on projects of similar size and scope.
 - b. Size and scope of the project - If the project is larger than normal or affects a major section of the highway and therefore has significant costs.
 - c. Impact of the offsite improvements - If it can be determined that the proposed offsite improvements, if not completed by Permittee, pose low risk to the safety of the traveling public if not addressed immediately.
 - d. A pre-existing blanket bond - If the Applicant/Permittee currently has a blanket bond enough to fulfill the cost of the proposed construction improvements.

Only the District Executive or his designee will make the determination on whether to accept another form of security. Letters of credit are required because they are a safer and easier form of security in that PennDOT may go directly to the bank, present the letter of credit, and collect the funds without going through an insurance company or initiating a legal action. A letter of credit may be issued by either a Pennsylvania or a non-Pennsylvania bank. Districts may not require a letter of credit be issued or confirmed by a Pennsylvania bank.

Issuing banks may not change the language of Form M-950L; however, they may retype the form on their own letterhead and they may rearrange the wording. The Office of Chief Counsel should be consulted on proposed changes to Form M-950L.

The letter of credit (Form M-950 L) may be provided by a third party who is not the permit Applicant or the property owner if permit work and regulatory requirements during the permitted construction period and damage, restoration, and maintenance for two years after completion of the work will be secured.

2. Individual or "blanket" Bond: Use of Form M-950K or M-950KI is required when a bond is acceptable security. The form may not be changed, and PennDOT must be the obligee under the bond. The minimum amount required for a blanket bond is \$500,000. All blanket bonds must be pre-approved by Central Office Permits.
3. Escrow Agreement: There is no standard form required because escrow agreements are drafted on a case-by-case basis. If a Permittee proposes, and the District allows, an escrow agreement, advance arrangements must be made to allow sufficient time for the proposed escrow agreement to be drafted, executed, and approved as to legality and form (when the Commonwealth is a party to, and executes, the agreement) by the Office of Chief Counsel, the Comptroller, the Office of General Counsel, and the Office of Attorney General. Approximately six weeks is necessary for approval as to form and legality.

The regulations specify that security (when required) be obtained as a prerequisite to issuance of the HOP. PennDOT may, upon written request demonstrating good cause, allow security to be submitted after issuance of the HOP, provided the security is received at least 30 calendar days prior to the start of work. See HOP Condition Code #315.

Applicants who submit proposed *substitute security* (e.g., escrow) should be advised that work under the HOP cannot begin until their security is approved as to form and legality by OCC.

Security is not normally necessary for PA State Agencies or Federal Agencies because the risk to PennDOT is lower.

If security is contemplated for a municipally-initiated driveway or local road permit being issued to that Municipality (e.g. traffic signal project, intersection improvement project), PennDOT will waive the security requirement so long as the municipality already has other acceptable security in place. To ensure work is secured, the following condition (Condition Code #314) will be placed on the permit:

”THE MUNICIPALITY WILL OBTAIN SECURITY ADEQUATE TO ENSURE COMPLETION OF THE PERMITTED WORK PRIOR TO THE START OF WORK IN PENNDOT RIGHT-OF-WAY CONSISTENT WITH 36 P.S. §670-420 AND 67 PA CODE §441.6 DAMAGE TO HIGHWAY.”

If desired, District staff may submit letters of credit or individual bonds for review to the Office of Chief Counsel Permit Programs Attorney and copy CPO: however, such review is not required unless there are changes to standard language.

District staff should not refer Applicants to CPO or OCC concerning the status of applications or security documents for at least two weeks after initial review request submission.

The best means of assuring a timely and favorable review by CPO and/or OCC is for both the Applicant and the District Office to ensure all documents are complete and accurate prior to submission.

Insurance for Access Construction

If insurance is required under Chapter 441, the amount of insurance shall be at least \$250,000 per person and at least \$1,000,000 per occurrence (Minimum Use Driveway Permittees may be authorized to carry lesser amounts). Insurance policies shall include coverage for public liability and property damage.

When determined that evidence of insurance is required Under Chapter 441, a copy of the property owner’s Certificate of Insurance must be submitted. An ACORD approved form naming PennDOT as additional insured is preferred for a Certificate of Insurance. Other forms will be considered and submitted to CPO and Office of Chief Counsel on a case by case basis.

If written notice to cancel insurance is delivered to PennDOT, no further work may be performed under the Permit unless a new Certificate of Insurance is received and approved prior to the cancellation date, and no time-extension Supplement will be issued until a new certificate is filed.

The Permittee must provide evidence of insurance (if applicable) to PennDOT when seeking a time extension supplement. PennDOT must verify the expiration date on individual insurance policies when issuing a time-extension Supplement. See Chapter 4.

Right-of-Way Procedures for HOP Applicants

1. Background

HOP Applicants are often required to provide State highway right-of-way to PennDOT in connection with obtaining a permit. The Engineering Districts should address right-of-way and related issues and procedures early in the HOP process, utilizing the scoping meeting approach, if appropriate. It is important to complete these transactions correctly to ensure PennDOT's new property interest is properly documented for the future.

Utilize appropriate resources within each District to accomplish these transactions, including, but not limited to, the right-of-way, utilities, plans, and bridge units as appropriate. The Office of Chief Counsel will assist with legal issues but is not a right-of-way acquisition unit.

Obtaining necessary right-of-way is the responsibility of the permit Applicant. PennDOT will not acquire right-of-way for an Applicant. However, local municipalities are authorized to acquire right-of-way for an Applicant amicably or by condemnation, as discussed below.

Following are some of the important right-of-way related issues in the permit process:

- a. Acquisition procedures for HOP projects involving private, local, state or federal funding;
- b. Determination of the type and amount of right-of-way required;
- c. Right-of-way plan requirements;
- d. Deed forms and approval;
- e. Title documentation;
- f. Plot plans and deed descriptions;
- g. Other conveyance and recording procedures;
- h. Condemnation by a municipal entity;
- i. Title searches and title insurance/certification;
- j. Utility relocation or elimination issues;
- k. Environmental issues.

An outline of the procedures explained below is included in Appendix C3 of this manual.

2. Application of procedures and general requirements

These procedures apply to the acquisition of highway right-of-way by an Applicant as part of a permit project. They apply only as appropriate where the project involves the use of Federal highway funds in any phase of the project; where the project involves the use of State highway

funds in any phase of the project; or where a local government may condemn land for State highway right-of-way in connection with the permit project.

The following procedures apply in the various types of projects mentioned; the last one being the most common on permit projects:

- a. Project involving the use of Federal highway funds in any phase of the project.

All acquisitions by local government agencies or private persons must conform to the Uniform Real Property Acquisition and Relocation Assistance Policies Act of 1970, as amended, and the regulations promulgated thereunder. 42 USC §4601 et seq., and 49 CFR Part 24 (“the Uniform Act”).

If the agency or person undertaking the project has the power of eminent domain, all requirements of the Uniform Act apply. Among other general requirements, negotiations must be held based upon an approved appraisal. 49 CFR §24.102. The [Local Project Delivery Manual](#) (Publication 740 – Chapter 5 Right-of-Way) is a good publication explaining the necessary procedures.

If the agency or person undertaking the project does not have the power of eminent domain, the general requirements of the Uniform Act do not apply. However, a written offer to purchase must be made advising the landowner that the agency or person does not have or will not exercise the power of eminent domain if negotiations fail and what the agency or person believes to be the fair market value of the property. 49 CFR §24.101(a)(2).

- b. Projects involving the use of State highway funds in any phase of the project.

All acquisitions by local government agencies or private persons that have the power of eminent domain and intend to exercise it if necessary must conform to PennDOT’s Right-of-Way Manual (Publication 378). These procedures are generally consistent with the Uniform Act requirements. [Local Project Delivery Manual](#) (Publication 740 – Chapter 5 Right-of-Way) is a good publication explaining the necessary procedures.

If the agency or person undertaking the project does not have the power of eminent domain or does not plan to exercise it for the project in question, the Right-of-Way Manual procedures need not be followed. However, a written offer to purchase must be made advising the landowner that the agency or person does not have or will not exercise the power of eminent domain if negotiations fail and what the agency or person believes to be the fair market value of the property.

- c. Projects not involving the use of Federal or State highway funds where a local government may condemn land for State highway right-of-way.

All acquisitions by local government agencies or private persons authorized by PennDOT to acquire land for a highway project must conform to PennDOT’s Right-of-Way Manual (Publication 378). These procedures are generally consistent with the Federal Uniform Act requirements. The [Local Project Delivery Manual](#) (Publication 740 – Chapter 5 Right-of-Way) is

a good publication explaining the necessary procedures.

- d. Projects not involving the use of Federal or State highway funds or the possible condemnation of highway right-of-way.

Acquisitions need not conform to the Federal Uniform Act or PennDOT Right-of-Way Manual (Publication 378) provided the landowner is informed in writing prior to the start of negotiations that although the land may eventually become part of a State highway, PennDOT is only involved because of its authority to issue highway occupancy permits for driveways onto State highways and entities with condemning authority will not exercise the power of eminent domain in the event negotiations fail.

- e. All projects.

The Applicant must also follow the procedures set forth below.

3. When is right-of-way required and what type of interest should be required?

Whenever a proposed highway facility, highway drainage structure or other highway related structure falls outside of the existing legal right-of-way, new right-of-way will be required. The nature and interest PennDOT should require the Applicant to acquire is set out in the Design Manual, Part 3 (Publication 14M). See specifically DM-3, Chapter 3, Section 3.1.EE (HOP Plans) and generally DM- 3, Chapter 3, Section 3.1 (Interest to be Acquired).

The general policy is to have the Permittee include all State highway features within required right-of-way and to have the right-of-way acquired in fee simple. If appropriate, right-of-way can be acquired as an easement for highway purposes. A highway easement may be appropriate where the municipality will require the Applicant to subdivide if fee simple title is acquired. The acquisition of traffic signal easements on behalf of the municipality is also permitted on HOP projects, if the municipality has agreed to accept the easement and to apply for a signal permit (DM-3, 3.1.Y). Slope easements, drainage easements and other lesser property interests may be acquired by a Permittee in contravention of the general policy to acquire required right-of-way when approved by the District Executive based on special circumstances.

Special circumstances meriting acquisition of interests other than fee right-of-way would include but not be limited to slope easements in commercial areas where a fee take would adversely impact parking and drainage easements for ditches other than parallel ditches. Other considerations would be impacts to the remainder, possible environmental issues, open space and setback requirements of a municipality, and minor cuts and fills that will not jeopardize the integrity of the road. The District Executive should make these determinations with the advice of their supporting units based on the administrative risks.

If land has been previously dedicated to public use but not accepted, PennDOT may be able to accept that dedication as part of the HOP acquisition process. In other situations the dedication would need to be accepted by the local government and transferred to PennDOT. The appropriate approach depends on the nature of the previous dedication. PennDOT will only accept dedications of areas required to maintain the State highway system. A complete discussion of this topic is set

forth in the Right-of-Way Manual, Appendix C, Article 10 (Dedications and Ordainments). As discussed below, PennDOT does not accept dedication deeds as part of the HOP acquisition process.

4. Right-of-Way Plans

A right-of-way plan, in PennDOT approved design format, is required for every HOP application where right-of-way will be conveyed to PennDOT. This serves several purposes, including documentation of the highway right-of-way for future use by PennDOT and others and a means to ensure that appropriate right-of-way is acquired for the HOP project. The right-of-way plan will generally be drafted by the consulting engineer/surveyor after the HOP construction plan is approved. As such, it is one of the last plan approval steps in the HOP process.

In accordance with DM-3, Chapter 3, Section 3.0.H (HOP Plans), there are three types of plans related to the highway occupancy permit process: drawings depicting right-of-way to be deeded to PennDOT; drawings authorizing acquisition by local governments; and drawings accepting dedications. These plans must conform to the requirements of this Chapter and be reviewed at the District level by the appropriate Central Office Field Liaison Engineer. The District permit and right-of-way units should also review the plans.

- a. *Drawings Depicting Right-of-way to Be Deeded to PennDOT.* The most common HOP-related plan is that developed to document right-of-way deeded to PennDOT as part of the HOP process. These deed plans do not transfer title. The Permittee must transfer title to PennDOT by deed. The deed plan only documents the State highway right-of-way for future reference.

Deed plans must be filed with the District plans unit and forwarded to the Bureau of Project Delivery, Plans and Reproduction, for appropriate filing. Deed plans must also be recorded at the appropriate county courthouse to document the highway right-of-way.

- b. *Plans Authorizing a Local Government to Acquire Land for a State Highway.* This type of plan is also sometimes required in the HOP process. Local authorization plans also do not transfer title. They only authorize the local government to acquire interests in land for a State highway and document the State highway right-of-way for future reference.

Local authorization plans must be filed with the District plans unit and forwarded to the Bureau of Project Delivery, Plans and Reproduction, for appropriate filing. Local authorization plans must also be recorded at the appropriate county courthouse to document the highway right-of-way. The plan may not be recorded until approved by PennDOT, but must be recorded prior to condemnation by the local government under the plan.

- c. *Plans Accepting the Dedication of Right-of-way.* This type of plan is available in the HOP process, but is typically not appropriate. The best practice is to have the land deeded to PennDOT and documented with a plan depicting right-of-way to be deeded to PennDOT.

A deed and deed plan should always be used for land owned by the Permittee. For land owned by a neighboring owner, but previously dedicated to public use for a State highway, the best practice is to have the local government accept the dedication and then deed it to PennDOT. Whether the land is being deeded by a private Permittee or a local government, the normal

permit deed (either fee simple or easement for highway purposes) should be used, not a deed of dedication.

The acceptance of dedication plan may only be used if the offer of dedication is general or to the Commonwealth. It may not be used if the dedication is to the local government or, even if general, the local government has already accepted the dedication. Use of this plan is not encouraged. The deed process should be used if at all possible.

If the acceptance of dedication plan is used, it must be filed with the District plans unit and forwarded to the Bureau of Project Delivery, Plans and Reproduction, for appropriate execution by the Secretary and then filing. The acceptance of dedication plan must also be recorded at the appropriate county courthouse because it is evidence of an actual title transfer. Designation of the dedication on the subdivision or land development plan is the offer of dedication and execution of the plan by PennDOT is acceptance of the dedication; there is no need for a separate deed of dedication.

- d. *General Guidance.* These special highway occupancy permit plans may not be used for other functions. For example, PennDOT may not designate areas to be vacated or abandoned on them or attempt to authorize acquisition by PennDOT through them. Separate procedures must be used for these purposes. By the same token, a regular title sheet authorizing PennDOT to acquire property may not be used for plans reflecting land to be deeded to PennDOT during the HOP process or authorizing another government entity to condemn for a State highway.

Where the majority of the HOP construction is within existing right-of-way, only a few properties are involved and the areas to be acquired are minor, the right-of-way plan can be a simple, one or two page plan that need not depict related proposed highway construction features. See DM-3, Chapter 3, Section 3.0.G (Simplified Right-of-Way Plans).

HOP right-of-way plans must contain an approval block for the Secretary of Transportation to approve the plan for himself and the Governor, as well as a District Executive approval and recording block. Appropriate personnel, such as the District Plans Engineer, District Chief of Surveys, District Permit Manager and/or District Right-of-Way Administrator, should review the plan prior to signature. See DM-3, Chapter 3, Sections 3.2.I.6 and 7. See also DM-3, Chapter 3, Sections 3.3.A.14 (legend on index sheet), 3.4.H.5.m (special general note), and 3.5.X and Y (additional special directions) on plans presentation for HOP right-of-way plans.

HOP right-of-way plans should be reviewed and approved before any deeds are reviewed and accepted by PennDOT. The plan should designate the property owners as they exist before the Applicant purchases the necessary right-of-way. See Section 5 below on the conveyance process. Temporary construction easements are not to be shown on plans depicting right-of-way to be deeded to PennDOT because the Permittee will not be conveying rights to PennDOT in such areas. See DM- 3, Chapter 3, Section 3.4.H.5.i.

Please note that HOP right-of-way plans submitted by consultants do not always correctly reflect the proper legal right-of-way lines. It is important to obtain and review the right-of-way plans on file in the district plans room, as well as straight line diagrams. The Right-of-Way Administrator may also be of help in this determination. See generally DM-3, Chapter 3, Section 3.8 (Determination of Legal Right- of-Way Widths).

Please also note that consultants often show dedicated and ultimate right-of-way areas as legal right-of-way. This is not correct because until properly accepted by some government entity, the property owner still owns these areas subject to the offer of dedication. See generally Right-of-Way Manual, Appendix C, Article 10 (Dedications and Ordainments) and Subsection c above on plans accepting the dedication of right-of-way.

5. Conveyance of right-of-way to PennDOT

Amicable conveyance by Applicant to PennDOT - Needed State highway right-of-way should be conveyed to PennDOT from the Applicant, usually in a single deed. That is, the Applicant must purchase any areas not owned by it and then deed it to PennDOT. The main reason for this requirement is to have the warranty of title be from the Applicant rather than an unrelated third party. Exceptions to this requirement have been made when the land is under the control of other government entities. For example, jurisdiction of Commonwealth-owned land can be transferred to PennDOT directly from other Commonwealth agencies by memorandum of understanding.

The right-of-way plan should be used to ensure the correct areas are included in the conveyance. The plan will contain a numbered list of property parcels, identified by a circle (indicating that land is required from that parcel) or a circle inside a triangle (indicating no land is required). There will also be a right-of-way information block for each parcel for each property from which land is required, containing a tabulation of required areas.

It is recommended that the Permit Manager meet with the District Right-of-Way Administrator or other appropriate District real estate expert to review the proposed deed in conjunction with the right-of-way plan. This review would include ensuring that all required deeds have been provided and that each deed is properly executed and suitable for recording at the County Recorder of Deeds Office. It may be appropriate to have the Applicant's attorney present at this review to answer questions where the conveyance is significant.

Form of deed - Use Deed M-950 D1 (Deed, Fee Simple) if required right-of-way is being acquired in fee simple and Deed M-950 D2 (Deed of Easement) if required right-of-way is only being acquired as a highway easement or the acquisition of a drainage or other easement has been approved. The Right-of-Way Plan will reflect the nature of the title to be acquired.

The deeds are interactive and may not otherwise be altered without review and approval of the District Right-of-Way Administrator or other District personnel with real estate expertise. Permit personnel should consult with the District Right-of-Way Administrator or other District personnel with real estate expertise when completing the deeds. They are much like deeds used when PennDOT is acquiring right-of-way for a highway project.

The District can consult with the Office of Chief Counsel as appropriate. The deeds do not need to be approved as to form and legality because they are not being executed by PennDOT. If the District would like a deed approved as to form and legality, the deed should be forwarded to the Office of Chief Counsel, Real Property Division, Permit Programs Attorney.

The Deed M-950 D1 (Deed, Fee Simple) provides for use of a metes and bounds description if it is used only to transfer fee title. However, see the subsection below entitled “Plot plans and written descriptions” for concerns in this regard.

Documentation of title – The Applicant must provide an investigation of title to the property being conveyed based on courthouse records. That is, no deed may be accepted without documentation and review of the title through a record owner and lien certificate, an abstract of title or title report based on a title search. The purpose of these documents is to ascertain the history and present condition of the title with reference to liens, encumbrances, easements, etc., to determine if there is marketable title. This is a legal term meaning title that is free from reasonable doubt, can be sold or mortgaged, and will not expose the owner to potential litigation or conflicts regarding use or ownership of the land.

The title documentation may be from a title company or an attorney at law. A record owner and lien certificate is the best document but an abstract of title or title report is acceptable. The District Permit Manager should consult with the District Right-of-Way Administrator or other District real estate expert to review the documentation for any title defects that must be cleared before the deed can be accepted by PennDOT. Such defects could include utility easements, liens of record, mortgages, etc. PennDOT must be identified as a beneficiary of the title work certificate.

The executed deed and title information must be reviewed and accepted by the District Right-Of-Way Administrator or other District real estate expert prior to recording. A bring down/update of the title should be provided to within 15 calendar days of the date the permit is to be issued.

Title insurance to be paid for by the Applicant can be required but is not recommended. Under such a policy the title insurance company protects the insured from losses caused by defects in the title of the property which have not been excluded from coverage. PennDOT must be named as an insured or beneficiary to be protected. Examples of items not usually excluded would be losses resulting from title being vested in someone else, unmarketability of the title and lack of the right of access to the land conveyed. As a practicable matter most policies exclude the defects that are problematic for PennDOT such as utility easements and liens of record and the existence of the policy may not even be discovered if a problem arises later unless some tracking system is established. The District would also be required to approve the amount of coverage based on the estimated value of the property being conveyed. There is also added cost to the Applicant to provide the insurance.

Please note that the title documentation need only apply to the property being conveyed to PennDOT. It does not need to cover the entire property. Indeed, documentation covering the entire property often causes undue problems by noting easements and other issues that do not apply to the property being conveyed. Limiting a record owner and lien certificate to only the property being conveyed is highly recommended.

Mortgages and other liens and judgments – Mortgages and other liens and judgments on the property should be released as to the area conveyed at the expense of the Applicant. This will ensure that PennDOT is not included on foreclosures or other legal actions relating to the mortgage or other lien. With the approval of the District Executive, a deed may be accepted without release of a mortgage or other liens under the following circumstances: 1) the value of the land being conveyed is \$25,000 or less and the District Right-of-Way Administrator or other District real

estate expert certifies that the land being conveyed is sufficiently minor that it does not materially affect the ability of the remainder of the property to provide security for liens and judgments. The Applicant must prove to the District that the value of land is \$25,000 or less based on the purchase price, an appraisal or other documentation deemed acceptable to the District.

Utility and other easements – Utility and other easements on the property should be eliminated as to the area conveyed at the expense of the Applicant. This will insure that the utility or other easement owner does not retain private property rights within the highway right-of-way which PennDOT may be required to acquire in the future. As to utilities, they would retain the right to substitute right-of-way and reimbursement for future relocations from the right-of-way because they would have private status. Not eliminating the easement would also allow the utility or other easement owner to argue it has rights within the right-of-way not controlled by PennDOT's police powers, including the utility occupancy regulations.

In exceptional circumstances and with the approval of the District Executive, a deed may be accepted without elimination of an easement on the land being conveyed. An example of an exceptional circumstance would be when a utility already has private status for its facility within legal right-of-way or perhaps where there are no actual facilities within the easement. The risks and possible future costs to PennDOT by not eliminating the easement should be considered in making the determination.

If a utility is allowed to remain in place without private status, a new or amended utility HOP should be made a condition of issuing the driveway HOP. If a utility is allowed to remain in place with private status, a private status agreement should be executed to insure the utility is subject to PennDOT's regulation.

Proper execution of the deed – The information block and all blanks on the deed form should be filled in. The proper party must execute the deed on behalf of the Applicant. See *Signature Authority Guide* in Appendix C6 of this manual.

Plot plans and written descriptions – PennDOT right-of-way acquisition forms do not typically use metes and bounds descriptions, but rather use plot plans. This approach has been incorporated into the M-950 deed forms. A metes and bounds description is not required by Pennsylvania law and it is simpler to compare a plot plan to the approved right-of-way plan for accuracy than to have a metes and bounds description reviewed by the survey or other district unit for accuracy. Using only a plot plan avoids problems with discrepancies between a plot plan and a metes and bounds narrative. Under Pennsylvania law, if both are attached to a deed, the words take precedence over the plan.

The best approach is where the plot plan is part of the right-of-way plan and is reviewed as part of the plan review. However, if not part of the right-of-way plan, the plot plan must be reviewed for accuracy when reviewing the deed.

A metes and bounds description may be included in the deed if the District requests or approves of this approach. In that case, however, the description should be supported by a sealed survey for PennDOT review. In any event, the description must be reviewed by someone in the District with sufficient knowledge to assure it accurately describes the property being transferred to PennDOT

as depicted on the plan. Such a review may be impractical from a staffing standpoint. There is also the risk that the description may not close.

Timing – Deeds and related documentation should be provided for review as soon as practicable after the right-of-way plan is approved, but well before issuance of the HOP. The right-of-way plan should not be prepared until the HOP construction plans are prepared to ensure proper right-of-way is acquired.

Executed deeds for all necessary State highway right-of-ways should be provided to PennDOT before a permit is issued. Conditioning an HOP on acquisition of required right-of-way is not advisable because the District will then be required to ensure work is not performed under the permit on lands of third parties and may never obtain title to where highway features have been constructed. If allowed in view of special circumstances approved by the District Executive, the condition must be clear that the Permittee is not allowed to do work depicted on the HOP plan that is outside the Applicant's land before that right-of-way is conveyed to PennDOT. The start of work must be conditioned on delivery of acceptable deeds and appropriate documentation. An example where it may be appropriate to issue an HOP conditioned on the completion of right-of-way acquisition would be if the Applicant's financing entity will not release funds to purchase the property without issuance of an HOP and leases with tenants are put in jeopardy. Another example would be where a local government has agreed to use its power of condemnation if necessary. These issues must be approached on a case by case basis.

Recording - The right-of-way plan must be recorded in the County Recorder of Deeds office where other such plans are recorded. It must also be filed in the District Plans Room, with copies forwarded to the Bureau of Project Delivery in accordance with standard procedures for plans showing PennDOT right-of-way.

The deed conveying the right-of-way to PennDOT must be separately recorded in the County Recorder's Office where other deeds are recorded. Deeds should not be recorded prior to PennDOT approval.

The Applicant must pay all fees necessary for recording the documents.

Right-of-Way Units in some districts assist in recording plans and deeds.

Acquisition of required right-of-way by condemnation - PennDOT will not acquire right-of-way for HOP projects by amicable acquisition or by condemnation. However, in exceptional circumstances, a local government may use its condemnation authority to acquire State highway right-of-way. Execution of a plan authorizing a local government to acquire land for a State highway (see Section 4b above) is required to enable the municipality to acquire right-of-way for the State highway.

Where PennDOT executes a plan authorizing condemnation of State highway right-of-way by a municipality, all acquisitions by the local government and the Applicant must conform to PennDOT's Right-of-Way Manual (Publication 378). The [Local Project Delivery Manual](#) (Publication 740 – Chapter 5 Right-of-Way) is a good publication explaining the necessary procedures. See Section 2c above. PennDOT should also follow the review procedures that apply to acquisitions by local governments under the LPA procedures.

Authorizing a local government to acquire right-of-way for a State highway does not obligate PennDOT to assume any liability for costs associated with condemnation or other acquisition of the land in question. The Applicant or municipality is solely liable for all such costs and expenses.

6. Environmental and historical concerns

Once PennDOT accepts a deed for the right of way associated with a state road, PennDOT can become responsible for environmental conditions on the property conveyed. Consequently, all environmental issues such as hazardous materials, wetlands or historic preservation should be thoroughly investigated and evaluated prior to acceptance of a deed. In all situations the District Permit Staff should conduct a thorough visual inspection of the property for evidence of environmental issues before accepting a deed.

An environmental report should be developed by the applicant if the District has a concern as a result of a visual inspection. For example, at least a Phase I environmental report would be appropriate if the property has been put to a prior commercial use that could cause issues (e.g. a factory, dry cleaner, automotive repair garage, gas station, tannery, chemical plant, etc.) or there is evidence of possible contamination due to fuel tanks above or below the surface, dumping or storage of chemicals. Guidance from the District environmental unit should be obtained if an environmental report is being recommended.

Permitted projects may also have an effect on properties included in or eligible for inclusion in the National Register of Historical Places. The "Memorandum of Understanding between the Pennsylvania State Historic Preservation Officer and the Pennsylvania Department of Transportation Regarding Consultation of State-Funded Transportation Projects in Pennsylvania", executed October 2011 addresses this topic. Stipulation III of the MOU provides specific guidance on HOP. This document should be referenced when addressing historic preservation issues.

Note that additional environmental studies may be required if federal or state funds are being provided for the project or if a point of access issue is involved. If federal funds or other actions requiring FHWA approval are involved, a formal NEPA document is required. If state funds are involved, a formal Environmental Document is required.

Waiver of Design Requirements that cannot be met for Driveways/Local Roads and Related State Highway Improvements

1. Background

The design requirements that the Applicant must comply with when applying for a driveway/local road permit are as follows:

- a. Design requirements for the driveway/local road for which access to the State highway system has been applied for, and
- b. Design requirements for related State highway improvements which increased traffic generated by the proposed driveway/local road may necessitate.

Design requirements involving any of the elements as identified below that cannot be met require a

Design Waiver satisfying each of the five conditions mandated by 67 Pa. Code §441.5(e). Those conditions are as follows:

- a. No other reasonable access is available to or from the property;
- b. The Applicant has done all that can reasonably be done to satisfy the design requirements;
- c. If additional land is required, the Applicant provides satisfactory evidence that it cannot be purchased at a reasonable price;
- d. No traffic problem (i.e., no unacceptable operational or safety problem) will be created; and
- e. The Applicant executes an indemnification satisfactory to the Commonwealth.

Design requirements for the driveway/local road for which a permit is sought are those specifically set forth in Chapter 441 (e.g. those relating to location and geometrics) and those relating to Level of Service (LOS). Requirements and background relating to LOS are contained in the *Policies and Procedures for Transportation Impact Studies* (TIS Guidelines).

Design requirements for related highway improvements are those incorporated into Chapter 441 by reference (i.e. Design Manual, Part 2, the TIS Guidelines, etc.). As stated in Chapter 441, Applicants/Permittees are responsible for related highway improvements which increased traffic or surface drainage may necessitate, 67 Pa. Code §441.6(4)(i), and all work under the permit shall conform to all requirements and standards of PennDOT, 67 Pa. Code §441.6(3).

The granting of a design waiver should be a rare and unusual occurrence rather than a regular method for authorizing driveways/local roads and highway improvements which would otherwise not comply with the regulations and design requirements. It should be granted only if the District Executive or higher Departmental authority (if necessary) determines that neither public safety nor the highway/bridge infrastructure would be adversely affected by granting the waiver. As stated in 67 Pa. Code §441.7(b), access shall be permitted only at locations in which sight distance is adequate, the free movement of traffic is not impaired, and no hazard or undue traffic congestion will be created.

Consideration must be given to all project conditions such as service life; safety benefits; compatibility with adjacent sections of unimproved roadways, driveways and local roads; and the length of time the highway will function under an acceptable level of service. Full justification must be provided for the retention, limited improvement, or partial mitigation of substandard features.

Note: If federal or state funds are involved, a formal Design Exception, consistent with PennDOT Publication DM-1X, Appendix P, is required.

2. Specific elements requiring a Design Waiver

The specific elements relating to driveways/local roads and related highway improvements requiring formal Design Waiver approval are as follows:

- a. Driveway/local road location(s)
- b. Driveway/local road geometrics
- c. Intersection LOS

- d. Design Speed- Design waivers for the design speed are for the design elements that do not meet the required design speed for the project. The design speed for a project is based upon the posted speed of the roadway. If the roadway does not have a posted speed limit, refer to the Title 75, Vehicle Code § 3362 for maximum speed limits categorized by roadway type, location, and classification. Design speeds are not applicable to tee intersections, since slow or stop conditions preclude attainment.
- e. Lane Width
- f. Shoulder Width
- g. Bridge Width
- h. Structural Capacity
- i. Horizontal Alignment
- j. Vertical Alignment
- k. Grade
- l. Stopping Sight Distance (SSD) and Headlight Sight Distance (HLSD) at locations other than driveways or local roads
- m. Cross Slope
- n. Superelevation
- o. Vertical Clearance
- p. Horizontal Clearance (other than Clear Zone)

When one of these design requirements cannot be met, the Applicant and the District shall follow the subsequent procedures for submitting and reviewing the request for a design waiver.

3. Design Waiver Request

Applicant

An Applicant that intends to request a design waiver must first request a Design Waiver Scoping Field View (Field View). The request for a Field View must be in writing to the District Executive. It must identify the design requirement(s) that may not be met and provide sufficient details for the District to determine what disciplines are necessary for review of the possible request. Design waiver requests may not be submitted until after a Field View has been conducted by the District Design Waiver Review Team, discussed below, the Applicant and/or the Applicant's consulting engineer. The District Design Waiver Review Team has the option to waive the Field View after review of the Scoping Field View request.

A formal request for a design waiver shall be submitted by the Applicant. The request shall be a stand-alone document prepared in accordance with the Design Waiver Data Checklist (below), addressed to the District Executive and sealed by a professional engineer. The submission shall be submitted concurrent with the HOP application.

When a design waiver relating to Level of Service (LOS) is requested, the TIS shall be included

with the waiver request as well as documentation regarding the attempts pursued to comply with Conditions 1 or 2 as outlined in the TIS Guidelines. Compliance with these procedures may eliminate the need for a Design Waiver relating to LOS.

Prior to submitting a formal request for a design waiver relating to LOS, the Applicant must first pursue and demonstrate attempts to comply with either mitigation Condition 1 (Marginal LOS Degradation) or Condition 2 (Significant LOS Degradation) as detailed in *Policies and Procedures for Transportation Impact Studies Related to Highway Occupancy Permits*. Submissions on design waivers relating to LOS that do not demonstrate compliance with Condition 1 and Condition 2 acceptable to the District Executive shall not be considered and shall be returned to the Applicant for further information.

District Office

The District Executive will determine the appropriate personnel to be included on the District Design Waiver Review Team (Review Team). The Review Team may include staff from the District Permit Unit, District Traffic Unit, District Design Unit, and/or other appropriate unit based on the request being made. The design waiver review should be a collaborative effort of key personnel who are knowledgeable in the field. At least one person must have considerable traffic engineering experience. For design waivers relating to LOS, the District Traffic Engineer shall be a part of the Review Team.

The Review Team shall attend the scoping field view unless waived. The Review Team shall review the submission request for compliance with the Design Waiver Data Checklist and provide the District Executive with a recommendation and all relevant information needed to determine an appropriate action on the request. The District Executive decides whether a design waiver should be granted unless the waiver relates to a limited access highway, structural capacity, or projects categorized as “moderately complex” or “complex” in accordance with Design Manual, Part 1, Chapter 2, in which case further review is required.

For non-interstate limited access highway projects with waiver requests involving the first three elements listed in Section 2, the District Executive shall forward the design waiver request to the Director of the Bureau of Maintenance and Operations (BOMO) for a decision.

For non-interstate projects requiring the approval from the Director of the Bureau of Project Delivery (BOPD) (waiver requests involving the remaining elements listed in Section 2), the District Executive shall forward the design waiver request to BOMO for further action.

For Interstate projects requiring Federal Highway Administration (FHWA) approval, a formal design exception request, in accordance with DM-1X, Appendix P will be required. The District Executive shall forward the design exception request to BOMO for routing. Requests not prepared in accordance with DM-1X, Appendix P guidelines, will be returned to the District for further action.

When required to be submitted to the BOMO, design waiver requests shall be submitted to the BOMO only after the District Design Waiver Review Team has conducted a safety evaluation of the proposed HOP project in accordance with these guidelines and the District Executive has concluded that, based on engineering judgment, the proposed design with the design waiver does not compromise highway safety.

4. Design Waiver Data Checklist

Design waiver requests must address the following matters as determined applicable by the Review Team at the Field View. Minutes of the Field View shall be prepared by the Applicant's consulting engineer and submitted for review and approval by the Review Team prior to the submission of a design waiver request. This summary data checklist is not all inclusive and should not be considered

a substitute for sound engineering judgment to be exercised by the Applicant's consulting engineer, the Review Team and the District Executive:

- a. **Project Information.** Provide project identification information including: County, State Route (SR), Section, Project Length, driveway(s) and local road(s) location and Segment/Offsets, beginning and ending Segment/Offsets, Functional Classification, Urban or Rural Area, and proposed construction year. Design waivers of the required 4.9 meter (16 foot) vertical clearance on a Strategic Highway Network (STRAHNET) requires coordination with the Surface Deployment and Distribution Command Transportation Engineering Agency (SDDCTEA) of the Department of Defense.
- b. **Submission Documentation.** Design waiver requests must include the following items:
 - i. Project Location Map
 - ii. Crash History Evaluation, as described in Item L below, if required
 - iii. Plan Sheets, Profile Sheets, Typical Sections, and Cross Sections where applicable if not previously included in a Field View submission
 - iv. Scoping Field View minutes, approved by the Review Team
 - v. If applicable, bridge sufficiency rating and letter from District Bridge Engineer stating the maximum deck width attainable without total reconstruction, if the proposed project involves a design waiver for bridge width
 - vi. Ramp Design Sheet (Table 4.2 of DM-2) if a Design Waiver request is being submitted for ramp length or geometry
- c. **Governing Criteria.** Describe the proposed work and the design criteria (from Chapter 441 or the Design Manual) that govern design of the driveway/local road or related State highway improvement. Include existing and proposed typical section geometrics such as lane width, shoulder width, bridge width, number of lanes, etc., as required by the District.
- d. **Traffic Information.** Provide traffic information including Current and Design Average Daily Traffic (ADT), Percent Trucks, Design Hour Volume (DHV), Level of Service, and Truck Design Size.
- e. **Speed Information.** Provide Design Speed, Posted Speed, and Running Speed at each section in the project where running speed is expected to vary from the posted speed.
- f. **Deficiencies of Proposed Design.** Specifically identify the substandard design element(s) that requires a design waiver and the design standard that would be required without a design waiver. Reference the source and page number of the document that specifies the governing design criteria (i.e., Chapter 441, Design Manual, PennDOT TIS Guidelines, etc.). Provide the American Association of State Highway and Transportation Officials (AASHTO) design criteria if this is different from PennDOT's design criteria.

- g. Estimated Costs. If cost is a justification for the Design Waiver, provide the current estimated cost with a design waiver included and the estimated cost to meet standard design criteria without a design waiver.
- h. Compatibility with adjacent highway areas. An explanation of the compatibility of the design waiver(s) and the proposed design compared to the geometrics of existing roadway sections, driveways or local roads, as applicable both within and adjacent to the proposed project.
- i. Bridge related design criteria. A description of structure impacts, if applicable. Impacts typically affect bridge deck width, horizontal clearance to substructure, vertical clearance, load capacity or safety. Include the required bridge width and the width to which the existing bridge can be widened without total replacement for deck replacement projects, partial superstructure replacement projects, and projects where the abutments and/or piers are reused. Include the latest bridge sufficiency rating, the effect of the proposed work on any load restrictions, and the design life of the bridge with and without the proposed work.
- j. Construction Impacts. The impacts of the proposed project during construction (with and without the proposed design waiver(s)) including traffic control operations, detours, and access to residences and businesses within the limits of the proposed Highway Occupancy Permit work.
- k. Right-of-Way Impacts. Describe right-of-way impacts with and without the proposed design waiver(s) on adjacent residences and businesses. Include how the proposed design reduces these impacts while providing a safe highway. If additional right-of-way would be required to construct the project without the proposed design waiver, the Applicant must provide satisfactory evidence that the required right-of-way cannot be purchased at a reasonable price. An appraisal would be appropriate for this purpose, as well as a copy of an offer letter made to the affected property owner. Evidence acceptable to the District that the applicable municipality will not agree to condemn required land on behalf of PennDOT for the Applicant could also be considered.
- l. Crash History Evaluation. For design waivers relating to State highway design features, evaluate the traffic crash history within the project limits to determine what existing highway safety concerns are present, and then identify how these safety concerns would be addressed by:
 - i. The proposed project designed using the design waiver(s); and
 - ii. The proposed project designed using full-design criteria required by Chapter 441, the Design Manual, the TIS Guidelines or other PennDOT standard or requirement.
 - iii. The evaluation shall consist of a safety study which includes the following items as a minimum:
 - 1) A five-year traffic crash history (engineering extract, both summary and resume pages) using the most recent five-year period.
 - 2) A listing of any crash cluster list locations within the project limits (intersection, curve, tree, etc.).
 - 3) A comparison of the actual crash rate and the fatal crash rate to the statewide averages found in the current homogeneous report. Obtain all necessary data from the District Safety Engineer.
 - 4) A narrative description which describes the important aspects of the safety study items addressed. The description must address any differences in traffic crash

remediation between a project designed using the recommended design waiver(s) versus a project designed using full design criteria.

- 5) If determined appropriate by the District, provide collision diagrams and/or other information that might be useful. This safety study shall be kept together in a separate file within the Highway Occupancy Permit project file.
- iv. Prior to reviewing the study, the District, based on the type of design waiver requested and the data and information included, must determine if the safety study file, and all items within that file, should be labeled "Confidential: In-Depth Accident Investigation/Safety Study." In accordance with Section 3754 of the Vehicle Code (75 Pa.C.S. §3754) and 23 U.S.C. §409, a safety study will be protected from disclosure in litigation and should not be disclosed pursuant to a subpoena without the specific written consent of the PennDOT's OCC. However, PennDOT may be required to disclose the study under the Right to Know Law (RTKL). Requests for a study under that law should be referred to PennDOT's RTKL Officer who will ensure that they are reviewed by OCC. Labeling the study confidential will segregate the data and information for purposes of determining whether it may or must be disclosed.
- m. Mitigation Measures. Describe the mitigation measures that will be incorporated into the project design to lessen the impact of the design waiver with respect to safety (remediating crashes, capacity, etc.). Mitigation measures may include advisory signing, improved delineation, lighting, reduction in the posted speed, clearing roadside obstructions, striping-out shoulder area to provide longer effective ramp lengths, etc.
- n. Future Projects. Describe the dates and types of future PennDOT highway projects and maintenance upgrades that are proposed for the project and adjacent sections of highway. This future project and maintenance data can be obtained from the appropriate Engineering District. Describe the advantages and disadvantages of meeting the full criteria on the subject project with respect to the future upgrades. Photographs of existing conditions are recommended and can assist in assessing geometric constraints.
- i. If the deficient condition would be temporary due to a future PennDOT project or anticipated highway improvements by another Applicant, the Applicant can identify monetary or land contributions that they would be willing to make towards those future improvements.
- o. Design Longevity. The date when the highway is expected to become obsolete due to increased or changed traffic demands, pavement distresses (includes resurfacing or reconstruction interval), bridge rehabilitation or replacement, etc.
- p. Justification. A complete justification for the design waiver and mitigation measures, if any, shall be provided. Highway safety is the predominant concern. When documenting incremental differences in cost and/or right-of-way acquisition in comparing design alternatives (with or without a design waiver), the level of detail required need only reflect the purposes of design waiver justification. Round numbers indicating a general magnitude of the differences, generated by information readily available at the time is sufficient. The intent is to minimize the level of effort required to compile the information, while assuring that PennDOT properly documents its sound engineering decisions.

- q. Indemnification. If the Applicant is requesting additions, deletions or changes to the Form M-950 IDW, justification is required in accordance with Chapter 3.

5. Design Waiver Review Process

A final decision should be made on requests for design waivers/exceptions within 30 calendar days of receipt; a final decision must be made within 60 calendar days. The design waiver process is part of the Highway Occupancy Permitting process. Thus, in accordance with the Pennsylvania Municipalities Planning Code (MPC), all design waiver requests associated with an HOP require a formal response from PennDOT to the Applicant within 60 calendar days from receipt of the design waiver request.

A formal response is one that is made in writing. That response may be one of the following:

- a. Design Waiver request returned for additional information. Return the request for additional information if the request does not adequately and completely address the requirements of the regulation, PennDOT design standards and, if necessary, these guidelines.
- b. Design Waiver approved. If approved, a formal approval memo on PennDOT letterhead shall be prepared and signed by the District Executive, based on written recommendations from the District Design Waiver Review Team containing engineering justification and rationale. This memo approving the design waiver will be attached as Exhibit A to the Indemnification executed by the Applicant.
 - i. The memo shall include a recitation of the facts, the relevant design requirements, and the full justification for the waiver approval addressing the five regulatory conditions established by 67 Pa. Code §441.5(e). The memo may include reference to the request for a design waiver and must conclude that, based on the District Design Waiver Review Team's evaluation and engineering judgment, the proposed design using the design waiver(s) does not compromise highway safety. A sample approval memo is posted on PennDOT's P: drive. Each HOP issued with a waiver must be personally signed by the District Executive or higher Departmental authority (if applicable).
 - ii. The request for a design waiver cannot be approved without the Applicant furnishing an indemnification, a covenant running with the land (unless excused) and insurance policy in accordance with the form of indemnification in this Chapter as required by Chapter 441.5(e).
- c. Design Waiver approved with conditions. Certain conditions may be tied to a particular design waiver approval such as allowing a temporary design waiver that will be corrected as part of a second phase of construction scenario. In this case, the waiver approval memo shall indicate the conditions in which approval was granted.
 - i. The design waiver approval shall be attached as Exhibit A to the indemnification executed by the Applicant.
- d. Design Waiver denied. If the District Executive denies the request, a formal denial letter shall be sent to the Applicant indicating the specific reason(s) for the denial and indicating the particular regulatory and design requirements not being met, including the operational, design or safety rationale for the denial.

- i. The denial shall include the following statement: “The Applicant may appeal under Pa.C.S. §§ 501–508 (relating to practice and procedure of Commonwealth agencies), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) and Chapter 491 (relating to administrative practice and procedure), by submitting a written request for a hearing within 30 calendar days after the mailing of the document containing the determination, to the Administrative Docket Clerk, Office of Chief Counsel, 400 North Street, Harrisburg, Pennsylvania 17120-0041. A filing fee as prescribed under Chapter 491, made payable to the "Commonwealth of Pennsylvania," must accompany each request.
- ii. The District Executive may consult with the Director for BOMO and/or the Director for BOPD, and must coordinate with BOMO and BOPD in instances where the design waiver request affects limited access highway, structural capacity, or projects categorized as “moderately complex” or “complex” in accordance with Design Manual, Part 1, Chapter 2.
- iii. If the District Executive does not have a Professional Engineer (P.E.) license, a P.E. shall provide an approval recommendation prior to the District Executive’s approval.

6. Bureau of Project Delivery, Bureau of Maintenance and Operations and Federal Highway Administration review

This statewide policy does not delegate design waiver authority for applications that require Central Office, BOPD, BOMO and/or Federal Highway Administration (FHWA) reviews. Refer to Section 3

for instances requiring Central Office and/or FHWA approval. Design waiver requests forwarded to Central Office for review shall be accompanied by a copy of the HOP application package. Note that a formal design exception request, in accordance with DM-1X, Appendix P will be required if FHWA approval is needed.

Because FHWA is not bound by the Municipalities Planning Code’s (MPC) 60 calendar day requirement, the Applicant shall be requested to sign a letter waiving this if review by the FHWA will be required in accordance with federal law, regulation or the current delegation agreement between PennDOT and FHWA. If the Applicant refuses to sign such a letter, the application must be denied within the 60-day period. The reason for denial would be failure to obtain approval from FHWA.

BOPD and BOMO, in conjunction with FHWA when required, will return the request for additional information, approve, approve with conditions, or deny the design waiver request as set out above and notify the District. The District will, in turn, notify the Applicant.

7. Design Waiver Documentation/Recording

The approved design waiver request, crash history study (if any), approval letters, and other appropriate correspondence related to design waivers must be retained with the Highway Occupancy Permit project file(s), and must be included with the permanent Highway Occupancy Permit project records. For design waivers relating to LOS, a copy of the request and approval shall be included in the appendix of the final approved TIS.

The design waiver will be recorded with the permit and/or the indemnification, as appropriate, in accordance with 67 Pa. Code §441.5(f).

Access Indemnification

Access Indemnifications (Forms M-950 IDW, M-950 IA, M-950 ID, and M-950 IC) are required under:

1. 441.3(h) relating to inability to obtain a drainage release, where a drainage release or satisfactory drainage controls are not feasible – use Forms M-950 ID and M-950 IC.
2. 441.5(e)(1)(v) relating to Applicants requesting a waiver of design requirements – use Forms M-950 IDW and M-950 IC.
3. 441.8(j)(5) relating to placing an auxiliary lane in front of another person's property – use Forms M-950 IA and M-950 IC.

The use of these forms is explained in Chapter 9 (Indemnifications; Forms M-950 IDW, M-950 IA and M-950 ID; and Covenant, Form M-950 IC) of this manual.

2.7 – ADDITIONAL UTILITY APPLICATION REQUIREMENTS

Utility Occupancies

All proposed Utility facility work shall conform to Department standards including, but not limited to, Publication 408, and shall be done at a time and in a manner consistent with the safety of the public and conform to requirements and standards of the Department. Highway materials shall be obtained from Department approved sources which are identified in current Department Publication Numbers 34, 35, 41 and 42. Upon request, the permittee shall make available for review certifications for backfill and restoration materials placed within the improved area. See Section 441.6, General Permit Conditions.

1. Transverse Pavement Openings

459.8(b) identifies five instances where trenching across the improved area may be authorized by the Permit; as follows:

- a. The subsurface is solid rock, as documented with satisfactory evidence such as drill records, or where boring was attempted *twice* without success (except on limited access highways where trenching across the improved area will not be authorized).
- b. There are other facilities located longitudinally under the improved area and their location precludes methods other than trenching, as documented with a detailed plan. The plan must show the location and approximate depth of existing facilities. Verify Applicant claims as part of the application site review.
- c. Adjacent development in a very congested urban area makes the construction of a tunneling or boring shaft impossible. The plan must show the obstacles that prevent the construction of boring pits. Verify Applicant claims as part of the application site review.
- d. The highway is unpaved.

- e. PennDOT's wearing course is older than ten years, and the highway average daily traffic (ADT) does not exceed 500.

Following are two additional situations under which trenching may be authorized across the improved area (see HOP Condition Code #325):

- f. If an Applicant requests to open cut across a section of highway which is within the limits of an active or pending PennDOT construction project involving excavation below the subgrade elevation within the existing pavement area or in areas where at least three feet of embankment will be placed above the existing pavement. Continuous inspection will be required to preclude subsidence. Other items to consider would include security, insurance, coarse aggregate material certification and compaction tests.
- g. Drainage pipe culverts. It is not feasible to drill, bore, drive or tunnel storm water facilities across a highway. See Section 601 of Publication 408.

2. Longitudinal Occupancy – Subsurface

459.8(c)(1) states that a utility facility shall be placed outside the pavement and shoulder unless there is no feasible space outside the pavement and shoulder for placing the facility, in which case occupancy within the pavement or shoulder may be authorized by the Permit.

Where it is necessary for a utility to occupy the pavement or shoulder longitudinally, the District has the authority to determine the facility location which will have the least impact on both the traveling public and the structural integrity of the highway. See HOP Condition Code #323.

While reviewing the application on-site, the District and County staff must verify that all new and replacement subsurface facilities are placed as near the right-of-way line as feasible. New and replacement facilities not placed adjacent to the right-of-way line cannot be approved unless the plans include satisfactory documentation to verify why the facility cannot be placed adjacent to the right-of-way line or as near thereto as is feasible (e.g., slopes too steep to operate equipment, existing utilities, or structures).

If an application proposes occupancy along one or more bridges, the HOP will not be issued until the Bridge Occupancy License (BOL) is issued. If a BOL application is not approved, the Applicant can pursue a stream/ravine crossing (and modify its drawings accordingly). Applicants proposing to occupy a bridge must submit via EPS or an Application Form M-906 A to the District Bridge Unit.

For limited access highways, longitudinal access is generally restricted to specific circumstance requiring justification. Refer to 459.7(10) and PennDOT Design Manual 5 (DM-5), Chapter 1.

3. Longitudinal Occupancy – Aboveground

459.9(b)(1)(i) states that new poles and other aboveground facilities shall be installed outside the highway *Clear Zone* as near the right-of-way line as practicable, under the Permit and applicable provisions of Design Manual, Parts 2 and 5.

459.9(b)(1)(ii) states that replacement of poles and other aboveground facilities shall comply with the Permit and applicable provisions of Design Manual, Part 5.

459.9(b)(1)(iii) states that installation of poles and other aboveground facilities in locations where highway guiderail or curb exists shall comply with the Permit and applicable provisions of Design Manual, Parts 2 and 5.

While reviewing the application on-site, District and County staff must verify that new and replacement aboveground facilities are placed as near the right-of-way line as practicable. New and replacement facilities not placed adjacent to the right-of-way line cannot be approved unless the plans include satisfactory documentation to verify why the facility cannot be placed adjacent to the right-of-way line or as near thereto as is practicable (e.g., existing utilities, guiderail, curb, certain slopes, structures).

For limited access highways, longitudinal access is generally restricted to specific circumstance requiring justification. Refer to 459.7(10) and PennDOT Design Manual 5 (DM-5), Chapter 1.

4. Aboveground Crossings

Several sections of the regulation must be considered together to determine if the HOP for an aboveground crossing can be issued:

- a. 459.1 definition of “utility facility” includes the stipulations “*Privately, publicly or cooperatively owned lines, facilities ... which directly or indirectly serve the public or any part thereof.*”
- b. 459.3(b)(1) prohibits HOP applications from contractors of the owner or operator and persons only being serviced by the facility.
- c. 459.3(b)(2) provides conditions under which PennDOT may issue an HOP to a facility owner who is not in the business of providing utility service.
- d. 459.6 outlines provisions for performing emergency work on permitted facilities (in future years).
- e. 459.7(3) requires permitted work to conform to PennDOT standards.
- f. 459.7(14) requires the Permittee to maintain its facility and keep it in good order and repair (in future years).
- g. 459.7(15) requires a damaged facility to be promptly removed, repaired or otherwise made safe (in future years).
- h. 459.7(17) requires the Permittee to change or relocate its facility at its own cost and expense if it interferes with highway alterations (in future years).
- i. 459.9(a) stipulates that a Permit will not be issued to install aboveground facilities (as defined under "utility facility") at a location which PennDOT determines to have a high accident potential.

PennDOT staff may consider the following when determining if a proposed aboveground facility crossing will have a high accident potential:

- a. Are supporting structures placed outside State highway right-of-way?
- b. Are supporting structures protected from errant vehicles, and vice versa?
- c. Are structures crossing the highway at least 18 feet above the pavement and shoulder, to preclude impact from any vehicle, including buses, fire apparatus, utility vehicles (i.e., cherry pickers), maintenance vehicles with raised beds, and overheight loads on vehicles operating

either under Special Hauling Permit authority or illegally (e.g., off route)? *Note: The 18-foot minimum vertical clearance is consistent with Subsection 459.9(c), (relating to wires, cables or conductors).*

- d. Is the crossing structure designed to preclude any type of material from dropping or being thrown onto vehicles, pedestrians, or the surface within the right-of-way?

The District Bridge Unit must approve the structural design. Additional application fees may be assessed under 459.4(d)(1) to reimburse PennDOT for the engineering analysis; as documented on Form M-371 A.

Aboveground occupancy by a pipeline crossing is not authorized, except under a Bridge Occupancy License. Pipelines must be installed at least three feet beneath the surface. See Section 459.8.

Wireless Communication Facilities

The following additional guidance applies to wireless communication facilities:

Location

1. Wireless small cell and Distributed Antennae System (DAS) installations are encouraged on existing utility facility infrastructure where possible.
2. Pole installations will be considered on a case by case basis and must be placed outside the clear zone per PennDOT Design Manual, Part 2 (DM-2). A small cell/DAS permit application for new pole installations must first seek to attach to existing facilities and, if unsuccessful, provide documented attempts.
3. Small cell/DAS facilities may be permitted on traffic signal structures consistent with SOL 494-15-05.
4. If curbing is present, small cell/OAS or transport pole must still be located beyond the clear zone as indicated in DM-2.
5. If within a crash cluster list area, the District Safety Engineer will determine whether the location is acceptable.
6. Small cell and OAS facilities are strictly prohibited:
 - a. on highway structures (bridges, etc.).
 - b. in limited access highway right of way.

Support Equipment

1. Support equipment should be mounted on pole. Ground mounted cabinets would be an exception that would be considered on a case by case basis at the discretion of the Permit Manager.

Material

1. Direct burial foundations for steel poles is not permitted.
2. No spliced wood poles permitted.

Construction and Maintenance

Access Permits required for certain Utility Crossings

If a utility owner is installing a facility crossing which will extend beyond the limits of the right of way and vehicular access is necessary for continued facility installation or future facility maintenance, HOPs will be required, for both the facility and the access. An example would be a utility owner that is placing a facility “cross country” and highway access is needed by the Utility for personnel, equipment and materials to access the utility corridor. Upon completion of the work for the cross country facility, the access should be closed unless permanent access is necessary. Permanent access will be necessary unless access to the utility corridor will be rare (e.g. emergencies, occasional maintenance).

When a driveway HOP is necessary, but the proposed access lacks proper sight distance, various options may be pursued:

1. Under a driveway HOP application, provide engineered plans that depict how sight distance will be achieved (e.g. cross sections, sight line profile, contour plan, property lines, right of way, etc.).
2. Under an embankment alteration HOP, alter the embankment to obtain proper sight distance for the proposed driveway location, then apply for a driveway HOP.
3. If options 1 and 2 are determined by PennDOT to be infeasible, under a driveway HOP application, provide a work zone traffic control (WZTC) plan in accordance with Pa Code, Title 67, Chapter 212 and PennDOT Publication 213. It will be a condition of the driveway permit that any access made to or from the highway requires the implementation of the WZTC plan for access. This is not an option if requesting permanent access.

1. Provide adequate pull-off area beyond the shoulder for construction and maintenance operations of the facility.
2. Utility must provide an in-service inspection plan for steel poles with a maximum 6-year interval.

Notification

1. Provide proof the local government has notice of the application submission.

Utility Plans (Form M-949 Utility Sketch Series)

M-949 A (Single Pole Placement)

This plan is an acceptable alternative to an Applicant's own plan, provided all required information is completed and all minimum distances are met or exceeded. Any new installation not placed adjacent to the right-of-way line must be justified (e.g., steep slope, ditch behind pole, meets required distance behind guiderail or curb). Accident damaged or cluster area poles must be placed consistent with Design Manual, Part 5.

M-949 B (Multi-pole Placement)

This plan is an acceptable alternative to an Applicant's own plan for an installation of four or more poles, provided all required information is completed for each pole and all poles are physically connected by a common conductor.

Note: On an application to remove existing aboveground facilities, a tab sheet may be submitted in lieu of a plan or Form M-949 A or B, provided no subsurface facility or appurtenance – other than electrical ground wire – is being placed, removed, adjusted or relocated. The tab sheet should identify the SR, Segment, and Offset for each pole to be removed, along with each pole number.

M-949 C (Surface Opening Not More Than 500 Linear Feet)

This plan is an acceptable alternative to an Applicant's own plan for an opening not more than 500 feet in State highway right-of-way, provided the entire opening is in the same municipality. Typical uses would include an opening less than 36 square feet for emergency repairs or service connections; crossings – either boring or open cut method (if approved); boring pits; and longitudinal openings up to 500 linear feet. Multiple openings are also acceptable on this plan. The typical information on the back of this form must also be completed. Use the back of this form to justify open cutting (e.g., show location of all other affected

utilities in the area). If openings in the pavement or shoulder are over 100 linear feet, additional plan requirements may apply, consistent with 459.3(e). See the following section.

Additional Utility Plan Requirements

Occupancy of more than 500 feet in the pavement or shoulder, or both, must contain all required information listed in 459.3(d)(3) and 459.3(e). For example, such plans must be drawn to a scale of one inch equal to no more than 50 feet. If the installation or placement of a facility involves more than 100 linear feet of pavement or shoulder opening, the plans shall also contain cross sections at all locations where a significant change occurs in the roadway cross section (e.g., cut to fill, uncurbed to curb, widening). These plans must also include detailed information explaining why a proposed facility cannot be placed outside the pavement or shoulder and shall identify utility facilities and other structures that will be affected.

A Traffic Control Plan may also be required as determined by the District Permit Office. Special circumstances which require a Traffic Control Plan include:

1. When a figure from Publication 213 will not or cannot apply to the proposed operation.
2. Applications from facility owners who are not in the business of providing utility service are required to submit a detailed Traffic Control Plan as required under 459.3(b)(2)(ii).
3. When a closed lane will also be used to store material or equipment. (The Permittee is not authorized to close a portion of the pavement or shoulder to traffic for the primary purpose of storing material.)

An Applicant should submit copies of applicable figures from Publication 213 to provide the Permittee's work crew direct access to the traffic control requirements.

Photo documentation

Photo documentation required under 459.5(g) will not be waived. Photo documentation must display the pre-construction condition of the pavement and shoulders and should display curbs, guiderail and other highway appurtenances such as bridge approaches and signs.

PennDOT may create substitute photo-documentation if the Permittee's second submission is unsatisfactory. No work may be started until acceptable photo documentation is received or created by the District.

All photos taken that satisfy the photo documentation requirement must be uploaded to EPS.

Utility Security

Consistent with 420(b) of the State Highway Law, PennDOT is authorized to require security for HOPs, provided the amount of highway restoration security required for surface opening(s) is based upon highway restoration costs. The computation sheet for highway restoration security (Form M-945 J) should be used by District staff (not the Applicant) as a guide for establishing a minimum security amount, adjusted for inflation. Place the completed form in the District Office Permit file (and/or upload to EPS) for future reference. Security for surface opening(s) shall cover a period not in excess

of two years from PennDOT's acknowledgment of completion of the work.

Following are guidelines for determining when to consider security on surface opening permits:

1. The Permittee will be authorized to perform a substantial amount of work in the right-of-way. See 459.5(b).
2. Work involving a subsurface facility in limited access highway right-of-way.
3. Work involving trench openings of more than 500 feet in the pavement and/or shoulder of a non-limited access highway.
4. Work involving a situation which requires extreme care, as determined by PennDOT.
5. Work involving the installation, modification, or repair of ADA-compliant curb ramps.
6. When backfill (other than flowable fill) is placed outside shoulders in layers more than eight inches in depth. See 459.8(g)(3)(ii).
7. In the case of a facility owner who is not in the business of providing utility service. See 459.3(b)(2)(i)(C), (D), and (E).
8. Where a Permittee has requested a modification of conditions. See 459.12(b)(2). Work authorized under 459.12 (relating to modification of conditions).

The following security options are acceptable *for utility permits*:

1. Irrevocable Letter of Credit –Use of Form M-945 L is preferred. If the issuer requires use of their letterhead, then the letter of credit must contain all the information as shown on PennDOT Form M-945 L. A letter of credit may be issued by either a Pennsylvania or a non-Pennsylvania bank. Letters of credit issued outside the United States are not acceptable.
2. Individual or "blanket" Bond –Form M-945 K.
3. Assignment of Cause of Action –Form M-945 M.
4. Escrow Agreement - There is no standard form required because escrow agreements are drafted on a case-by-case basis. If a Permittee proposes, and the District allows, an escrow agreement, advance arrangements must be made to allow sufficient time for the proposed escrow agreement to be drafted, executed, and approved as to legality and form (when the Commonwealth is a party to, and executes, the agreement) by OCC, the Comptroller, the Office of General Counsel, and the Office of Attorney General. Approximately six weeks is necessary for approval as to form and legality.

Utility Insurance

If insurance is required under Chapter 459, the amount of insurance shall be at least \$250,000 per person and at least \$1,000,000 per occurrence. Insurance policies shall include coverage for public liability and property damage.

When it is determined that evidence of insurance is required and the Permittee does not have a current "blanket" Certificate of Insurance on file a copy of the utility's or their contractor's (when applicable) Certificate of Insurance must be submitted.

These criteria determine when evidence of insurance is required under 459.7(11), 459.7(12), 459.5(d) – generally – and in other sections of Chapter 459, as noted:

1. Work involving a facility in limited access highway right-of-way.
2. Work involving trench openings of more than 500 feet in the pavement and/or shoulder of a non-limited access highway.
3. Work involving an unusual situation which accentuates the need for extreme care.
4. Work authorized under 459.12 (relating to modification of conditions).
5. If blasting within the right-of-way as required under 459.7(12)(ii) and 459.7(13). (Note – no blasting is permitted within 50 feet of the nearest part of a bridge, box, or culvert.)
6. If openings exist overnight, as required under 459.8(d)(2)(iii).
7. If a Permit is issued to a facility owner who is not in the business of providing utility service (459.3(b)(2)(i)(B)).
8. Work involving seismic surveys by the vibroseis method (see Chapter

3). Utility Insurance Cancellation

If written notice to cancel insurance is delivered to PennDOT, and unless a new Certificate of Insurance is received prior to cancellation date, no further work may be performed under the Permit, and no time- extension Supplement will be issued until a new certificate is filed.

The Permittee must provide evidence of insurance (if applicable) to PennDOT when seeking a time extension supplement. PennDOT must verify the expiration date on individual insurance policies when issuing a time-extension Supplement. See Chapter 4.

Modification of Conditions

The utility occupancy regulations allow an applicant to request a waiver when a requirement cannot be met, called a “modification of conditions”. 459.12(a) contains *four important criteria* that must all be met in order for a term or condition of the regulations to be modified.

Applications for a modification of conditions must be made in writing and fully supported and documented to demonstrate compliance with the regulation is infeasible. The applicant must show reasonable steps and design alternatives attempted to comply with the regulation. The proposed alternative must satisfy the intent of the regulation, is the minimum feasible deviation from the regulatory term, standard, condition or requirement and may not be requested merely for its economic benefit to the applicant.

Prior to issuing a Permit which contains a modification, the District Executive will determine whether to require the Applicant to:

Execute an Indemnification (Form M-945 I & M-950 IC);

1. Submit new or additional security (e.g., could the modification result in damage to the highway);
and
2. Provide a Certificate of Insurance for the life of the facility.

The "third parties" Subsection (d) text clarifies that if a modification is granted under 459.12, abutting property owners or other interested parties do not have the right to impose additional conditions on the Permittee Note: third parties may have a right to intervene or protest a modification of conditions, if it affects their interest adversely.

HOP Condition Code #398 may be used if a modification is granted. The Permit must be authorized or approved by the District Executive or higher Departmental authority. The Permit shall also contain a detailed description of the modification.

Note: District staff will advise contractors who inquire about whether a specific regulation may be modified to contact and coordinate through the Applicant for further guidance. Applicants should advise contractor not to assume any Permit requirement will be modified or waived by PennDOT. This is because successful bidders granted a cost-saving modification or waiver of a regulatory requirement, policy or standard prior issuance of a permit and prior to submitting a private or public bid may have an unfair advantage.

Utility Indemnification

Utility Indemnification (Form M-945 I and M-950 IC) is required under:

1. 459.3(b)(2)(i)(A) relating to Applicants not in the utility service business. In the case of Applicants who are not in the business of providing utility service, the Indemnification (M-945 I and M-950 IC) will satisfy the indemnity requirement in Clause (A). Other requirements for insurance (Clause B), restoration security (Clause C), and facility maintenance (Clause D), shall be executed in an amount at least as high as may be required to cover PennDOT's exposure under the Permit.
2. 459.12(b)(1) relating to modifications of Chapter 459 conditions. Whenever a modification is granted, the District Executive may, if requested, decide to excuse the Applicant from executing an Indemnification (Form M-945 I and M-950 IC), submitting new or additional security (i.e., could the modification result in additional damage to the highway?), and providing a Certificate of Insurance for the life of the facility.

Thus, Form M-945 I Indemnification and M-950 IC Indemnification Covenant are to be used for Chapter 459 – Utilities. These forms may not be modified.

Section 4 of the agreement requires insurance that covers both property and personal injuries in an amount equal to the limits contained in the *Sovereign Immunity Act* (presently \$250,000 per individual and \$1,000,000 in the aggregate per occurrence). Evidence of required insurance must be submitted to the District Permit Manager initially and upon the future sale or transfer of any interest in the property.

Section 10 of the agreement requires a covenant to be added to the deed stating that the Indemnification's obligations attach to the land and pass with it on any transfer. If an application is made for a waiver/modification, the Applicant must present a copy of a deed to the site showing the addition of the covenant. Prior to acceptance, District staff should consult with OCC Permit Section staff as needed for review of proposed covenant language. The Applicant then has five working days to provide documentation from the Recorder of Deeds Office demonstrating such filing.

The use of these forms is explained in Chapter 9 (Indemnification; Form M-945 I and Covenant; Form M-945 IC) of this manual.

2.8 – UTILITY OCCUPANCY INTERPRETIVE GUIDANCE

The following guidance has been provided in response to questions asked by persons who have contacted CPO for clarification of PennDOT's Utility regulations. This guidance is keyed to the applicable section of the regulations to assist Permit staff in making decisions in similar situations. This guidance not intended to amend or modify any conflicting statute or regulation.

459.1 – Pavement

Parking lanes in a curbed section of highway are part of the pavement. Intersecting driveways and local roads are not considered to be part of a pavement; however, driveways and local roads are to be restored to at least their pre-construction condition. See 459.8(n)(1).

Where some properties are curbed and others are not, project the curb line through the uncurbed properties (consistent with the Maintenance Manual, Chapter 7).

459.1 – Shoulder

Width of shoulder in an uncurbed highway section must be determined using criteria contained in the definition. Criteria include:

1. existing improved portion (i.e., prior to start of work) or
2. graded portion (i.e., as constructed).

A paved shoulder or paved portion of a shoulder has a "hard" surface (e.g., Portland cement concrete; bituminous concrete, seal coat or surface treatment). An unpaved shoulder or unpaved portion of a shoulder does not have a "hard" surface (e.g., turf, earth, aggregate stabilized and dust oil).

Sidewalk is not part of a shoulder; sidewalk is considered as an "other" highway area.

459.3(a) – Work within Right-Of-Way Requires Permit

All work within the right-of-way involving the placing of a utility facility or structure or the opening of the surface requires a Permit unless specifically exempted under 459.3(a). Such work behind curb but within the right-of-way is not exempted from the requirement to obtain a Permit under either this regulation or Section 411 of the State Highway Law, which prohibits occupancy by a utility of any portion of a State highway.

459.3(b)(1) – Facility Owner/Operator in the business

Applicants are required under this paragraph to be "in the business of providing utility service" and must own, operate or intend to operate the facility. Contractors and customers of the facility owner/operator are specifically prohibited from being the Applicant.

459.3(b)(2) – Utility Service Jurisdiction

A municipality's "utility service jurisdiction" extends to all areas within the municipality within which it by authority of State law may place or require the placement of a utility facility within its boundaries.

459.3(b)(2)(iv) – Pavement Occupancy

Applicants who are not in the business of providing utility service are not authorized to place a facility longitudinally within the pavement. Longitudinal occupancy of the shoulder may be authorized if the Applicant justifies that occupancy outside the shoulder is not feasible.

459.3(f) – Work Zone Traffic Control Plan

Special circumstances which require a Traffic Control Plan include:

1. When a figure from Publication 213 will not or cannot apply to the operation.
2. Applications from facility owners who are not in the business of providing utility service are required to submit a detailed Traffic Control Plan in all cases as required in 459.3(b)(2)(ii).
3. When a closed lane will also be used to store material or equipment.

Applicant must submit copies of appropriate figures from Publication 213 to allow for the Permittee's work crew to have direct access to the appropriate traffic control requirements.

459.7(9) – Sharing Facilities

Sharing facilities under one permit is encouraged. However, the permit must be issued to the facility owner/operator (consistent with 459.3(b)(1)), not the "owner" of a conductor (on limited access right-of-way), guy or other appurtenance.

"Guys". A permitted pole's owner is responsible for obtaining a permit for any guy, even if the guy is being placed to support a conductor placed by another service provider who is sharing the utility's pole. The utility pole owner/operator must be the Permittee for the structure and all appurtenances (including future changes). Normally, guys are an appurtenance to a new aboveground facility and not a facility themselves, unless a guy is installed later to support additional wire by another utility who is sharing the pole under an agreement with the pole owner. Without the pole there would be no guy. Guys are placed when utility design standards indicate a guy is necessary; PennDOT would not require a guy because utility facility design is beyond staff expertise and 459.2 authority. PennDOT guy requirements are identified in 459.9(d) and compliance with these requirements can be easily verified at the 'close out' inspection.

459.7(15) – Facility Damage

The Permittee is responsible for repair or restoration of the portion of the highway damaged by a damaged structure or facility. For example, if a leaking water line is repaired, the Permittee is also responsible for correcting subsidence in the area of the permitted work. The Permittee may furnish clear and convincing evidence such subsidence is not attributable to water which leaked from the damaged facility (e.g., no higher concentrations of fluoride in adjacent ground water when water in pipe is fluoridated). A sinkhole throat is a hole at the bottom of the sinkhole allowing water to pass out

of the sinkhole washing away fine material of sand or clay. The mere existence of a sinkhole throat is not necessarily clear and convincing evidence that the throat existed before the water facility leak. Also, the absence of chlorine in adjacent ground water is not necessarily clear and convincing evidence because chlorine rapidly dissipates.

459.8(b)(5) – Three-Foot Depth

The regulation provides for facilities to be placed at depths less than three feet provided such facilities are not capable of operating more than three feet below the surface. PennDOT requirements and standards may authorize specific utility facilities or highway appurtenances to be placed at depths less than three feet. See HOP Condition Code #322.

459.8(l) – Paint Date

The Permittee is not required to paint a date on temporary pavement restorations, but may do so. However, the date and conduct of backfill, compaction and restoration work must be documented in the inspector's FID/PSA.

459.8(m)(1) – Appurtenances to Underground Installations

This paragraph requires that the top of every manhole, valve box or other access (e.g., pedestals, gas meters) to a subsurface facility be placed flush with the surrounding surface. Fire hydrants and other appurtenances (e.g., subsurface attachments to poles) which are incapable of operating below the surface and which cannot feasibly be placed outside the right-of-way may be placed consistent with 459.9, outside the highway clear-zone or as near the right-of-way line as possible.

459.8 (m)(3) – Appurtenances to Underground Installations

This paragraph requires that a manhole, including that cast-in-place, be constructed in compliance with current industry standards and Section 714 of Publication 408. Therefore, an application from a utility to place manholes, vaults or similar underground appurtenances must confirm that the facility meets industry standards (e.g., American Gas Association, American Water Works Association, National Electric Code, etc.).

459.8(n) – Additional Restoration

Paragraph (1) requires highway restoration to be consistent with the Roadway Construction Standards (PennDOT Publication No. 72M).

Paragraph (1) also requires PennDOT to notify the Permittee, in writing, should additional restoration be required which is not already specified in the regulations, the issued Permit or a Supplement. Even if a utility has executed Form M-945 U, agreeing to its obligation to perform additional restoration, PennDOT must still notify the Permittee in writing as to what additional restoration will be required. Notes taken during the semi-final inspection will satisfy this regulatory requirement once these notes are provided to the Permittee.

Paragraph (3) specifies that if more than 100 linear feet of longitudinal or transverse openings are made in the pavement, an overlay may be required regardless of the age of the wearing course. Every effort must be made to specify in the issued Permit when an overlay is required under authority of this paragraph.

459.8(n)(4) – SRL

Skid Resistance Level (SRL) criteria are based on the highway Average Daily Traffic (ADT) and dictate the aggregate used in bituminous wearing courses. See Publication 242 for current criteria.

459.8(n)(8) – Pavement Markings

All pavement markings which were covered, destroyed or disturbed shall be replaced in their former location. PennDOT cannot acknowledge completion of the work until all pavement markings are replaced or otherwise restored.

This paragraph also requires temporary pavement markings to be placed whenever more than 250 linear feet of highway are covered or destroyed by the permitted work, before opening the disturbed pavement to traffic. See Chapter 212, Section 212.201 and 212.407.

459.9(b)(1)(i) – New Poles

This subparagraph requires new poles to be installed as near the right-of-way line as practicable. This subparagraph also requires new poles to be installed outside the highway Clear Zone. Note: the term "Clear Zone" is defined in Section 459.1 as the portion of right-of-way beyond the pavement edge within which, under Design Manual, Part 5 (not Design Manual, Part 2) no new obstructions may be located. DM-5 indicates such facilities must be placed outside PennDOT's specified Clear Zone Area. Since there are so few specified clear zone areas, the primary criterion for new poles and other aboveground facilities is that the aboveground facility must be installed "as near the right-of-way line as practicable".

Thus, whenever an application for a new pole identifies the pole to be more than two feet from the right- of-way line, the Applicant must justify why the new pole cannot be located within two feet of the right- of-way line.

459.9(b)(1)(iii) – Poles Behind Guide Rail or Curb

This subparagraph allows poles and other aboveground facilities to be located behind specified guiderail deflection distances as well as behind curb, consistent with Design Manual, Part 2, Chapter 12 and Part 5, Chapter 1. The distances allowed under this subparagraph are additional requirements which must be met along with subparagraphs (i) and (ii).

Thus, new poles must comply with subparagraphs (i) and (iii) while replacement poles must comply with subparagraphs (ii) and (iii).

459.9(c) – Vertical Clearance

Refer to Design Manual, Part 5, Figure A-725, for additional information on minimum vertical clearances required for wires, cables, conductors, or overhead structures or facilities.

459.9(g)(2) – Reinforced Existing Poles

This paragraph prohibits other than existing, permitted reinforced poles (such as new facilities, or repaired, modified, further reinforced or replaced facilities) from being located within areas not authorized under paragraph (1) of this subsection. If existing, permitted reinforced poles are repaired, modified or further reinforced, the reinforced pole must be located in compliance with paragraph (g)(1). However, any utility facility which PennDOT determines to have a high accident potential or to be a hazard shall be promptly relocated at the Permittee's expense.

PennDOT has approved requests involving new technology for reinforcing deteriorated wood utility poles with fiberglass restoration systems.

Each approval letter is posted on the PennDOT P: drive. When such an application is reviewed, ensure that the following conditions are met:

1. An approved system will be used.
2. The application identifies the fiberglass restoration system or steel pole.
3. The pole wrap system is not being used for other than a deteriorated pole. A fiberglass pole wrap system may not be approved for an accident-damaged pole.
4. The pole to be wrapped is placed consistent with the Americans with Disabilities Act (ADA).

Future HOP and PennDOT Projects

Generally, utility facilities occupying PennDOT right-of-way under HOP have no property rights to occupy a highway altered for public convenience or necessity, and must relocate at the Permittee's expense (PennDOT project) or the applicant's expense (HOP project) if their continued occupancy interferes with construction under approved plans. See 459.7(17) Future highway changes.

"Historically... non transportation public utilities have been permitted to occupy highway rights-of-way free of cost, subject to and subordinate to the State's police power to control and regulate the highways for the benefit of the public. Such utilities obtain no property rights in the highway and can be ordered by a competent State or municipal agency to relocate their facilities at their own expense..."Delaware River Port Authority v. Pennsylvania Public Utility Commission, 393 Pa. 639, 145 A.2d 172 (1958).

Private Status for Utilities

Utility facilities located in the right-of-way can acquire private status by agreement with PennDOT in connection with PennDOT highway construction projects. PennDOT does not extend private status rights to utility facilities affected by HOP projects, except in limited circumstances.

"Private Status" is defined in 459.1 as:

"The status of a utility's facilities, which are situated within public right-of-way by agreement with PennDOT, after PennDOT condemned the utility's easement and did not provide a substitute right-of-way." (Emphasis added.)

A private status agreement obligates the Department to acquire substitute right-of-way, if necessary, and to bear the cost of future utility relocations resulting from PennDOT projects. Such private status agreements operate as the HOP for purposes of Chapter 459 and Design Manual, Part 5. See: Pub. 16M, Chapter 8.1 Section L, *Private status agreements*.

This obligation does not extend to projects constructed under HOP.

The agreement also serves to memorialize that the utility is occupying the right-of-way by permit and subordinating to the rights of the Department.

Permit applicants should review PennDOT right-of-way plans and coordinate with the affected utility and the District Utility Relocation Unit to determine if a utility facility affected by the HOP project is under *private status*.

459.4 exempts utility facility owners from application fees and general Permit inspection fees for reconstructing or maintaining their facilities which occupy the right-of-way under an existing private status agreement operating as a Permit. The fee exemption is available only if PennDOT has executed a private status agreement with the utility. No fee is required if the facility will be accommodated in place or relocated as part of the HOP project. The fee exemption facilitates PennDOT's policy for executing private status agreements with public utilities in lieu of their relocation outside of the right-of-way as part of a PennDOT highway improvement project involving the Right-of-Way and Utility Relocation Units.

If an unpermitted utility facility is determined to be occupying the right-of-way with no permit and not under a private status agreement with PennDOT, then a Permit, and payment of the applicable fees, is required.

If a utility facility under private status agreement is required to be relocated as a result of the HOP project, a permit application is required and the facility will be accommodated within the right-of-way at the permit applicant's expense. The utility's private status rights may be transferred with the permit. See Pub. 16M, Design Manual, Part 5. District Permit staff should notify the affected utility and coordinate transfer of private rights with the District utility relocation unit.

If the permit applicant and the facility owner agree to accommodate the facility by relocation outside of the right-of-way, the facility owner gives up its private status rights with PennDOT. District Permit staff should notify the affected utility facility owner and coordinate as necessary with the Permit applicant and the District Utility Relocation Unit.

2.9 – MISCELLANEOUS APPLICATIONS

Construction of Sidewalk, Curb, or Storm Water Facilities

No-fee HOPs will be issued in the name of a local government for the construction or modification of sidewalk, curb or storm water facilities being installed at no additional cost or expense to PennDOT. Note: additional application review and inspection fees will still be assessed if the District anticipates the cost or review or inspection will exceed the standard fees by a significant amount. Local governments are townships, cities, boroughs, incorporated towns, home rule municipalities, and counties. PennDOT may also issue an HOP to an individual property owner for the construction of sidewalk, curb and access drainage facilities within the property frontage. A local government may impose additional requirements upon a property owner for the construction of curbs and sidewalks provided that they do not conflict with PennDOT's standards.

Refer to Subchapter 2.2 – Storm Water Facilities for additional guidance on who shall apply for certain storm water facility installations/modifications.

Curbs and sidewalks are to be designed and installed consistent with Sections 630, 676, 694 and 695 of Publication 408, Roadway Construction Standards RC-64M and RC-67M, and Design Manual, Part 2, Chapter 6. Also see Section 416 of the State Highway Law.

Storm water facilities are to be designed and installed consistent with applicable provisions of Design Manual, Part 2, Chapter 10; the PennDOT Drainage Manual (Publication 584); the Maintenance Manual (Publication 23), Chapter 8.5; Publication 408 and Roadway Construction Standards RC-30M thru RC-46M. Also see Sections 417 and 421 of the State Highway Law.

Applications to construct or modify curb, sidewalk or drainage will be reviewed by District staff to determine the effects on safety, capacity, existing utility facilities and compliance with the Americans with Disabilities Act (ADA).

If the proposed sidewalk, curb or storm water facility will have an adverse impact on safety or capacity, the application will not be approved.

If the proposed sidewalk, curb or storm water facilities will have an adverse effect on highway drainage or change the rate, vo

441.8(i)(5) – Grade Requirements Where Curbs and Sidewalks Are Present

Curb reveal shall be installed 1-1/2 inches above the adjacent roadway or the gutter grade to maintain proper drainage. Depressed curb is preferable to extending the curb around the driveway radii in the case of Minimum Use driveways and Low Volume driveways having an ADT below 500. Also see Design Manual, Part 2, Chapter 2, Section 18 R and Chapters 6, 7, and 9. See RC-67M for curb cut ramp construction, repair or replacement at pedestrian crosswalks and on sidewalks in business and residential areas, consistent with ADA requirements. Also see Section 416 of the State Highway Law.

the rate, volume, or quality of storm water runoff, the Permittee will be required to construct all remedial drainage facilities, and assume

all future maintenance obligations of the drainage facilities as a condition of the permit.

If the proposed sidewalk, curb or storm water facility will require the relocation of any utility facility, the Applicant must submit written acknowledgment from all affected utilities that the utilities agree to relocate to the location designated on the plans at no cost to PennDOT.

Regulatory references relating to drainage. (Also see State Highway Law, Sections 417 and 421.)

1. Chapter 441:
 - a. 441.3 (g) – Drainage control plan...
 - b. 441.3 (h) – Drainage release.
 - c. 441.4 (f)(1) – Recording...
 - d. 441.6 (6) – Altering drainage prohibited.
 - e. 441.6 (12) – Maintenance.
 - f. 441.6 (15) – Damage to highway.
 - g. 441.10 – Penalties and enforcement actions.

2. Chapter 459:
 - a. 459.1 – Utility facility definition.
 - b. 459.7 (5) – Altering drainage prohibited.
 - c. 459.7 (14) – Maintaining structure or facility.
 - d. 459.7 (16) – Damage to highway.
 - e. 459.11 – Penalties and enforcement actions.

Applications for Traffic Signal Installations

Permits for traffic signals in conjunction with an HOP are only issued to the applicable municipality. Based on the application and TIS/TIA, its own research and other data available, the District Traffic Unit will determine the current/future need for traffic signal(s) during the review of applications involving local roads or Medium or High Volume driveways. If a traffic signal cannot be justified initially but it is anticipated that traffic signal warrants will be met eventually, obtain a written financial commitment from the Applicant and municipality that they will commit the appropriate funds to construct the signal installation and a traffic signal will be installed when the volume of traffic from the access justifies its need.

If work involves a change to drainage structures, embankment, curb, sidewalk, highway geometry, pavement, or installation of auxiliary lane(s) in conjunction with a Traffic Signal Permit (Form TE-964), the applicable Municipality will apply for the HOP at the same time. Emergency and preventive maintenance to existing traffic signal installations would not normally require an HOP. Signalization is

to be designed and placed consistent with TC-7800 series standards (PennDOT Publication Nos. 148 and 149M).

Turnpike Permits

Under Act No. 61 of 1985, Section 19(b), PennDOT is required to approve the Pennsylvania Turnpike Commission's plans and specifications for construction on the Pennsylvania Turnpike. These items are approved by the Bureau of Project Delivery (BOPD) as well as affected Districts.

Pennsylvania Turnpike Commission (PTC) related work within State highway right-of-way is authorized by an HOP, issued by the affected District. Initial project coordination should begin at project scoping for projects with federal involvement and at preliminary design on projects with no federal involvement. Coordination between the District and the PTC occurs through the District Turnpike Coordinator or assigned Project Manager. The District Turnpike Coordinator or assigned Project Manager will be involved with the design of the project from scoping and preliminary engineering through Final PS& E. (An HOP is not required for any signing as part of an MPT plan. However, coordination with the District is required.) Once the PTC design plans are finalized and ready for bidding, the BOPD is responsible for review and approval of the PTC project (FHWA approval of HOPs for Interstate facilities will be in accordance with the PennDOT/FHWA Stewardship and Oversight Agreement). The BOPD will verify in writing with the appropriate District Turnpike Coordinator that the project has been coordinated with the District, including the District Permit Manager, and the District is satisfied with the project. The approval will be documented in a letter that includes:

1. Specific reference to the contract numbers which are being approved.
2. Information as to whether the HOP must be recorded by the County Recorder of Deeds.
3. Information as to whether required right-of-way for the project has been acquired. The PTC will provide to the District copies of the right-of-way clearance certificates for the acquired properties.

This approval letter will be addressed to the PTC and copied to the affected District Turnpike Coordinator and Permit Manager.

Upon receipt of the approval letter, the District Permit Manager shall place the letter in a pending PTC file.

Once the PTC receives the BOPD approval letter, the PTC will submit a formal application through EPS or the current submission method requesting an HOP for the subject work. Upon receipt of the application, the District Permit Manager will:

1. Compare the application submitted by the PTC with the approval letter to verify that the contract numbers are identical.
2. After an administrative review of the plan and recording (if required) of the Permit, issue a free HOP to the PTC.

DEP Permits for HOP Projects

1. Chapter 105 Permits

Extension of an existing bridge, culvert, or pipe, or any impact on wetlands or other water of the Commonwealth located adjacent to a roadway would require a permit under the Dam Safety and Encroachment Act, also known as a Chapter 105 permit, prior to construction. Under each of these scenarios, the HOP Permittee, not PennDOT, would be the Applicant for purposes of the Chapter 105 permit process which is consistent with 25 Pa. Code §105.13(g)&(c) and the guidance document developed by PennDOT and DEP titled *Joint Agency Guidance for Permitting Projects Performed by Entities Other than PennDOT on Property Under PennDOT's Jurisdiction* which can be found in Appendix E1 of this manual.

- a. For activities that involve the extension of an existing bridge, culvert, or pipe owned and maintained by PennDOT, the Chapter 105 permit will be issued to the HOP Permittee. PennDOT will not be a co-Permittee on the developer's Chapter 105 permit. The HOP Permittee will be responsible for constructing the proposed roadway improvements consistent with the permit. The HOP Permittee will also be responsible for any maintenance required under 25 Pa. Code §105.171 for two years following construction. When an existing bridge, culvert, or pipe conveying a water of the Commonwealth is extended by the HOP Permittee a permit condition similar to the following will be added to the HOP:

“This Highway Occupancy Permit authorizes the modification of an existing [bridge, culvert, or pipe] within PennDOT's right-of-way to address traffic impacts caused by the proposed development. Permittee or his agent assumes responsibility for all environmental clearances, including a Chapter 105 permit, associated with this project. When two years from PennDOT's written acknowledgement to the Permittee that all work authorized under the referenced Highway Occupancy Permit, and any supplements thereto, is completed and accepted, Permittee will transfer the Chapter 105 permit obtained for the modification of the existing [bridge, culvert, or pipe] to PennDOT. The HOP Permittee is responsible for any maintenance required for the existing and modified sections of the [bridge, culvert, or pipe] under 25 Pa. Code §105.171, regardless of who holds the Chapter 105 permit.”

Any violations of the permit or maintenance responsibilities under the Chapter 105 regulations during the construction and the two-year guarantee period will be the sole responsibility of the HOP Permittee as the permit holder.

After construction is complete and the two-year guarantee period expires under the HOP, the permit will be transferred to PennDOT. In agreeing to this transfer, PennDOT is not in any way waiving any of the provisions contained in the HOP regulations (441.6(12)) with regard to the HOP Permittee's maintenance responsibilities. However, from the DEP's point of view, PennDOT is the point person if future maintenance issues arise within the right-of-way. It is PennDOT's responsibility to have the HOP Permittee fix the problem if PennDOT determines under its HOP regulations that it is the HOP Permittee's responsibility.

- b. For activities within PennDOT's right-of-way that (1) involve the placement of fill material in wetlands or other waters of the Commonwealth and/or (2) involve the construction of a new bridge, culvert, or pipe within a water of the Commonwealth, the Chapter 105 permit will be

issued to the developer. The HOP Permittee will be responsible for constructing the proposed roadway improvements consistent with the permit. The HOP Permittee will also be responsible for any required mitigation under the permit and any maintenance required under 25 Pa. Code §105.171 following construction. PennDOT will not be a co-Permittee on the HOP Permittee's Chapter 105 permit.

2. NPDES Permits

For any activities proposed by an entity other than PennDOT within PennDOT's right-of-way regardless of whether or not the activity involves the extension of an existing bridge, culvert, or pipe, the entity proposing or completing the activity (usually the HOP Permittee or its contractor) will be the Permittee for purposes of the NPDES permit process. PennDOT will not be a co-Permittee on the HOP Permittee's NPDES permit and will have no maintenance responsibilities for any post-construction storm water controls (best management practices) required by the NPDES permit. Placement of post-construction storm water controls within PennDOT's right-of-way is subject to PennDOT's review and approval. The following condition will be added to the HOP when post-construction storm water controls are placed within PennDOT's right-of-way:

“All post-construction storm water controls (best management practices) shall be the sole responsibility of the Permittee to construct and maintain so long as they are in place.”

Highway Lighting

HOPs are required (under both Sections 411 and 420 of the State Highway Law and 459.1) for highway lighting occupying State highway right-of-way if such lighting is not owned by PennDOT. Lighting facility applications may only be made by a political subdivision or a public utility. HOP requests will be processed by the District Utility Relocation Unit if the lighting is part of a highway construction project.

Highway lighting shall be designed and placed consistent with the RC-80 series standards contained in PennDOT Publication No. 72M. Also see Design Manual, Part 2, Chapter 2, Section 19 F. and Chapter 5. Highway lighting applications also require review by the District Design Unit.

Applications to erect and maintain lighting facilities within limited access right-of-way may require an agreement or condition statement. District staff must coordinate review of such applications with Central Office Highway Lighting Section.

Seismic Surveys

Permits may be issued authorizing seismic surveys using the vibroseis method only (see 459.9(f)). Permits for seismic surveys within limited access right-of-way are not authorized.

The approved procedure utilizes a vibrator – off the roadway – to set up minor shock waves for the seismic survey; virtually precluding damage to the highway. Seismic surveys are not permanent in nature and do not involve the opening of the surface of the highway or any blasting. A Permit may be issued authorizing a continuous seismic survey in two or more counties in the same Engineering District. This is a slow moving operation and must be performed consistent with Chapter 212. Permit inspection fees are charged consistent with 459.4.

Require a Certificate of Insurance to address potential property damage inquiries from adjacent property owners.

Mine Entries, Blasting, and Strip Mining Operations

Permits may be issued authorizing mine entries to be constructed under or across State highway right-of-way. Plans must be reviewed by the District Geotechnical Engineer to verify that the highway will be adequately supported. Permit applicants should submit a geotechnical report with the permit application. An agreement or condition statement may be required; District staff should coordinate with the Office of Chief Counsel Permit section. Allow sufficient time after execution for processing of any agreement that may be required. General Permit inspection fees are charged consistent with 459.4(b)(4). Also see Section 419 of the State Highway Law.

DEP regulations restrict certain blasting operations near highways open to traffic. 25 Pa. Code, Section 87.127(f)(1) requires a 1,000 ft. distance for surface mining of coal and 25 Pa. Code, Section 211.61(m)

& (n) require an 800 ft. distance for use of explosives, generally. At lesser distances, traffic must be stopped while blasting is in progress. Refer to Publication 213 for appropriate Work Zone Traffic Control measures that may be required as a condition of the permit.

Research Project Permits

The Strategic Highway Research Program 2 (SHRP2), developed by AASHTO, involves many research contracts with member states. Districts may elect to issue HOP for project work. District Permit staff must notify the Maintenance Office when issuing a SHRP2 HOP since Maintenance Office staff may be providing Work Zone Traffic Control and restoring openings. See HOP Condition Code #399 when preparing SHRP Permits.

Instances Where HOPs Are Not Required

An HOP is *not* required for routine maintenance operations, including the following:

1. Place cable within existing conduit or place wire over non-limited access highways; if no surface opening is required (also see 459.3(a)).

Note: Highway Occupancy Permits are required for utility lines crossing over limited access highways even though the supporting structures are located outside the right-of-way, consistent with FHWA aerial jurisdiction.

2. Enter a manhole, except in limited access highway medians or interchange areas.
3. Pave or repave a permitted access, as long as the physical design characteristics do not change (e.g., width, radius, grade or drainage) and the access does not violate the requirements of law, Chapter 441 or the Permit. Note: approved Work Zone Traffic Control may be required consistent with the existing permit and Pub. 213.
4. Regrade or place additional aggregate on a permitted Minimum Use driveway, as long as the physical design characteristics do not change (e.g., width, radius, grade or drainage) and the access does not violate the requirements of law (e.g., ADA), Chapter 441 or the Permit.

An HOP is *not* required for the placing of newspaper receptacles or mailboxes, although their location is subject to PennDOT maintenance requirements.

Instances Where HOPs Cannot Be Issued

1. To authorize a bike lane. A request to install a bike lane must originate from the municipality. Direct such requests to the District Bicycle/Pedestrian Coordinator (see Design Manual, Part 2, Chapter 16).
2. To authorize a snowmobile route. A request to designate a State highway as a snowmobile route must originate from a municipality. Direct such requests to the District Traffic Unit (see Publication 46, Chapter 11.13).
3. To authorize an all-terrain vehicle route. Direct such requests to the District Traffic Unit (see Publication 46, Chapter 11.13).
4. To authorize outdoor advertising devices. Direct such requests to the District Highway Beautification Unit (Right-of-Way).
5. To authorize banners or parades. Direct such requests to the District Traffic Unit. See regulations 201.4 and 201.71 (relating to special events). Also see Section 425 of the State Highway Law and Publication 46.
6. To authorize advertising signs, bus stop shelters, liquid fuel pumps or tanks, loading platforms, weigh scales or phone booths. PennDOT has authorized bus stop shelters by written agreements developed by the Maintenance Office and Office of Chief Counsel.
7. To authorize parking on State highway right-of-way, but PennDOT property may be leased to establish a surface parking lot under Section 495.6.
8. To authorize installations of electrically powered traffic control devices. Direct such requests to the District Traffic Unit. See Section 6122 of the Vehicle Code, 441.8(o)(2) of the regulations, Publication 46, Chapter 4 and Publications 148 and 149.
9. To authorize monitoring wells, soil borings or soil gas sampling wells to monitor possible contamination within State highway right-of-way. Monitoring wells, soil borings or gas sampling wells, but may also involve access for the installation or remediation equipment such as pumping wells, soil vapor recovery systems, and associated utilities, are administered separately from the HOP programs and may be authorized by PennDOT Form M-5 (Right of Entry Agreement for Monitoring Wells).
10. To authorize spill cleanups. This task should be completed in accordance with PennDOT Publication 611 – Waste Management Guidance Manual, Chapter 8.3.

Highway Construction Projects

An HOP *application* is not required to be submitted by the property owner for a new access or an adjustment to existing access to be designed and constructed by PennDOT or its contractor as part of a PennDOT highway construction project, unless initiated by or on behalf of the property owner.

Such access is reviewed, documented and authorized by appropriate District staff as part of the highway construction project delivery and plans development process. All new or adjusted existing

The requirements and regulations for driveways must meet the requirements of the latest edition of the Pennsylvania Code, Title 67 - Transportation, Chapter 441 entitled "Access to and Occupancy of Highways by Driveways and Local Roads" (67 PA Code § 441). No driveway can be constructed or altered within State highway right-of-way without first obtaining a highway occupancy permit from the Department.

- PennDOT Publication 13M (DM-2), Chapter 7

accesses should be designed consistent with PennDOT DM-2 and the regulations. District staff may issue an HOP based on approved construction plans.

Note: If a major alteration (e.g., elimination of an existing turning movement and other changes to permitted access) is contemplated as part of a PennDOT highway construction project, the property owner should be notified in advance.

Miscellaneous Structures and facility HOPs

Chapter 441 regulates access, local roads and other property within State highway right-of-way, and authorizes permits to be issued for driveways, local roads, drainage facilities and structures.

When reviewing applications for a proposed structure that is not a driveway, local road, sidewalk, lighting facility, drainage facility or appurtenant structure, District staff should consult other PennDOT specifications, policies, standards and publications to determine how they affect permissibility, design, placement, etc.

Chapter 441 prohibits use of the State highway right-of-way for displays and conducting business, and requires that the area between the edge of the pavement and the right-of-way line must be kept clear of buildings, sales exhibits, business signs, vehicles, service equipment and similar items. See 441.6(17) *Use of highway prohibited.*

Crossings, for example tipples, conveyors, pedestrian walkways and under grade subways and mines are permitted under Chapter 459, as are seismographs. See 459.4(b).

Miscellaneous structures and facilities District staff determine to be safe, consistent with the security, economy of maintenance and proper drainage of the highway and all other PennDOT specifications, policies, standards and publications may be permitted. Permanent structures and facilities that cannot be relocated at the Applicant's expense in the future should not be permitted.

District staff may coordinate with CPO and OCC Permits Section as appropriate, and should consider a permit condition statement addressing specific design element, future maintenance, work zone traffic control, indemnification and insurance concerns appropriate to the structure or facility proposed.

Miscellaneous structures and facilities proposed to be constructed in limited access right-of-way must be coordinated with Central Office staff through CPO.

2.10 – HOP APPLICATION FEES

Method of Payment

Fees shall be paid in the form of a check or money order (cash is not acceptable) or via enrollment in the monthly billing program described below. The current software (EPS) does not allow for electronic funds transfer.

Application, Issuance, and General Inspection Fees

The Permit Applicant will be charged a fee for costs incurred by PennDOT for the issuance and inspection of an HOP consistent with 441.4 and 459.4. If a miscellaneous occupancy does not have a specified regulatory fee, a twenty dollar (\$20) "other" issuance fee and a twenty dollar \$20 "other" general inspection fee will be charged. No fees are to be assessed nor are any fees to be waived unless specifically authorized by State law, PennDOT regulations or this Manual.

EPS will not issue a permit without a check on file unless the Applicant is enrolled in the permit monthly billing program and has obtained a billing account. For billing account enrollment information, refer to the section titled Permit Monthly Billing Program within this subchapter.

The general inspection fee for subsurface utility facilities is calculated only on the total linear feet of opening, not on the total linear feet of facility.

459.4 allows the Utility to be charged only one inspection fee for longitudinal openings which simultaneously occupy two or more highway areas. PennDOT will also allow transverse openings to be charged only the higher area fee (i.e., pavement fee).

In determining whether an opening is less than 36 square feet, do not include the one-foot cutback that is required for pavement openings under 459.8 (h) & (i).

Fees for storm water not connected to PennDOT drainage facilities will be charged under Chapter 459 (see 459.1 *utility facility* definition). Fees for storm water that is connected to PennDOT highway drainage facilities will be charged under Chapter 441.

For two or more poles (up to ten) to be assessed only a twenty-dollar (\$20) inspection fee, the facilities must be physically connected (i.e., share the same conductor).

Payment should be submitted to the County Office (may be accepted at the District office) within 5 calendar days of submitting the HOP application unless the Applicant participates in the permit monthly billing program. The check or money order shall contain the application number and shall be accompanied by a copy of the "Application Summary" printed out from EPS. The HOP will not be issued until PennDOT receives payment unless the applicant participates in the permit monthly billing program.

District or County staff will update EPS indicating payment received, amount, date and check number. The permit will not be issued until payment is received from the Applicant, except for Applicants participating in the monthly billing program.

PennDOT will keep checks and money orders in a safe, locked desk, locked file cabinet or other mechanism to secure the funds during non-business hours.

A summary of fees is below:

HIGHWAY OCCUPANCY PERMITS FEES

GENERAL ISSUANCE FEES

459.4(a)(1) Utilities	\$50
441.4(a)(1) Driveways	
(i) Minimum Use	\$15
(ii) Low Volume.....	\$30
(iii) Medium Volume.....	\$40
(iv) High Volume.....	\$50
Other (Curb, Bank Removal, Sidewalk & Curb, etc.)	\$20
441.4(a)(2) & 459.4(a)(2) Supplement Fee (each 6 month time extension or HOP revision)	\$10
459.4(a)(3) Emergency Permit Card (each card)	\$5

GENERAL INSPECTION FEES

441.4(b) Driveways	
(1) Each Minimum Use	\$10
(2) Each Low Volume	\$20
(3) Each Medium Volume	\$35
(4) Each High Volume	\$50
459.4(b)(1) Underground Facilities (Total each 100 linear feet increment or fraction thereof)	
(i)(A) Opening in Pavement	\$40
(i)(B) Opening in Shoulder	\$20
(i)(C) Opening outside of Pavement & Shoulder	\$10
(ii) If Longitudinal Opening Simultaneously Occupies Two or More Areas Only Higher Fee Charged	
459.4(b)(2) Surface Openings (Less than 36 square feet)	
(i) Opening in Pavement	\$30
(ii) Opening in Shoulder	\$15
(iii) Opening outside Pavement & Shoulder	\$10
(iv) If Opening Occupies Two or More Areas Simultaneously Charge Only Higher Fee	
459.4(b)(3) Aboveground Facilities	
(a) Poles, Guys/or Anchors Installed Independently	\$20
Up To 10 Physically Connected Facilities	
(b) Additional Connected Facilities (each)	\$2
459.4(b)(4) Crossings (tipples, conveyors, walkways, etc.)	\$80
459.4(b)(5) Seismograph – Vibroseis method	
(i) First Mile	\$50
(ii) Each Additional Mile or Fraction Thereof	\$5
459.4(b)(6) Non-Emergency Test Holes In Pavement or Shoulder (each hole)	\$5
441.4(b) Other	\$20

ADDITIONAL FEES (varies)

- 459.4(d)(1) Additional application fees.
- 441.4(d) & 459.4(d)(2) Additional inspection fees.

Fee Exceptions

The following are exempted from HOP application/issuance fees and general inspection fees. See 441.4 and 459.4. Permittees who qualify for certain fee exemptions under Subsection (c) must still pay for additional application fees and additional inspection fees under Subsection (d).

Table 2.10.1: Applicants Not Assessed Permit Fees

441.4(c) Reference	Applicant
1.	The Commonwealth of PA.
2.	PA political subdivisions. This includes public schools and colleges who derive their revenue from tax dollars.
3.	Governmental authorities organized under the laws of PA.
4.	The Federal government.
5.	<i>Charitable organizations ... (HOP applications submitted under current Chapter 441 only).</i>

459.4(c) Reference	Applicant
1.	The Commonwealth of PA.
2.	PA political subdivisions, except when placing a facility longitudinally within more than 100 total linear feet of pavement. In that case, the application and inspection fees for pavement openings will be charged under Subsections (a), (b), and (d).
3.	Governmental authorities organized under the laws of PA, except when placing a facility longitudinally within more than 100 total linear feet of pavement. In that case, the application and inspection fees for pavement openings only will be charged under Subsections (a), (b), and (d).
4.	The Federal government.
5.	Utility facility owners for: <ul style="list-style-type: none"> i. The installation or maintenance of highway lighting at the request of PennDOT or political subdivisions. ii. The replacement or renewal of their facilities prior to a PennDOT maintenance project after notice from PennDOT. To qualify for a free Permit, the application must include documentation that a facility is being replaced or renewed "after notice from" PennDOT of a Department maintenance project. iii. The removal of poles and attached appurtenances. iv. Facilities moved at the request of PennDOT or political subdivisions. To qualify for a free Permit, the application must include documentation that a facility is being moved "at the request of" PennDOT. v. Reconstructing or maintaining their facilities which occupy the right-of-way under private status. (The Utility must provide the Agreement Number and date of Agreement whereby private status was granted by PennDOT to be eligible under this exemption. The private status can then be verified through the Bureau of Project Delivery – Utility Relocation Section.)

A political subdivision or a governmental authority will be assessed an application fee and a general inspection fee when placing a longitudinal opening over 100 linear feet in the pavement. The general inspection fee will be based only on the total longitudinal opening in the pavement. A political subdivision or governmental authority will not be charged a general inspection fee for occupancy of either the shoulder or outside the shoulder.

Additional Fees

Additional fees may be charged by PennDOT consistent with Sections 411 and 420 of the State Highway Law and 441.4(d) and 459.4(d) as explained below:

1. Additional Application Fees. – Additional application fees may be charged when PennDOT determines that the cost of reviewing the application will exceed the application and inspection fees by a significant amount. When it is anticipated that such additional application review costs will be incurred, process Form M-945 H (in the case of a utility facility) or Form M-950 H (in the case of a driveway). After Form M-945 H or M-950 H is signed by the Applicant and received by the District Permit Manager, formal review of the application may begin. Additional application fees may be assessed only for costs incurred after the Effective Date of Form M-945 H or M-950 H. The following guidelines may be used to determine if there may be additional "significant" costs:
 - a. Work involving more than 500 linear feet of pavement or shoulder, or both.
 - b. Work involving more than 1,000 total feet of surface openings within State highway right-of-way.
 - c. An "accident damaged" or "cluster area" aboveground facility.
 - d. A driveway application which warrants a Transportation Impact Study, Assessment or Drainage Impact Report.
 - e. Work involving construction of acceleration, deceleration or left turn lanes.
 - f. A resubmitted application previously returned more than once for incompleteness or correction.
 - g. Work involving an unusual situation which requires the need for extreme care.
 - h. Other circumstances where PennDOT may reasonably require reimbursement.
2. Additional Access Inspection Fees. – Under 441.4(d), additional inspection fees may be charged when PennDOT determines that the permitted work is of sufficient magnitude or importance to warrant assignment of one or more inspectors on a more than spot inspection basis.

These guidelines may be used to determine if there may be additional "significant" costs:

- a. Work involving construction in limited access highway right-of-way.
 - b. Work involving construction of acceleration, deceleration or left turn lanes.
 - c. Work involving construction of pavement widening or construction of type 6 or better shoulders.
 - d. Work involving construction of drainage facilities in the right-of-way (e.g., new installation or connection to existing facilities).
 - e. Work involving an unusual situation which requires the need for extreme care.
3. Additional Utility Inspection Fees. – Under Regulation 459.4(d)(2), additional inspection fees may be charged when PennDOT determines that the permitted work is of sufficient magnitude or importance to warrant assignment of one or more inspectors on a more than spot inspection basis. Examples of such work include:

- a. Work involving a subsurface facility in limited access highway right-of-way.
- b. Work involving trench openings exceeding 500 feet (whether or not contiguous) in the pavement or shoulder, on a non-limited access highway. See Chapter 7 of this manual for more information.
- c. Work involving an unusual situation which requires the need for extreme care.
- d. Work authorized under Regulation 459.12 (relating to modification of conditions).
- e. Work involving substantial excavation of the highway, e.g. a project of considerable size, importance or restoration cost.

Note: If additional inspection fees are contemplated as part of an access or utility permit, then the Applicant must obtain an EPS Business Partner ID for electronic invoicing through EPS prior to permit issuance.

Supplement Fees

PennDOT will charge a Supplement fee under 441.4(a) and 459.4(a).

1. Time-extension. – A \$10 fee is assessed for each 6-month time-extension. For example, if a Permittee is issued a Supplement to extend the work period under the Permit for a period of one year, the Supplement fee would be \$20.00.
2. Amend a Permit. – A \$10 fee is assessed when the Permittee proposes to make a change to a Permit (e.g., change of name or address). If there is a request for additional work, the applicable general Permit inspection fees will be charged in addition to the Supplement fee.

Processing of Fees

The following steps are used for processing revenues:

1. Post the revenue documents with SAP transmission FB50.
2. Print the Deposit Transit Slip using ZF_Deposit (STD-421) with checks and money orders.
3. Submit the STD-421 with the checks and money orders via US Mail directly to the Department of Revenue's facility at 1854 Brookwood Street, Harrisburg, PA 17104.

Follow the current [Management Directive 305.11](#), *Depositing Checks, Money Orders and Cash*. Checks and money orders must be deposited weekly or when the amount is greater than five hundred dollars (\$500.00).

Permit Monthly Billing Program

459.3(d)(4) offers utility facility owners or operators the opportunity to participate in a permit monthly billing system.

Rather than providing a check or money order for each permit applied for prior to permit issuance, the utility, if participating in the monthly billing program, would receive an invoice from PennDOT each

month that lists all permits and supplements and their associated fees the utility was issued the prior month.

To participate in the permit monthly billing program, a utility must provide to PennDOT's Central Permit Office (400 North Street, Harrisburg, PA 17120), the following:

1. Application for Utility Facility Highway Occupancy Permit Billing Account;
2. Insurance verification:
 - a. If self-insured, a completed self-insurance questionnaire ([Form M-4902APPSI](#)), or
 - b. ACORD form for insurance information (Blanket Insurance). NOTE: The following is recommended language in the Description of Operations section if providing a Blanket ACORD form: "Certificate holder is included as an additional insured for PennDOT permits issued with respect to _____'s highway occupancy permit blanket billing account(s). Certificate holder will be provided with 30 days advance notice of cancellation."
3. M-945K Highway Restoration & Maintenance Bond (Blanket Bond) for \$500,000;
4. EPS Business Partner ID (BP ID). For information on applying for a BP ID, visit <https://www.dot14.state.pa.us/EPS/home/manageBPRegistration.jsp>.
5. \$100.00 processing fee payable by check or money order.

All forms must have the same company name and address on them, and the application and M-945K must be signed by a senior executive of the company consistent with the *Signature Authority Guide* in Appendix C6 of this manual.

To ensure the monthly invoices will be e-mailed to the appropriate individual(s), the following additional information must be provided:

1. Invoicing Business Name
2. Federal Tax ID Number
3. Address Information (Street, City, State and ZIP Code)
4. Billing Account Contact(s) (Individual(s) receiving the monthly invoice via e-mail)
 - a. First and Last name
 - b. E-mail address
 - c. Telephone number

Once PennDOT receives the above items and approves the documents, the Utility will be assigned a customer and billing account. Typically, one billing account will be assigned to a utility. However, PennDOT may make exceptions in certain situations such as where the utility has various regional offices throughout the state or subsidiaries with different Federal Tax IDs. This will be addressed on a case by case basis.

Refund of Fees

441.4(e) and 459.4(e) authorize PennDOT to refund the *general* Permit *inspection* fees on unused HOPs. In order to be eligible to receive such a refund, the Permittee shall deliver a written request with the Permittee's copy of the Permit to the issuing District Permit Office on or before the Permit's expiration date.

1. A refund processing fee of \$10 will be deducted from the general Permit inspection fees.
2. The Permit application/issuance fee is not refundable on unused Permits.
3. Supplement fees are not refundable.

If the Permittee qualifies for a refund on an unused Permit, a refund request will be processed by the District Permit Office through a request submitted through SAP.

Fee for Uncollectible Check(s)

A check or money order is deemed to be uncollectible once it has been returned to PennDOT via the State Treasury without payment.

Any Permittee who has submitted an uncollectible check as payment for the HOP shall be notified (by certified mail) by the District Permit Office to replace the uncollectible check immediately with a certified check, cashier's check or money order for the amount of the HOP(s) plus an additional twenty dollar (\$20) penalty fee per check as authorized under Section 619-A (2)(I) of the Administrative Code.

If the Permittee does not replace the uncollectible check within one week after the mailing date of the letter, the District shall revoke the Permit(s), under authority of 441.10(b)(2) and 441.10(c) as well as 459.11(b)(2) and 459.11(c). The Notice of Revocation letter (see 'Form Letters' Folder (posted on the PennDOT P: Drive)) may be used to revoke a Permit for nonpayment by deleting the highway safety paragraph.

Township Fees

Under authority of 53 P.S. Section 67322, second class townships are required to assess Permit fees for utility facilities occupying Township roads as outlined in 459.4. PennDOT has a duty to determine utility permit fees to be assessed by second class townships in accordance with this law (53 P.S. Section 67322). In 1979, PennDOT determined that all second class townships would use PennDOT's regulatory fee schedule, consistent with legislative intent to promote statewide uniformity:

"The township shall collect a fee as determined by Department of Transportation for processing the application and another fee for making the inspection."

It is the responsibility of the District Permit Manager to answer township inquiries on PennDOT's fees. However, refer inquiries relating to administration to Pennsylvania State Association of Township Supervisors, 4855 Woodland Drive, Enola, PA 17025, (Phone: 717-763-0930).

CHAPTER 3 – APPLICATION REVIEW

3.1 – APPLICATION REVIEW POLICY

HOP applications for access to and occupancy of a highway, as defined in Chapters 441 and 459, by driveways, local roads or utilities, including required studies, plans, and other supporting documents are processed concurrently through PennDOT's Electronic Permitting System (EPS).

Applications for access to local roads not under PennDOT jurisdiction will be returned without action, with notice to the applicable municipality.

Applications that are not complete and accurate as determined during the initial on-site review by HOP staff may be returned for additional information and correction before District Office review.

Applications that *are* complete and accurate will be thoroughly reviewed by required District staff reviewers before the application is approved, denied or returned to the Applicant for additional information, correction or amendment(s). Thorough reviews promote efficiency and reduce the application review cycles which occur if an application is returned before all reviewers review the package (e.g., additional amendments are often identified after the amended application is forwarded to the remaining reviewers if the remaining reviewers have not had an opportunity to review the current application package).

However, it may be counterproductive for all reviewers to expend resources reviewing every submission if there are substantial initial comments significantly affecting the proposed design. Holding a project "scoping" meeting during the pre-application phase of the project can provide great benefit by reducing the likelihood of encountering significant element of design concerns during the application review process.

Certain types of HOP applications must be reviewed by Central Office. Within Central Office, the Bureau of Maintenance and Operations (BOMO), the Bureau of Project Delivery (BOPD), and the Office of Chief Counsel (OCC) may be involved in the review process depending upon the nature of the review submission. FHWA staff must also review and approve: (1) all non-utility permanent occupancy applications involving limited access highways on the Interstate system; (2) any utility application involving a limited access highway that is not in accordance with Design Manual, Part 5; (3) any proposed longitudinal occupancy of a limited access highway; and (4) any access to/from a limited access highway on the Interstate system.

Necessary reviews by the FHWA are undertaken after the Central Office review so that FHWA staff reviewers are aware of PennDOT's comments or concurrence. Similarly, final drafting and approval of documents by OCC may need to occur after design features and other matters have been approved by other reviewers before any necessary agreement can be finalized.

HOP Application Review

Generally, PennDOT's action on an HOP application is considered an exercise of the police power. A property owner with no existing permitted access purchases the property with no assurance access will be granted in the future. While a property owner has a constitutional right of reasonable access to the highway system, the type of access allowed must be consistent with regulations as well as the property's existing physical configuration and limitations. *Hardee's Food Systems v. Department of Transportation*, 434 A.2d 1209, 495 A.2d 514 (1981).

PennDOT's final decision on an application for an HOP is an adjudication, and consequently the Applicant has the right to request an administrative hearing before PennDOT (2 Pa. C.S. Section 504, 67 Pa. Code, Chapter 491).

Other property owners may be affected by a pending HOP application, depending on the driveway's design or operational characteristics, and may have sufficient rights to institute a formal protest, complaint, intervention or other administrative action with PennDOT. Review the "Access Approval Procedures" in Subchapter 2.6 for more information.

3.2 – HOP APPLICATION PROCESSING POLICY

Following is PennDOT statewide policy for processing HOP and BOL applications in an equitable manner, consistent with law:

General Rule: All HOP and BOL applications will be expeditiously reviewed on a first-come, first-served basis, except as noted below:

Exception 1: Public Emergency

Applicants requesting authorization to replace or repair a facility or structure or perform work requiring a permit or license because of a bona fide emergency or accident affecting the public safety or convenience should follow the Emergency Permit procedures as specified in 459.6. Prompt assistance will be provided consistent with 459.6. The follow-up HOP application will be processed – after the emergency – under the general rule above.

Exception 2: Winter Heat Conversions

Applicants requesting a permit to make a conversion at their customer's request (e.g., to change heat or water heater type) during winter months to provide uninterrupted service, will be provided prompt assistance.

Exception 3: Priority Utility Applications

Consistent with 459.3(d)(5), utility applications identified as *priority* by the Applicant will be reviewed before other pending applications from the same Applicant are reviewed. Other applications which have already been reviewed should not be delayed. Applications from other utility owners should not be delayed. If an Applicant identifies all of its applications as being "priority", that Applicant's applications may then be processed in the same manner as they would be if none were marked "priority".

Exception 4: Department Error

Applicants requesting replacement permits, licenses or supplements due to a confirmed PennDOT error will be provided prompt assistance.

The Driveway Application 60-day Deemer

1. Applications for access to non-limited access highways, which are complete and correct, will be processed by PennDOT staff within 60 calendar days after receipt.

County Office and on-site reviews should be completed within ten calendar days of receipt of an application. Each application review must be completed promptly. Applications for access which require review by Central Office will require additional processing time; schedule these applications accordingly. Each application review must be completed in its entirety based on the information provided, before being approved, denied or returned. A final decision must be made, in writing, on all driveway application submissions within 60 calendar days of receipt by PennDOT, as explained below.

2. Act 247 of 1968, 53 P.S. 10508(6) and Act 170 of 1976, 53 P.S. 4104, involve municipalities (*except for Philadelphia and Pittsburgh*) that have enacted a subdivision and land development ordinance or municipalities that have enacted an ordinance requiring a building permit. These Acts, as reenacted and amended by Acts 42 and 43 of 1986 require PennDOT within 60 calendar days of the date of receipt of a Driveway Application (Forms M-945 A or M-950 A) to do one of the following:
 - a. approve the Permit,
 - b. deny the Permit,
 - c. return the application for additional information or correction to conform with regulations, or
 - d. notify the municipality and Applicant in writing that no Permit is required.

If PennDOT fails to take any action within the 60-day period, the Permit is **deemed** to be issued (in those municipalities that qualify under the legislation noted above).

The 60-day review period will begin to *run* on the date an application is received by the affected PennDOT Permit Office. This will be the date the application is marked as received by PennDOT personnel in the EPS. For paper submissions, the date of receipt will be documented on the application in the field titled "Department Use Only" each time the application is received by PennDOT. If PennDOT has to return the application for additional information or correction, the application return notification (via EPS-generated e-mail) will serve as documentation for acting on the application during the 60-day period. If the application is resubmitted, a new 60-day review period will commence.

These Acts further provide that the plat or building permit "contains a notice that a highway occupancy permit is required...before driveway access to a State highway is permitted." PennDOT issues Permits consistent with its own regulations and is responsible for enforcement of these regulations only, regardless of the property owner's compliance with municipal requirements. Municipalities may include this statement even if no State highway abuts the property. The requirement that a plat or building permit be so marked ensures that a property owner receives notice of its legal obligation to obtain an HOP for access to a State highway. These Acts do not require that the property owner secure an access Permit before obtaining municipal approval, although some municipalities may impose this requirement by ordinance. This notice requirement does not modify existing laws or regulations with regard to delineating when an HOP is required.

Requirements for building permits vary among municipalities. If PennDOT were to require an HOP every time a property owner obtained a building permit, some property owners would need a new HOP for each home improvement which requires a building permit (e.g., placing new siding on a

house, converting a carport into a garage, building an addition on a house). Also, property owners would be subject to varying HOP requirements, based on their municipality's building permit ordinances.

These Acts afford PennDOT an opportunity to determine whether an HOP is required, due to a property owner's improvements having an adverse effect on a State highway. However, if the improvements do not affect any State highway, access or traffic, then PennDOT will not pursue the property owner to apply for a driveway Permit.

Where a property that will be subdivided contains both existing and proposed driveways, the existing driveways will also be reviewed to bring them into regulatory conformity if necessary. Such review furthers the purposes of the Driveway regulations, which is to secure a safe and operationally sound State highway system. Exercise of the authority to require an Access Covenant under 441.6(16) is pointless unless both existing and proposed driveways are considered. Even if the existing driveways were previously permitted, this fact does not exempt them from PennDOT-mandated modification or elimination under 441.6(1)(ix).

3.3 – PRELIMINARY REVIEW OF APPLICATIONS BY COUNTY STAFF

Initial on-site reviews. The County Permit Supervisor or staff is required to field view the proposed work site as part of the initial application review. A thorough initial on-site review is essential, for the following reasons:

1. To verify applications and plans are factually complete and accurate (e.g., an application should depict actual site conditions); application returns and comments should be drafted to encourage complete and correct application on subsequent submissions(s).
2. To verify up-front that the application package is in full compliance with applicable laws and regulations, policies and standards.
3. To identify issues up-front, so there is adequate time to address.

If the application and plans are complete and accurate, the County Permit Supervisor or staff will forward the application package to the District Permit Office for additional review and processing.

If the application and plans are not complete and accurate, the entire package should be returned to the Applicant using the appropriate application return letter through EPS identifying all known additions or corrections to be made by the Applicant so the application will not have to be returned a second time for incompleteness or correction of obvious deficiencies or errors.

If an application is returned twice for additional information and the same requested information still is not provided without justification, the District may deny the application (see 'Form Letters' Folder (posted on the PennDOT P: Drive)) and retain the application fee consistent with Chapter 9.

Where conditions or requirements have not changed, duplicate applications received within one year of being previously denied may be returned without action.

3.4 –DRIVEWAY APPLICATION ON-SITE REVIEWS

For all applications, the County Permit Supervisor or staff is required to perform an initial on-site review of the proposed work site. The reviewer's name and each on-site review date must be captured on the application.

Purpose

The purpose for this review is to verify the application package contains applicable information required under 441.3, to verify information depicted on the plans actually matches field conditions, and to verify that measurements (e.g., sight distances, grades) are not in conflict with the regulations, when measured consistent with statewide policy.

Items requiring verification during the initial on-site review include the following:

1. County, Municipality, SR, Segment(s) and Offset(s) are correct.
2. The site is depicted accurately on the plan.
3. All information required by 441.3(i) is on the plan and is accurate.
4. Verify minimum sight distances.
 - a. Use posted speed limit(s); if no posted (maximum legal) speed or if operating speeds vary significantly from posted speed limit(s), measure safe-running speed or 85th percentile speed.
 - b. Independently verify and record average grade in both directions (along measured sight distance).
 - c. If access is a “local road”, verify sight distances are consistent with Publication 70M “Guidelines for Design of Local Roads and Streets”.
5. If access is a “local road”, verify design is consistent with Publication 70M (see 441.7(d)).
6. Verify existing highway drainage is depicted accurately.
7. Verify existing curb is depicted accurately.
8. All highway appurtenances are shown (e.g., drainage, signage, guiderail) and whether any will require relocation or adjustment.
9. All existing and proposed utilities are shown and plans indicate if any utility facility will require relocation or adjustment to accommodate access.
10. Proposed development will meet all Americans with Disabilities Act (ADA) requirements (including RC-67M curb ramp designs), and PA Vehicle Code, Section 3354(d)(3)(iii) disability parking sign requirements.
11. Driveway is designed with required minimum distances from other driveways and intersections (see 441.8(c) & (e)).
12. Driveway angle is consistent with 441.8(b) (e.g., is satisfactory justification provided if 90-degree access is not proposed at site?).
13. Driveway design is consistent with Subchapter 2.4 of this manual (e.g., is justification provided if proposed access design is inconsistent with Subchapter 2.4).

14. A Traffic Control Plan is included (if required) and depicts actual highway conditions see Pub. 213 *Temporary Traffic Control Guidelines*.

Driveway Sight Distance Overview

Velocity (V)

Legal Speed

The speed limit is the maximum velocity, in miles per hour, that traffic may legally travel on a section of highway as determined under 67 Pa. Code, Sections 201.6(17) and 201.31--201.35, and consistent with the Vehicle Code, 75 Pa. C.S. Sections 3361--3365.

Section 3362 of the Vehicle Code (Maximum Speed Limits) reads as follows:

General rule. -- Except when a special hazard exists that requires lower speed for compliance with Section 3361 (relating to driving vehicle at safe speed), the limits specified in this section or established under this subchapter shall be maximum lawful speeds and no person shall drive a vehicle at a speed in excess of the following maximum limits:

- (1) 35 miles per hour in any **urban district**.
 - (1.1) 65 miles per hour for all vehicles on freeways where PennDOT has posted a 65-miles-per-hour speed limit.
 - (1.2) 25 miles per hour in a **residence district** if the highway:
 - (i) is not a numbered traffic route; and
 - (ii) is functionally classified by PennDOT as a local highway.
- (2) 55 miles per hour in other locations.
- (3) Any other maximum speed limit established under this subchapter.

Section 102 of the Vehicle Code includes the following definitions:

“Urban district.” The territory contiguous to and including any street which is built up with structures devoted to business, industry or dwelling houses situated at intervals of less than 100 feet for a distance of a quarter of a mile or more.

“Residence district.” The territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of 300 feet or more is in the main improved with residences or residences and buildings in use for business.

“Business district.” The territory contiguous to and including a highway when within any 600 feet along the highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

Safe-Running Speed

The safe-running speed is the maximum velocity, in miles per hour, at which drivers may safely operate their vehicles on a section of highway during favorable weather conditions and prevailing traffic conditions, as determined under 67 Pa. Code, Section 212.1.

District Permit staff may determine the Formula Sight Distance (FSD) consistent with Regulation 441.8(h) by using the safe-running speed in the "formula" for "V", where V = Speed of vehicle (miles per hour).

The safe-running speed method, as outlined on Form M-950 SRS, may be used where the maximum legal highway speed approaching a driveway is not posted. The recorded speeds and computations will be documented on Form M-950 SRS and filed with the driveway application package.

85th Percentile Speed

The 85th percentile speed is the velocity, in miles per hour, which is exceeded by only 15% of the drivers traveling on a section of highway, consistent with the "Manual of Transportation Engineering Studies," Institute of Transportation Engineers, current edition, and 67 Pa. Code, Section 212.1.

District Traffic staff may determine the Formula Sight Distance (FSD) consistent with Regulation 441.8(h) by using the 85th percentile speed in the "formula" for "V", where V = Speed of vehicle (miles per hour).

District Traffic staff may require sight distances greater than minimum values derived from the Formula Sight Distance (FSD):

1. if trucks, longer combination vehicles, buses, special mobile equipment or similar specialized vehicles will frequently use the driveway, considering number of lanes, medians and roadway geometry, consistent with Chapter 9 of the AASHTO publication entitled "A Policy on Geometric Design of Highways and Streets," and Design Manual, Part 2.
2. if staff determines another location along the property frontage of the owner will better accommodate the amount and type of traffic that is expected to frequently use the driveway and considering the type, character and 85th percentile speed of the highway which is being accessed.
3. if a local road, consistent with Publication 70M sight distance criteria.

Measuring Sight Distances

The measurement of available sight distances for a proposed access is a critical component of the access location decision. An applicant's sight distance measurements need to be verified by PennDOT. The County Permit Supervisor or staff verifies driveway sight distances and documents these measurements consistent with Form M-950 S. County staff sends the completed copy with the driveway application to the District Permit Office for review.

For the purpose of measuring driveway sight distances, the drivers' eye heights shall be measured at

3.50 feet above the proposed driveway surface and highway pavement surface. The vehicle heights shall be measured at 3.50 feet above the proposed driveway surface and highway pavement surface. The placement of vehicles measured at the driveway and on the roadway, shall be consistent with the operation of the driveway and roadway, as illustrated on Form M-950 S.

Also consider impacts of legally parked vehicles and foliage which may not be present when the sight distance measurements are made. For each direction along the highway, the following lengths shall be the measured sight distances for that direction, as illustrated on Form M-950 S:

- (A) The maximum length of roadway along which a driver at a driveway location can continuously see another vehicle approaching on the roadway. Consistent with driver responsibilities contained in Sections 3112, 3114, 3323, 3344 and 3361 of the Vehicle Code (75 Pa. C.S.), the driver's eyes shall be measured ten feet back from the traveled portion of the roadway.
- (B) The maximum length of roadway along which a driver on the roadway can continuously see the rear of a vehicle which is located in the driver's travel lane and which is positioned to make a left turn into a driveway.
- (C) The maximum length of roadway along which a driver of a vehicle intending to make a left turn into a driveway can continuously see a vehicle approaching from the opposite direction. This sight distance length is measured from the location of the approaching vehicle to a point on the roadway where the left-turning vehicle crosses the path of the approaching vehicle.

Staff should not re-measure any sight distance unless highway features or proposed access location have changed (e.g., vegetation or embankment removed). Sight distance measurements need to be carefully taken initially, using accurate measuring devices.

Insufficient Sight Distance

If any measured sight distance for a proposed driveway does not exceed the minimum Stopping Sight Distance, forward the sight distance denial letter to the applicant (see 'Form Letters' Folder (posted on PennDOT P: Drive)).

Vegetation on Adjacent Property

PennDOT generally has broad authority to control use of highway right-of-way for all transportation purposes. 36 P.S. Section 670-420, 71 P.S. Section 512. PennDOT "...shall have the absolute right to trim, cut and remove any...shrubs growing within the legal right-of-way of any State highway...insofar as they overhang or encroach upon the legal right-of-way of any State highway." 36 P.S. Section 670-

410. Accordingly, PennDOT may require removal of any shrub or encroachment – within the right-of-way – affecting sight distance as a condition of a Highway Occupancy Permit.

In addition, Section 6112 of the Vehicle Code reads:

6112. Removal of traffic hazards by property owner.

(a) General rule.—It is the duty of the owner of real property to remove from the property any tree, plant, shrub or other similar obstruction, or part thereof, which by obstructing the view of any driver constitutes a traffic hazard.

(b) Notice of hazard.–When the department or any local authority determines on the basis of an engineering and traffic investigation that a traffic hazard exists, it shall notify the owner and order the hazard removed within ten calendar days.

(c) Penalty.–The failure of the owner to remove the traffic hazard within ten calendar days after notice under subsection (b) is a summary offense and every day the owner fails to remove it shall be a separate and distinct offense. The offense is punishable by a fine of \$10.

Accordingly, PennDOT or a local authority may require removal of shrubbery or other similar obstruction affecting sight distance to or from a local road.

However, in the case of a driveway, the owner(s) of the shrubbery or other similar obstruction may need to be notified of PennDOT's intention to issue an HOP requiring removal of the shrub(s) so that the owner(s) may take appropriate action, consistent with law. Thus, the applicant may be required to make timely, advance notification to the owner(s) of the shrubbery or other similar obstruction, of PennDOT's intention to issue a driveway permit requiring removal of the subject shrubbery. Such notification must advise the property owner of his rights under the Administrative Agency Law and the procedural requirements of 67 Pa. Code Chapter 491, relating to administrative proceedings before the Department, as well as filing fees.

Application Denial

Be sure to list all reasons for an application denial and cite the specific law(s), regulation(s) or statewide policy on which the denial is based. Only reasons that were considered by PennDOT staff in formulating a final decision on an application may be entered into evidence, in the event the applicant requests a hearing on a denied application.

Resubmission of Denied Applications

Denied applications will be retained in accordance with EPS procedures and policy. If an applicant submits an identical or substantially similar application within one year of a denial and neither (1) related PennDOT requirements nor (2) related highway features have changed, the Office of Chief Counsel, Permits Section staff must be contacted. Resubmitted duplicate applications may be returned without action.

3.5 – UTILITY APPLICATION ON-SITE REVIEWS

Purpose

The purposes and procedures for reviewing utility applications are basically the same as for reviewing driveway applications. When an application is received, the County Permit Supervisor or its subordinate needs to perform an on-site review enter the reviewer's name and on-site review date(s) on the application, and either forward the application to the District Permit Office for further review and issuance or return the package to the Applicant for corrections and/or additions.

The main difference between the utility review and the access review is with the items to be checked and verified during the on-site review.

Items requiring verification during the initial on-site review include the following:

1. County, Municipality, SR, Segment(s) and Offset(s) are correct.
2. The site is depicted accurately on the plan.
3. All information required by 459.3(d) & (e) is on the plan and is accurate.
4. Whether the utility facility (aboveground or subsurface) can be physically located farther away from the roadway center line and closer to the right-of-way line.
5. If poles can be placed nearer the right-of-way line (new installation) or if "other" location justification is satisfactory (e.g. where there is a line of fixed objects [such as trees, fences, signs, etc.] situated along the roadway).
6. If proposed location complies with 'Americans with Disabilities Act' (ADA).
7. If pole is being placed in an unauthorized location (e.g., drainage ditch, ADA facility, in front of curb).
8. If aboveground facility is being placed at least the minimum distance behind curb (consistent with Design Manual, Part 5, Chapter 1) or guiderail (consistent with RC standards, Design Manual, Part 2, Chapter 12 and Form M-949 A and B)?
9. If type of guiderail is as depicted.
10. If justification for open cutting pavement or shoulder is satisfactory.
11. A Traffic Control Plan is included and depicts actual highway conditions (see 459.3(f)).
12. If emergency work, temporary or permanent restoration was placed, old pole was removed, and location and size of emergency opening are correctly depicted (e.g., size, number, and location).
13. If proposed facility will be in conflict with bridges or highway appurtenances?

Photo Documentation

It is recommended that photographs be taken of possible problems identified during the on-site review. Photos should be uploaded to the EPS application file. High quality digital photos are the desirable option, because they provide greater detail and additional quality copies can be produced for evidence at legal proceedings. Photographs should contain the following notations, as a minimum:

1. Taken by (photographer).
2. Date and time photo taken.
3. Location pictured (SR, Segment, and Offset).
4. Subject (what problem is being documented?).
5. Application number.

3.6 – RECORDING A HIGHWAY OCCUPANCY PERMIT

Certain types of HOPs and HOP legal documents must be recorded in the county recorder of deeds office when deemed necessary by PennDOT before the HOP can be issued. (see 441.4(f) and 459.4(f) of the regulations).

Recording gives future purchasers of the affected property notice of permit issuance, deed restriction(s) under the permit, and future responsibilities under the permit that run with the land.

Before issuing the HOP for the following, require the HOP or applicable HOP document to be recorded:

1. Drainage Releases (Form M-947) under 441.3(h).
2. Access Covenant (Form M-946) under 441.6(16).
3. Indemnification (Form M-945 I, Form M-950 IA).
4. The HOP if issued to a facility owner who is not in the business of providing utility service under 459.3(b).

If the Applicant is not the fee owner of the property and the HOP needs to be recorded, the District Permit Manager should contact OCC, Permit Section Attorney for further guidance.

Note: If the District Permit Manager requires the applicant to execute an agreement (see 441.6(f)) or condition statement as a prerequisite to issuance of the permit, consider recording the HOP and associated agreement or condition statement when deemed appropriate.

Note: Notarized legal documents (e.g. Drainage Release, Access Covenant, etc.) must be recorded independent of the HOP by the applicant prior to the HOP being recorded. Attach the recorded document(s) to the HOP as an exhibit(s) when recording the HOP.

Note: If land will be conveyed to PennDOT, the executed deed and the title information must be reviewed and accepted by the Right-Of-Way Administrator prior to: (1) recording, and (2) issuance of the permit. See Right-of-Way Procedures for HOP Applicants in this Chapter for exceptions.

If a document is to be recorded, a condition will be placed on the permit stating as such. See Chapter 9 (Form M-945 RC or other form with recording section) for generic recording procedures.

3.7 – BRIDGE OCCUPANCY LICENSE (BOL) PROGRAM

Law

Sections 411 and 702 of the State Highway Law (36 P.S. Sections 670 – 411 and 702) authorize PennDOT to issue Bridge Occupancy Licenses (BOLs) and collect several fees for the occupancy of a State bridge by the utility facility.

Regulation and Policy

459.10a of the regulations governs Bridge Occupancy. The following is a summary of the regulation and general statewide policies related to the regulation:

1. Application. 459.10a(b)(1) of the regulations requires a separate License Application for each utility facility and for each bridge be submitted to the District Bridge Engineer. Applications may be submitted through the Electronic Permitting System (EPS), or in paper using Form M-906 A. If

paper form M-906 A is submitted by the applicant, it will be entered into EPS. All applications are then processed by the District HOP Unit, and reviewed by the District Bridge Unit. For a visual representation of BOL workflow within EPS, refer to the diagram at the end of this section.

When an application for a BOL is submitted in conjunction with a PennDOT bridge construction project, the application may be entered in EPS prior to project completion; the License will not be issued until the project is completed and accepted by PennDOT, unless PennDOT authorizes occupancy during construction of the bridge through the procedure outlined in 459.10a(d)(5), requiring a certificate from the contractor consenting to the work and releasing PennDOT from delay damages. If the application is received by a District Utility Relocation unit, it should be forwarded to the District HOP unit for processing.

Further, if the application is from a utility facility owner "not in the business of providing utility service", the application shall identify how the facility will directly or indirectly serve the public and shall furnish other information as may be required by 459.3(b)(2), governing application for an HOP submitted by a utility facility owner "not in the business of providing utility service".

The following questions will provide information to help determine if the application satisfactorily identifies "how the public will benefit from the occupancy":

- a. Will the property being serviced by the utility be used by the public? For example, is a hospital, school, shopping center, hotel, restaurant or similar business establishment being serviced by the utility?
- b. Do the application and plans coincide with the justification?
- c. Is the applicant being serviced by the utility facility? (See 459.10a(c) (2)). Is the applicant a customer of the utility? Will the applicant be invoiced by the utility for utility service?
- d. How will the utility facility be maintained?

Owners of unlicensed utility attachments must also obtain a BOL from PennDOT. Owners of such facilities should be informed of their obligation to do so pursuant to Sections 411 and 702 of the State Highway Law.

When possible, PennDOT and all of the Commonwealth's utilities should be proactive in communicating with one another when a utility facility and/or PennDOT structure are planned for replacement. This helps utilities avoid the redundancy of constructing new facilities twice within a short timeframe.

2. License. 459.10a(a) requires a BOL (Form M-906 L) in order for a person to attach a utility facility to a State bridge or modify an existing utility facility. With the incorporation of BOLs into EPS, Form M-906 L is now issued by the District HOP Units. Districts can establish accounts for new customers, issue and maintain licenses through the system, and process application fees. Central Office will continue to monitor licenses and accounts in the system at a statewide level; generate annual rental invoices; and receive and process annual rental fees required under the statute and 459.10a(b)(3).
3. Denials. Applications should be denied if one or more of the following applies. If an application package is:

- a. not in the name of the owner of the utility facility;
- b. from a utility facility owner not in the business of providing utility service but does not identify to PennDOT's satisfaction how the public will benefit from the occupancy;
- c. not submitted consistent with 459.10a; or
- d. unsatisfactory from a structural stand-point, as determined by the District Bridge Unit.

Applications will be denied by the District Bridge Engineer. The denial letter should list **all** reasons for the denial and can provide alternatives, if applicable (e.g., crossing under a stream/ravine is feasible).

4. Fees. 459.10a(b)(3) specifies an issuance fee, an inspection fee, an accommodation fee and an *annual* rental fee. While governmental utilities are generally exempt from these fees, governmental *authorities* are not exempt from the annual rental fee.

Before a license can be issued, applicants required to pay fees must have a billing account established through EPS; District HOP staff assist with this process. Invoices are e-mailed to licensees for issuance, inspection, and accommodation fees within a month of license issuance, while invoices for annual rental fees will be delivered each January.

5. Amended Applications. 459.10a(9) allows a licensee to change, alter, or remove part or all of a utility facility belonging to it from the bridge or highway by filing an amended application if disturbed parts of the bridge or highway are restored at the expense of the licensee as directed by the District office. The procedures for amended applications are as follows:
 - a. An application amending a previous license shall be received and processed in the same manner as a new BOL application. The new application should reference the original application, and include revised plans and calculations as required.
 - b. It is the responsibility of the District Bridge Unit to determine fees, including annual rental fees, which account for any cost differences resulting from an amended application.
 - c. When an amended application is approved and a new license is issued, the original license will be revoked.
 - d. When an amended application to remove a licensed utility facility is approved, the license shall be revoked after District inspection staff verifies and confirms removal and proper restoration of the bridge structure.

6. General Provisions.

- a. The provisions of Chapter 459 are incorporated into Section 459.10a where technically feasible by substituting License and Licensee for Permit and Permittee respectively.
- b. The Licensee is also responsible for complying with, among other things, 25 Pa. Code, Chapter 105 (Dam Safety and Waterway Management), as noted in 459.10a(d)(2).
- c. The utility facility installation must be consistent with applicable provisions of Design Manual, Part 5, as noted in 459.10a(d)(11).
- d. A BOL is required, subject to the condition that the BOL does not amend/contradict anything in a

PUC order for a utility to occupy a bridge over which the PUC has jurisdiction. The District Grade Crossing and Bridge Units must coordinate their activities in this regard.

Bridge Occupancy License – EPS Application Lifecycle



Administrative Responsibilities

Central Permit Office

Central Permit Office staff is responsible for the following tasks:

1. Amend PennDOT License regulations (459.10a).
2. Amend PennDOT License software and forms (EPS, M-906 A and M-906 L).
3. Invoice for and collect license application fees and annual rentals through EPS.
4. Maintain electronic file of active Licenses and accounts through EPS.

District Bridge Units

District Bridge Unit staff is responsible for the following tasks:

1. Review each License application to verify the application is in compliance with applicable laws, regulations, statewide policies and engineering standards; and is complete and accurate.
2. Approve issuance of a license once the draft license has been generated in EPS by the District HOP Unit.
3. Notify applicant if application is denied and, upon request, participate in hearings on denied applications.
4. Inspect work performed under License authority to monitor compliance.
5. Take corrective action as required, including the identification and pursuit of owners of unlicensed utility facility attachments.
6. Maintain accurate files of active Licenses.
7. Assist CPO staff with inquiries about specific licenses or bridges.

District HOP Units

District HOP Unit staff is responsible for the following tasks:

1. Receive each License application, upload it into EPS as necessary, verify the application is complete and accurate, and assign the appropriate Bridge Unit staff to conduct a review.
2. Generate draft licenses for approval by the District Bridge Unit and issue licenses through EPS after the application is complete and accurate, and has been approved by the District Bridge Unit.
3. Assist applicants in establishing billing accounts to pay prescribed license fees as applicable.

CHAPTER 4 – ISSUING THE PERMIT

4.1 – PERMIT ISSUANCE

After the HOP application is assigned, reviewed and approved by each authorized PennDOT Unit, the HOP (Form M-945 P) will be promptly issued by District Permit Office staff, provided the application and plans are complete, accurate and consistent with law, regulation and statewide policy.

HOPs may be issued for a period of six months – or multiples thereof – as deemed necessary for permitted work to be completed (e.g., work would not be completed in six months if a large utility or access project, or if permanent restoration cannot be completed in six months due to weather).

HOPs are generated and issued electronically through the EPS consistent with statewide procedures outlined in the EPS training document (posted on the P: drive). When the HOP is generated and approved, an e-mail notification containing a link to the permit file is automatically delivered to the Applicant team, who can then log-in and download a copy of the permit. The permit does not need to be physically signed by the Secretary of Transportation, District Executive, or his/her designees; these signatures are generated in electronic form upon generation of the permit.

441.6(1)(ix) states: “The Department, in granting a permit, will waive none of its powers or rights to require the future change in operation, removal, relocation, or proper maintenance of any access within State highway right-of-way.”

Permit Agreements and Condition Statements

PennDOT may require the Applicant to execute an agreement under 441.5(f) and 459.5(b) prior to issuance of the HOP. Refer to Appendix D8 of this manual.

When an Applicant is expected to comply with special conditions and no condition code exists, a condition statement may suffice.

Following are guidelines for determining HOP work that *may* require an agreement or a condition statement:

Highway Occupancy Permit Condition Statement

A Condition Statement is signed by the permittee and describes the permittee’s additional obligations under the permit. It does not have to follow Commonwealth contracting procedures. In its simplest form, it does not include the requirement of security or insurance, but it can be tailored to meet the needs of the District Office. Condition Statements are used to add simple additional conditions of the permit.

Future Changes in Driveway Design and Operation

PennDOT retains under the regulations “its powers or rights to require the future change in operation, removal, relocation, or proper maintenance of any access within the State highway right-of-way.” 67 Pa. Code §441.6(1)(ix). See generally *Department of Transportation v. Longo*, 510 A.2d 832 (Pa. Cmwlth. 1986) (holding that the regulations could be applied retroactively to reasonably limit ingress and egress under the police power of the State even though the driveway was established prior to promulgation of regulations).

1. Under Chapter 441 Access Regulations:
 - a. Where there will be a *substantial amount of work*, such as auxiliary lanes or drainage facilities extending beyond the property frontage.
 - b. Non-temporary occupancy within limited access highway right-of-way.
 - c. Where there will be special conditions and no condition code exists.
 - d. An unusual situation which requires extreme care.
2. Under Chapter 459 Utility Regulations:
 - a. Where there will be a *substantial amount of work*, such as pavement and shoulder openings totaling more than 5,000 feet.
 - b. Where there will be special conditions and no condition code exists.
 - c. Non-temporary occupancy within limited access highway right-of-way.
 - d. An unusual situation which requires extreme care.

As part of the agreement or condition statement, the Permittee may be expected to use prequalified contractors (e.g., base course, pavement and incidental construction work classifications as outlined in 459.5).

The agreement or condition statement may also address special coordination and control concerns inherent with substantial work, including necessary right-of-way to be acquired and conveyed or dedicated, responsibility for future maintenance and repair of the highway, coordination and approval with the municipality, PennDOT and municipality contribution of work or funds – in conjunction with a programmed PennDOT project, contractor pre-approval, future highway improvements (e.g., signalization) that may be necessary, and other areas of interest or concern to PennDOT or the Applicant that are not already addressed in the law, regulations or Permit. District staff should coordinate with CPO and the OCC Permit section as appropriate (Allow sufficient time for processing of agreements; check with the Office of Chief Counsel (OCC) Contracts Section for current processing times).

The District will notify the Applicant – in writing – within 30

calendar days of receipt of a completed application when an agreement is required, under authority of 441.5(f) or 459.5(b).

4.2 – SUPPLEMENTAL HIGHWAY PERMIT (ELECTRONIC FORM M-945 S)

A Supplement (Form M-945 S), is issued using EPS to authorize an amendment to the Permit (Note: If the original HOP was not generated or uploaded in EPS, a paper Supplement (Form M-945 S) should be issued). Instructions for completing this form document are in Chapter 9.

A Supplement must be applied for by the Permittee within 30 calendar days after the Permit expiration date. In regard to Utility permits, no time extension supplement will be issued to authorize changes to the original Permit for a request received more than 30 calendar days after the expiration of the permit. In that case, an application for a new permit may be submitted to the district office.

A Supplement may be issued for:

1. Changes to the Permit. Typical examples are: increase or decrease in the permitted work, changes in location of the permitted work, open cutting in lieu of boring, changes in the work zone Traffic Control Plan, and assignment of the permit prior to permit close-out.
2. Time-extensions. Ideally, no time-extension Supplement will have to be issued since the initial Permit should provide sufficient time for work authorized under the Permit to be completed. If highway conditions have not changed and if satisfactory justification is provided, a time-extension Supplement may be issued for either six months or one year to allow Permit work to be completed. If a second time-extension is authorized on a Permit, include a condition that no future time-extensions will be authorized without satisfactory reasons being provided, and that all work must be completed by the revised Permit expiration date.
3. A PennDOT error (no fee is charged to correct a PennDOT error).

The Supplement must be issued *before* any changes to the original Permit may be authorized. Also, no work may be performed on an expired Permit until a Supplement is issued. However, the Permittee is responsible for performing such work as is necessary to protect the traveling public, while waiting for a Supplement to be issued.

The Supplemental Permit issuance fee is \$10.00 for each change and for each 6-month time-extension unless exempt due to a PennDOT error or under 441.4(c) or 459.4(c). When a Supplement is issued for a change in work, additional inspection fees will also be required, consistent with 441.4 or 459.4.

Security and Insurance. The Permittee must update and extend the expiration date for the letter of credit, bond or other security (if applicable) when seeking a time extension supplement. The Permittee should submit updated security documents with the time extension supplement. The Permittee must provide evidence of insurance (if applicable) to PennDOT when seeking a time extension supplement. Verify the expiration date(s) is(are) still valid on submitted Insurance Certificates when reviewing a time- extension request.

4.3 – CANCELLATION OR ASSIGNMENT OF PERMIT

Cancellation – Refund

An *unused* Permit may be cancelled provided that:

1. The Permittee contacts the issuing office, in writing, requesting cancellation and stating the reason(s) why the Permit was not used.
2. The request is postmarked or delivered to the District Permit Office on or before the Permit's expiration date.
3. The Permittee Copy of the unused Permit is submitted with the request.
4. The Permit was not issued for Emergency Permit use.

If a cancellation request meets all of the above provisions, the District Permit Office may refund monies through a SAP refund request.

Only general inspection fees may be refunded. There is a ten-dollar refund-processing fee. The application/issuance fee cannot be refunded. Therefore, a refund can be processed only on those unused Permits which cost at least ten dollars more than the application/issuance fee.

The Permittee Copy of cancelled Permits not generated or uploaded in EPS shall be forwarded to the Central Permit Office (CPO) for processing. Otherwise, the District Permit Office will cancel the Permit in EPS consistent with statewide procedures outlined in the EPS training document (posted on the P: drive).

Assignment of Permit or License

An HOP or License may be assigned to a new owner of a permitted facility or property by executing Form M-948, Assignment of Permit or License. Form M-948 is designed in three sections that must be completed by the present Permittee (Assignor), the new owner (Assignee), and the District Permit Office.

District Permit Office staff will review the first two sections for completeness and accuracy and determine whether (1) there are any special conditions listed on the Permit or any Supplements, and (2) PennDOT acknowledged completion of the permitted work. If the acknowledged completion occurred within two years of the assignment and security is still in effect (or if security is warranted otherwise), the new owner (Assignee) must provide security acceptable to PennDOT as a condition for approving the assignment. Return Assignment requests which do not include a copy of the Permit.

The same criteria that PennDOT uses to determine who may apply for a permit/license are also used to determine who may obtain a permit/license via the assignment process. See 441.3(b) and 459.10a(b)(1).

It may be necessary for District/County staff to field view the site to verify that the present Permittee is in compliance with the Permit. However, it is not necessary to re-measure sight distances.

Requests to change the Permittee's name on an active HOP may be done via a Name Change Supplement, if both the existing and new owner acknowledge acceptance of the change by executing the Assignment Form.

Upon approval, the District Permit Office will process and convert the completed Assignment Form to an authorized digital record and store in EDMS via EPS, as well as distribute the approved Assignment to the Assignor and the Assignee. Instructions for completion of this form are in Chapter 9.

If a utility/developer proposes to assign numerous utility/access permits due to a change of name or ownership, a "blanket" assignment may be processed. If there is a change in name, the Assignment Form must be executed along with a letter – on the utility/developer's letterhead – requesting that all permits issued before the date of name change be transferred to the new name (Assignee). If there is a change of ownership, follow the above procedure except a letter will be required from *both* the existing Utility/owner requesting the transfer and from the new utility/owner agreeing to accept transfer of all permits issued before date of transfer. Process this type of assignment in the same manner as other assignments. However, Districts can contact the COP for assistance in assigning the new Permittee to large volumes of permit records in EPS.

4.4 – MANAGEMENT OF PERMIT PLANS AND RECORDS

Creation, Distribution, Use Storage, Retrieval, Protection, Preservation and Disposition of Permit Records

The District Permit Manager and District staff ensures that Permits Records are stored, distributed, retrieved, used, preserved and appropriately disposed of in EPS and PennDOT's Electronic Document Management System (EDMS).

BOMO in coordination with District staff and business partners manages EPS/EDMS retrieval and access permissions to ensure effective protection, preservation and disposition of Permit Records and creates and manages EPS reports and queries and related functions to ensure efficient and timely permit application, issuance and compliance operations.

Permit Records include information, regardless of form, that are part of or document an application submission, review activity, or action that is created, received, reviewed, used, or retained pursuant to §420 and §411 of the State Highway Law and Chapters 441 and 459. The term includes all documents, papers, correspondences, invoices, field inspection diaries, e-mails, digital files and media, maps, plans, studies, photographs, film or digital or sound recordings, information stored or maintained electronically, and data-processed or image-processed files and documents.

Utility Occupancy Permits, Driveway Highway Occupancy Permits and supporting records are maintained in accordance with Pub. 527, the PennDOT Records Management Program, and related Management Directives 210.5 and 210.9. Both Chapter 441 and Chapter 459 provide that the Permittee must maintain the permit as a *permanent record*, so long as the driveway or facility exists and occupies the State highway right-of-way. See 441.6(1)(iii) and 459.7(1)(iii).

Permits and supporting records are *permanent vital records* that are maintained nearly indefinitely in accordance with the most current Records Retention and Disposition Schedule approved by the Pennsylvania Office of Administration Executive Board.

Vital records are:

1. Records essential to maintain government operations during and after and emergency (*Emergency Operating Records*)
2. Records essential to the protection of the access and occupancy rights and interests of municipalities, businesses and individuals (*Rights and Interest Records*).

Utility Occupancy and Driveway Highway Occupancy Permits are emergency operating records and/or rights and interest vital records.

Permit applications, permits and supporting records, supplements, assignments and extensions generated or scanned and uploaded to EPS, and are stored in EDMS as a digital record. When a Permit is issued in EPS, the Permittee will receive an e-mail notification of permit issuance.

Bureau of Maintenance and Operations (BOMO) approved PennDOT staff and the Permittee and, if an EPS Business Partner, have access to the digital Permit and its supporting documents in EPS.

For non-Business Partner Permittees, either the District or the Permittee's engineer (under M-950 AA requirements) is responsible for distributing a copy of the permit, approved plans, attachments and security documents to the Permittee. The public can retrieve pertinent digital permit records via the PennDOT Multimodal Project Management System (MPMS – IQ).

All pre-EPS Permits and applications, plans, and supporting documents and Permits not created in EPS will be converted to an authorized digital record and stored in EDMS. It is the responsibility of the Permittee to provide PennDOT with digital versions of all applications, plans, and supporting documents.

Two copies of pre-EPS Permits or Permits not created in EPS printed using the mainframe printer will be stored in the County Permit Office until the Permit file is converted and stored in EPS. Permits and supporting documents not created or stored in EPS must be returned to the District Permit Office by the County Permits Supervisor not later than close-out. The District Permit Manager ensures that all such records are converted and stored in EPS/EDMS in a timely manner.

On-site permit inspectors working on reimbursable inspection must deliver records (such as FIDs, reimbursable charges (M-371 A), notes and any other documentation) to the County Permit Office. The District Permit Manager will ensure that complete records are obtained from consultant inspectors and reviewers and converted and stored in EPS/EDMS at the completion of each project.

Permittee

The District Permit Manager ensures that the Permittee Copy of the Permit forwarded or EPS generated to the Permittee along with a copy of PennDOT approved plans, attachments and security documents

which shall be maintained by the Permittee (or Licensee) as “a permanent record...” See 441.6(1)(iii) and 459.7(1)(iii).

District Permit Office

The District Permit Manager ensures that Permits and supporting documents are stored, distributed, retrieved, used, preserved and ultimately disposed of in EPS and EDMS. The District Permit Manager insures that Permits not created in EPS and plans and supporting document are to be retained, in an orderly, promptly retrievable manner, in the District Permit Office as the District file copy until the record is converted from paper to an authorized digital record and stored in EDMS. Note: older Permits were converted from paper to microfilm. Microfilm record storage is too costly, no longer supported and will not be used. Microfilm records will be converted to digital media and stored and referenced in EPS/EDMS.

Retention of No Longer Used Permit Ledgers

District Permit Office

The computer generated paper ledgers (1989 to 2012) and microfilm ledgers (1961-1988) are to be retained indefinitely in the District Permit Office, in an orderly, promptly retrievable manner. With the implementation of EPS, a ledger is no longer necessary to monitor and maintain permit information as the data is easily accessible statewide through EPS.

The Permanent Permit Record

The Permanent Permit Record consists of the Utility Occupancy Permit and Highway Occupancy Permit and attachments, studies, files, plans, supplements and supporting documents evidencing the work, requirements and conditions of the Permit that are binding on the Permittee, its agents, contractors, successors and assigns.

The District Permit Manager and District staff ensures that:

Permits and supporting document in EPS/EDMS/ECMS shall be stored, preserved and disposed of as vital records in accordance with the most current Pennsylvania Office of Administration Office of Enterprise Records Management - Records Retention and Disposition Schedule for PennDOT, approved by the Executive Board, current Management Directives, and this manual.

Paper Permits and supporting documents not uploaded in EPS must be stored, maintained and preserved in an orderly and accessible manner in the District Office from date of issuance as a permanent record for the same period as if the record was uploaded to EPS/EDMS. This includes cancelled Permits and voided Permits which can either be a copy of the printed Permit or a screen print of an unprinted Permit.

Permit files (paper or digital, District, Applicant and other records generated in EPS and/or uploaded to EDMS) are purged of transitory records and irrelevant records during the 60-90 day period after the permit, permit supplement or time extension is issued or granted and again at Permit ‘close out’. The permanent Permit file shall contain only records listed here. Non-permanent records stored in

EPS/EDMS as part of a review cycle prior to the final review prior to permit issuance should be disposed of or deleted.

The following documents are to be created in EPS or converted to an authorized digital record and distributed, stored, used, maintained, preserved and disposed of in EPS/EDMS as a *permanent vital record* of the Permit and supporting documents:

1. Application and all attachments.
2. Permit.
3. Supplement(s).
4. Approved plans, including Construction plans, Traffic Signal plans and Right-of-way plans.
5. Approved Drainage Control Impact Study/ Assessment.
6. Approved Transportation Impact Study/ Assessment.
7. Other supporting records (e.g., permit conditions, contracts, agreements, re-leases, covenants etc. when approval was based on the document).
8. County acknowledgment of completion copies of Permit.
9. Permit Security (e.g. bond, letter of credit, etc. – retain digital record until date of re-release or cancelation plus one year).
10. Work Zone Traffic Control Plans for Utility Occupancy or Driveway Highway Occupancy future maintenance.
11. Construction and post-construction Records documenting proper completion or deficient work, requirements and conditions of the Permit that are binding on the Permittee, its successors and assigns, including FID/PSA's and supporting photographs and images, supplements, extensions and correspondence, etc.

Protection and Disposition of Permit Records

Permanent Permit Records

Permanent vital Permit Records are maintained nearly indefinitely so long as the driveway, facility or structure is in place and continues to exist, and in accordance with the most current PennDOT Records Retention schedule. Records in the permanent permit file may not be deleted, changed or amended 90 calendar days after permit issuance without District coordination with and approval of BOMO.

Transitory Permit Records

Not all Permit records are permanent. Permit records that have little or no documentary or permanent value and that do not need to be preserved for future use are only useful for a short period of time, perhaps to facilitate permit application review until completed or to help prepare a final product or which have short term administrative, legal or fiscal value are Transitory Records. Transitory Permit records should be deleted or disposed of once that administrative, legal or fiscal use has expired.

The District Permit Manager is responsible to ensure that transitory records related to the permit application are purged and deleted from EPS/EDMS during the 60-90 day period after the permit, permit supplement or time extension is issued or granted. This is a routine procedure for disposing of records unless suspended by the Office of Chief Counsel in coordination with the District and BOMO as necessary, to comply with existing preservation obligations related to actual and reasonably anticipated litigation, government investigation, or audit.

Transitory Records include records created or uploaded in EPS/EDMS during construction under the permit including forms M-371A and inspection invoices.

The following documents are not permanently stored or converted to an authorized digital record and stored in EDMS unless approval, denial or other Permit action was based on the document:

1. Contracts, Agreements and associated documents that approval of the permit was not based on.
2. Traffic signal plans maintained in the permanent traffic signal permit file.
3. Security (retain Original and digital copy in EPS/EDMS in an orderly, promptly retrievable manner, until one year after security is canceled or released).
4. Transmittal letters, correspondence and email. Note: maintain as part of the permanent record only if such records have or document permanent conditions or documentary value.
5. District interoffice correspondence (discontinued M-930 Forms).
6. Photographs and digital images, unless such records document permanent conditions or have documentary value.
7. Permit fee and inspection fee records and invoices, including forms M-371A, until 60-90 calendar days after full payment is made or until BOMO, in coordination with the District and the Office of Chief Counsel, determines the debt is uncollectable, canceled or otherwise exhausted.

Litigation Hold and Right to Know

The Commonwealth of Pennsylvania State Records Management Program requires PennDOT to establish and uphold policies and procedures in coordination with the Agency Records Legal Liaison for records legal hold to ensure that the records will not be destroyed or reformatted until the event resulting in the records legal hold has concluded and all appeal periods are exhausted.

A Records Legal Hold is the suspension of ordinary practices and procedures for disposing of records, as necessary, to comply with existing preservation obligations related to actual requests for discovery or disclosure and reasonably anticipated litigation, government investigation, or audit.

Records subject to a records legal hold or that are reasonably likely to be involved in litigation shall not be disposed of without approval of OCC. PennDOT staff should consult with Agency Records Legal Liaison for direction.

No records, including transitory records and previous review cycle records may be disposed of or deleted without the approval of OCC in coordination with the District and BOMO if those records are subject to a Records Legal Hold, involved or reasonably likely to be involved in litigation or related to

known investigations, even if the retention period for those records has been met. If a Permit is not closed out or if there is pending litigation on a particular Permit, all documents shall be retained in the District Office, in an orderly, promptly retrievable manner, for OCC. Records involved in a record legal hold must be retained for the duration of the legal action, even if the records exceed the relevant records retention and disposition schedule requirements or the guidance contained in this section.

If the District Permit Manager or District staff receives or is advised that a Right to Know Law (RTKL) request regarding a permit or any permit record has been made, no transitory or other permit record will be purged, deleted or otherwise disposed of until advised by the District RTKL Coordinator that the request has been closed by the PennDOT Agency Open Records Officer.

4.5 – MUNICIPAL PERMIT AGREEMENTS

Under Section 420 of the State Highway Law PennDOT *may* delegate its Permit issuing authority to a municipality which agrees to issue Permits in compliance with regulations, or municipal ordinances approved by PennDOT. Municipal ordinances shall contain standards which are *at least as stringent* as those contained in 441 and 459.

Model Ordinances (posted on the PennDOT P: drive) must be completed, approved and executed, before a municipality may enter into a standard Agreement (posted on the PennDOT P: drive) to issue Permits for PennDOT.

These Municipal agreements are administered by each District Executive as follows:

1. Municipalities that contact the District about either Agreement must be given an opportunity to qualify for delegated Permit issuance authority.
2. Some municipalities may want to be delegated HOP issuance authority in order to be given other authority under the Vehicle Code (e.g., to approve twin-trailer routes to terminals via State highways within their municipality under Section 4908(d)(2) – cities have this authority without executing an Agreement, under Section 4908(d)(1)). It is recommended that such municipalities be delegated authority to issue only Minimum Use Driveway Permits.
3. Review. Forward these agreements – through the CPO – for review by OCC as to form and legality, and for execution; but only after:
 - a. the municipality has already adopted the model ordinance, and has amended any conflicting ordinance,
 - b. the municipality has participated in a pre-delegation meeting with the District Executive or his/her designee,
 - c. any proposed substitute local ordinances are found satisfactory (i.e., ordinances must be *at least as stringent* as PennDOT Regulatory standards), and
 - d. the District Executive is satisfied the municipality will comply with both the spirit and the letter of the Agreement.

4. Pre-delegation meeting. During the pre-delegation meeting, review PennDOT's requirements and concerns. For example, municipalities are not authorized to waive any regulation nor are they authorized to issue Permits to themselves or their authorities.

Discuss every section of the Agreement at the meeting. The Driveway Agreement must be discussed to determine the extent of delegation. The municipality must clearly understand all activities which will and will not be delegated by the District. Provide the municipality with a copy of publications referenced in the Agreement at this meeting.

5. Annual Certification. Establish a “tickle” system to ensure the municipality provides the District with its annual certification, as required under the delegation Agreement.

4.6 – UTILITY PERMIT ISSUERS

There are three governmental entities that may be authorized to issue an HOP for a utility facility (see 459.1 “Permit” definition):

1. An HOP, Form M-945 P, issued by PennDOT's District Permit Office.
2. An HOP issued by a municipality under a municipal permit issuance agreement (see previous section).
3. A 'Utility Relocation Occupancy Permit, Form D-4181-P', issued by PennDOT's District Utility Relocation Unit:

*An authorization to occupy highway right-of-way when a utility facility **relocation** is required by a **highway construction project**, granted either by written agreement or by a highway occupancy permit—utility relocation (Form D-4181-P) under the Design Manual, Part 5.*

Permit Form D-4181-P should be issued *only when a utility facility relocation is required by a highway construction project.*

The term “**relocation**” is defined in Design Manual, Part 5, as the “adjustment, replacement, or relocation of utility facilities as required by a highway construction project, such as: removing and reinstalling the facility, acquiring necessary right-of-way, moving or rearranging existing facilities, changing the type of facility and any necessary safety and protective measures. It shall also mean constructing a replacement facility functionally equal to the existing facility, where necessary for continuous operation of the utility service, the project economy, or sequence of highway construction”.

The term “**highway construction project**” is defined in Design Manual, Part 5, as the “construction, reconstruction, widening or resurfacing of a State Highway, within the existing legal right-of-way or within a new required right-of-way, by contract or by Department forces”.

In Highway Construction Projects, utility relocation activities are expected to commence immediately upon receipt of the District's letter authorizing the start of physical work.

Consistent with Design Manual, Part 5, the transfer of Permit issuance responsibility from the District Permit Unit to the District Utility Relocation Unit occurs during the highway construction project

alternatives analysis stage, or if there is none, after final design of the utility relocation plans for the upcoming highway construction project.

Exemption from fees is a separate, but related issue as to which entity will issue the HOP. 459.4(c) reads, in part:

459.4(c) Exemptions. Permit application fees and general permit inspection fees are not required from the following:

* * * * *

(5) Utility facility owners for:

* * * * *

*(ii) The replacement or renewal of their facilities prior to a Department **maintenance project** after notice from PennDOT.*

This fee exemption is not based on a directive or relocation letter issued by PennDOT, but rather replacement or renewal action taken by the Utility on its own initiative, prior to a PennDOT **maintenance project**.

The Maintenance Manual, Publication 23, describes a variety of PennDOT maintenance projects, including safety, reconstruction and widening projects sponsored by PennDOT Maintenance Forces that may require the replacement or renewal of utility facilities. (For example, see Chapter 5 (Shoulders); Chapter 7 (Paved Surfaces); and Chapter 9 (Drainage and Drainage Systems) for typical maintenance activities). The term ‘PennDOT Maintenance Project’ is delineated by maintenance activities described in the Maintenance Manual and is clearly different from a Highway Construction Project as defined in Design Manual, Part 5.

* * * * *

(iv) Facilities moved at the request of PennDOT or political subdivisions.

If the request to move a facility is due to a PennDOT maintenance project, the District Permit Office would issue the HOP for a utility in State highway right-of-way.

If the request to move a facility is due to a highway construction project, the District Utility Relocation Unit would issue the HOP for a utility in State highway right-of-way.

Note: Duly promulgated regulations have the force and effect of Law. CPO staff has responsibility for promulgation of the regulations, and understand their purpose and intent. If there is an actual or perceived conflict between a regulation and a PennDOT Publication, the regulation as interpreted by a CPO staff will govern.

CHAPTER 5 – CONSTRUCTION & INSPECTION OF WORK

5.1 – CONSTRUCTION

Permit at Work Site

The Emergency Permit Certificate/Card and the HOP and relevant approved plans must be available at the work site for review.

Department Standards

The work shall be done at such time and in such a manner as shall be consistent with the safety of the public and shall conform to all requirements and standards of PennDOT including, but not limited to, Publication 408 (Specifications) and Publication 72 (Roadway Construction Standards).

Highway materials shall be obtained from PennDOT approved sources which are identified in current PennDOT Publication Numbers 34 (Aggregate Producers), 35 (Approved Construction Materials), 41 (Producers of Bituminous Mixtures) and 42 (Producers of Redi-Mixed Concrete). Upon request, the Permittee shall make available for review certifications for backfill and restoration materials placed within the improved area. Materials used in the construction of driveways shall meet the requirements of Publication 408.

Select granular material. If “2RC” is not obtained from an approved source as listed in PennDOT Publications 34, 35, 41 and 42, the Permittee is to arrange with the District Permit Manager to have the 2RC material stockpile tested consistent with Section 703.3 of Publication 408 prior to the start of work. This testing includes (1) gradation testing consistent with AASHTO T-27 (former P.T.M. 619), and (2) proctor testing for maximum density and optimum moisture consistent with current P.T.M. 106. The 2RC material stockpile shall be identified by the Permittee and checked to verify that the stockpile is free of vegetable or organic matter, lumps, or an excessive quantity of clay or other foreign or objectionable material, with no more than 10% of deleterious shale by weight. In-place compaction tests shall be performed consistent with AASHTO T-191 (former P.T.M. 112) (Sand Cone Method) or M. 402 (Nuclear Testing). All P.T.M. references pertain to Publication 19, Field Test Manual.

If at any time it shall be found by PennDOT that the work is not being performed or has not been properly completed, the Permittee, upon being notified in writing by PennDOT, shall immediately take the necessary steps, at its own expense, to place the work in condition to conform to PennDOT requirements and standards.

In the event any dispute arises between the Permittee and PennDOT’s inspector, PennDOT’s inspector shall have the authority to suspend work until the question at issue can be addressed by the district office. In such cases, a Citation (Form M-945 C) should be issued documenting any violations in detail. Informal work site dispute review procedures may be initiated via Form M-945 Y.

Appropriately Colored Vests and Hard Hats

Section 107.08 of Publication 408 requires all persons to wear an appropriately colored vest, shirt or

jacket while in work zones adjacent to traffic and to wear headgear within the project limits. This DOT requirement does not apply outside the right-of-way. In order to eliminate potential conflicts with O.S.H.A. regulations, it is recommended that persons working under Permit authority wear hard hats (29 CFR Section 1926.100) and reflectorized appropriately colored vests (29 CFR Section 1926.650) since such vests meet all requirements under all lighting conditions. Reflectorized rain gear is also recommended for inclement weather.

Traffic Protection and Maintenance

Maintenance and protection of traffic shall be carried out in accordance with the requirements of the Department, as set forth in Chapter 212 (relating to official traffic control devices), Publication 213 (Temporary Traffic Control Guidelines), and as specified in the HOP.

Work Restrictions

Except for emergency repairs of utility facilities, work within the pavement or shoulder shall be stopped prior to peak traffic hours that may exist on a particular highway on a particular day and as specified in the permit.

The District Permit Manager should consider identifying restricted work hours (HOP Condition Code #378) in the following situations:

1. Highways with high ADT
2. Holiday periods
3. Special events
4. School areas
5. Areas of noted congestion

HOP Condition Code #375 may be used to restrict work on highways in urbanized areas which are operating at or near full capacity during normal "rush hour" periods. Code #375 hour restrictions can be adjusted to reflect actual peak traffic hour conditions on a particular highway.

Protection of Openings at End of Workday

At the end of each workday, an opening in the right-of-way shall be one of the following:

1. Covered with steel plates or bridging over openings which are less than 6 feet in either length or width. The steel plates or bridging shall be extended a minimum of 18 inches from each edge of the opening. Thus, an opening which is four feet wide and ten feet long may be covered with steel plates at the end of a workday.

The utility owner can decide how the plates are anchored, as long as the plates are secured in a safe manner, and the steel plates may be secured by one of several methods that preclude the plates from moving and exposing the opening.

Consideration should be given to plowing operations during the winter months as steel plates may interfere with the operation and damage the plow.

2. Backfilled to the bottom elevation of the pavement or base course, or to the original surface elevation if outside the pavement and shoulder, and protected under Chapter 212 (relating to work zone traffic control) and an approved traffic control plan until the surface is restored to its former condition. If any paved surface is not restored to the original surface elevation prior to the end of the workday, the work area must be protected with an approved traffic control plan consistent with Chapter 212.
3. Protected under Chapter 212 and an approved traffic control plan, if the permittee has delivered certificates of insurance under §459.7(12)(ii) (relating to general conditions).

Subsurface Crossings

When crossing under the area within the right-of-way which has been constructed for highway purposes, including roadbed, pavement, shoulders, slope, sidewalks, drainage facilities and other appurtenances, the opening for a utility facility shall be drilled, bored, driven or tunneled a minimum depth of 3 feet from the surface to the top of the opening.

“Directional Drilling” is a method of boring where a transmitter and a detector are used to control the depth and direction of the cutting head. Chapter 459 prohibits jet or other non-mechanical boring methods. However, controlled directional drilling is permitted at any location where the regulation currently allows drilling, boring, driving, or tunneling by conventional equipment and methods. Authorized equipment may use water and/or air under pressure to cool the drill bit and/or the detection device (enclosed inside the drill head) to prevent burnout. Bentonite in combination with water is normally used. Bentonite is a clay material that is used to stabilize the circumference of the drill hole and also provides lubrication when pulling the facility through the void. Bentonite is an environmentally safe, nontoxic, naturally occurring material.

The use of this equipment reduces the amount of damage to PennDOT facilities and other buried utility facilities done by “blind” types of boring. If damage occurs, the Permittee is still responsible for repairs. The permit should note that roadway excavation is not allowed to retrieve drilling tools that become stuck beneath the roadway.

Trenching across an improved area may be performed only when specifically authorized by the HOP in accordance with Subchapter 459.8(b). Also refer to Subchapter 2.7 of this manual.

Except for service lines, facilities crossing an improved area must be cased from right-of-way line to right-of-way line unless exempted under Design Manual, Part 5, Chapter 1, which allows a utility to provide a statement of certification that proposed uncased crossings in free access roadways meet or exceed current DM-5 criteria.

Openings Parallel to the Highway

A utility facility shall be placed outside the pavement and shoulder unless there is no feasible space outside the pavement and shoulder for placing the facility, in which case occupancy within the pavement or shoulder may be authorized by the HOP. Where it is necessary for a utility to occupy the

pavement or shoulder longitudinally, the District still has the authority to determine the facility location which will have the least impact on both the traveling public and the structural integrity of the highway. Also refer to Subchapter 2.7 of this manual.

No opening may be made for more than 200 linear feet at one time, unless authorized by the permit.

The permittee shall protect its openings to provide for the safety of the traveling public, including motorists, bicyclists and pedestrians.

Material Storage

Material should be stored (i.e., placed) consistent with Publication 213, a minimum of 30 feet from the edge of the nearest open travel lane; the minimum unobstructed distance behind guiderail or median barrier; or more than two feet behind curb in curbed sections. If material cannot be stored as discussed above, then barricades, drums or other protective devices shall be placed around the material storage site to warn and protect the traveling public, consistent with an approved Traffic Control Plan.

For purposes of Chapter 459, "storing" material is synonymous with "placing" material on the surface and is *not a function of time*. Regardless of how long material occupies the surface at a particular site, the material creates an unyielding object for errant vehicles and presents a high probability that the surface itself will be damaged when the material is removed.

PennDOT may authorize material to be stored on a pavement or shoulder which has already been authorized to be closed (under an approved Traffic Control Plan) for reasons other than material storage. The Permittee is not authorized to store material on the pavement or shoulder unless such storage is requested with the Permittee's Traffic Control Plan and approved by PennDOT. In any event, if the Permittee does store material on the pavement or shoulder, the Permittee thereby acknowledges its obligation and commitment to repair or reconstruct the pavement and shoulder, if damaged, to its former condition and in a manner authorized by the District Permit Office.

If Form M-945 U has not been executed and the Permittee wishes to store material on the pavement or shoulder, the Permittee must submit a revised Traffic Control Plan along with a completed Form M-945 U. Security – for additional damage that may occur from material being placed and removed from the surface – may be required or increased.

In no case shall delivered material be stored overnight on the pavement. The Permittee shall plan its work activities to minimize all roadside hazards, including openings, material and equipment, particularly at the end of the workday.

If damage to the pavement or shoulder surface is determined to be superficial, the regulations allow for either a bituminous seal coat or a bituminous surface treatment to be authorized by the District Office in lieu of a full depth overlay. However, the District Permit Manager may not authorize a bituminous seal coat or bituminous surface treatment over an existing higher type-wearing course (e.g., SuperPave, ID-2, FJ-1) without the concurrence of the District Executive.

Trench Backfill Requirements

The Permittee is required to promptly backfill openings and restore the surface if work is stopped on a project other than at the end of a normal workday. However, gas utilities may need to keep excavations open overnight to “vent” leaking gas and, therefore, should not be ordered to promptly close such openings or continue work. Utilities that violate this section of the regulations will be notified to either promptly resume work or restore the right-of-way.

Backfill – First Foot

The regulations allow for fine aggregate material or granular material to be placed to a height not to exceed one foot over the top of the facility, rather than placing coarse aggregate material around the facility. The backfill material shall be placed in layers not exceeding four inches in depth prior to compaction and each layer shall be thoroughly compacted to preclude subsidence. See Restoration Figure 7-N series (posted on the PennDOT Web Site).

Backfill operations having improper backfill material or backfill layers thicker than authorized shall be promptly halted. Violation(s) and corrective action(s) shall be documented in the inspector's FID/PSA and on a Departmental Citation (Form M-945 C).

Backfill Compaction

Backfill material shall be placed in loose layers not to exceed four inches. Eight inch lifts may be used if vibratory compaction is used. Compact top 3 feet of backfill material to 100% SPD. Material below top 3 feet must be compacted consistent with Publication 408.

If the side(s) of an opening fall in, with the undermining resulting in a loss of support of the pavement or shoulder, after backfilling the opening up to the level where the sides are no longer vertical, remove sufficient material for the remaining depth of opening until both sides are again vertical, then resume backfilling.

While “flowable fill” was not an approved backfill material when Chapter 459 was amended in 1989, “flowable fill” is now acceptable backfill material which can preclude subsidence and minimize lane closure durations (see Publication 408, Section 220) and is preferred backfill material if the opening is within the pavement and shoulders.

Backfill Compaction Plan

Backfill material may be placed in layers thicker than eight inches prior to compaction provided the opening is outside the pavement and shoulders and provided the Applicant/Permittee has submitted a compaction plan for approval at least 15 calendar days prior to the start of work. Upon receipt of a compaction plan, it shall be reviewed for compliance with information required under this subparagraph. If permitted, approval will be documented on the Permit or a Supplement. Security may be required consistent with 459.5(b). Inspect work done under an approved compaction plan periodically to verify the work is being performed consistent with the approved plan.

A compaction plan is not required for “flowable fill” to be authorized.

Backfill Testing

PennDOT may require the Permittee to have both proposed backfill material and compacted backfill material tested for conformance to the applicable gradation and compaction requirements of Publication 408.

Material slips may be inspected to verify material to be used within the right-of-way is acquired from an approved source.

Compaction testing shall be performed by nuclear gauge, by non-movement, or by another PennDOT approved method. Testing is required on all non-emergency permitted openings in pavement, shoulder or sidewalk. A minimum of one test per lift per day is required. If exceeding 500 LF per day, a minimum of one test per lift every 500 LF is required. Additional testing may be warranted on longitudinal or transverse openings which exceed 500 total feet in length, or which exceed four feet in depth and at other times when the inspector believes the compaction method is not resulting in a compaction percentage consistent with Section 601.3(f) of Publication 408.

For openings greater than 500 total feet in pavement, shoulder or sidewalk, the appropriate testing method is to be based on the gradation of the aggregate as specified in Publication 408 Section 206.3(b)1.

For openings **less than or equal to 500 total feet in pavement, shoulder or sidewalk**, the Permittee may choose the compaction test method, provided the test method is performed consistent with Department Publications, and on the condition that the Permittee provide the completed CS-6 (Pipe Installation Inspection Form) and accompanying TR-478 and/or TR-4276 forms within a week of the completion of the work represented on the form. PennDOT will not close-out the permit prior to receiving the completed forms. PennDOT will randomly spot inspect to ensure compliance. The following Condition Code #347 will be included on the HOP:

“BACKFILL COMPACTION TESTING IS REQUIRED A MINIMUM ONE TEST PER LIFT DAILY. FOR OPENINGS LESS THAN OR EQUAL TO 500 TOTAL FEET IN PAVEMENT, SHOULDER OR SIDEWALK, THE PERMITTEE MAY CHOOSE THE COMPACTION TEST METHOD, PROVIDED THE TEST METHOD IS PERFORMED CONSISTENT WITH DEPARTMENT PUBLICATIONS, AND ON THE CONDITION THAT THE PERMITTEE PROVIDE THE COMPLETED CS-6 (PIPE INSTALLATION INSPECTION FORM) AND ACCOMPANYING TR-478 AND/OR TR-4276 FORMS WITHIN A WEEK OF THE COMPLETION OF THE WORK REPRESENTED ON THE FORM. PENNDOT WILL NOT CLOSE-OUT THE PERMIT PRIOR TO RECEIVING THE COMPLETED FORMS.”

Note: No backfill compaction testing documentation is required 1) during emergency repairs, openings less than 36 square feet and/or 3) if approved flowable backfill material is utilized.

Aboveground Facilities

A wire, cable or conductor which overhangs a portion of the right-of-way shall be placed to provide a minimum vertical clearance of 18 feet over the pavement and shoulder, except where the National Electrical Safety Code requires vertical clearances in excess of 18 feet due to voltage or span lengths.

A pole shall bear the name or initials of the facility owner and the pole numbers assigned by the facility owner.

A guy shall be placed to avoid interference with vehicular or pedestrian traffic and shall be insulated or grounded in compliance with the National Electrical Safety Code.

Restoration

All disturbed portions of the highway, including slopes and all appurtenances and structures such as guide rail, curbs, signs, markings, drain pipes, driveways and vegetation must be restored by the permittee to a condition at least equal to that which existed before the start of any work authorized by the HOP.

Additional restoration may also be required, upon written notification, to restore the structural integrity of the pavement or shoulder.

Flexible Base Pavement Restoration

If binder course is required, it will be in addition to the wearing and base courses. If an existing wearing course is over 2" in depth, additional base or binder course will be required to fill the additional void. See Restoration Figure 7-N series (posted on the PennDOT Web Site).

If an opening is made in the pavement within 3 feet of the edge of pavement or other longitudinal joint or opening, the pavement restoration must be extended to the edge of pavement or other longitudinal joint or opening.

Cement Concrete Pavement Restoration

On existing reinforced cement concrete pavements that are opened for more than six feet in either length or width, reinforcing steel, expansion tie bolts and load transfer devices shall be placed consistent with Roadway Construction Standard RC-26M.

Paragraph (4) of 459.8(i) specifies full lane width restoration may be required to restore the structural integrity of the damaged cement concrete pavement. The District Permit Manager should consider requiring a full lane width restoration on cement concrete pavements less than ten years old or on other pavements which are in good condition. See HOP Condition Code #349. See Restoration Figure 7-N series (posted on the PennDOT Web Site).

Temporary Restoration

While temporary restoration methods should be avoided where feasible -- to preclude additional disruptions to traffic generally -- the District Permit Manager may require, as a Permit condition, temporary restoration of pavements or paved shoulders in the following instances:

- a. Openings expected to be restored during the dates indicated in Publication 408, Section 409.3(b) & (b)(1).
- b. An opening in the pavement which was already *backfilled* without the Department having an opportunity to have an inspector present (e.g., emergency repairs during evenings,

weekends, or holidays; or where the Department was not provided required prior notice; particularly if the Utility or its contractor has a documented history of highway restoration failures).

- c. An opening in the pavement or shoulder over 100 feet in length or over six feet in depth, where “flowable fill” is not used as trench backfill material.
- d. Where unfavorable subsurface or surface conditions preclude final restoration being performed promptly.

Temporary pavement surface suitable for driving may be kept in place for up to 6 months or as specified in the permit, if it is properly maintained. *See HOP Condition Code #343.*

Spreading, finishing and compaction of the temporary pavement material shall leave the surface smooth and level with the edge of existing pavement. The distance at any point from a ten (10) foot straight edge to the surface shall not exceed one-half (1/2) inch in any direction for the duration of temporary restoration. Lumps or depressions exceeding this tolerance shall be corrected by removing defective work and replacing with new material as directed.

Approved hot-mix or warm-mix bituminous material must be used for temporary restoration when available. Cold mix material will be permitted at the discretion of PennDOT. *See the following HOP Condition Code #346:*

“THE PERMITTEE IS REQUIRED TO USE HOT MIX OR WARM MIX MATERIAL FOR TEMPORARY RESTORATION. COLD MIX WILL BE PERMITTED AT THE DISCRETION OF THE DEPARTMENT. PERMITTEE MUST MAINTAIN A SMOOTH PAVEMENT SURFACE SUITABLE FOR DRIVING FOR THE DURATION OF THE TEMPORARY PAVEMENT.”

See Restoration Figure 7-N series (posted on PennDOT Web Site).

5.2 – INSPECTION

Assignment of On-site Permit Inspectors

Inspection of Permit work is necessary to verify that the Permittee complies with applicable laws, regulations and HOP conditions, for the security, maintenance and protection of the motoring public and Pennsylvania’s highway and bridge infrastructure.

Inspectors, as defined in 441.1 and 459.1, are representatives authorized by PennDOT to be in immediate charge of inspecting all or part of the performance of the permitted work and materials furnished.

There are two types of inspectors:

1. PennDOT employee inspection staff, and
2. PennDOT contracted consultant inspection staff.

Inspectors represent PennDOT's interest and report to the District Permit Manager and staff for inspection operations.

Each District authorizes inspectors to conduct inspection and quality assurance operations. Inspectors are competent, skilled technical experts with State highway and local road and bridge inspection and/or construction project management experience and a thorough working knowledge of the Regulations, this manual, Publication 408, the appropriate Design Manuals, and other related PennDOT publications, standards and requirements.

Each District maintains a list of inspectors and inspection enterprises. Inspectors demonstrate competence to the District's satisfaction by performance verification, or NICET certification (Highway Construction Level 1 or higher); ACI Concrete Field Testing Certification; NECEPT Bituminous Pavement Field Technician certification or equivalent work experience or other qualifications acceptable to the District, based on the type and amount of permitted work.

The District Executive is responsible to oversee the Permit inspection program for the District, and shall appoint the Assistant District Executive for Construction (ADE-C) to establish and implement the District's program and to select, approve and qualify inspectors and inspection enterprises.

Districts must plan ahead to meet anticipated inspection staffing requirements for permitted work.

Districts will make every attempt to limit the amount of reimbursable inspection costs and perform inspection in-house where practical. Utilization of on-demand consultant inspection contracts should be considered. Advance planning for seasonal inspectors, borrowing or hiring construction inspectors and consultant inspectors, and coordinating with municipalities, utilities, applicants, and Permittees will minimize inspection staff shortages which may delay Permit work.

On-site inspectors may be assigned by the District Permit Manager or delegate to perform:

1. Non-reimbursable spot inspections, or
2. Reimbursable continuous (full-time)

inspections

Spot Inspection

Non-reimbursable on-site inspection is conducted on a spot-inspection basis by District staff and consultant inspectors. When continuous inspection is not required, spot inspection must be performed to monitor compliance with the permit.

In addition to permit close-outs, specific instances where spot inspection should be performed are:

1. Prior to installing drainage facilities, curb, sidewalk or curb ramps.
2. Prior to final pavement or shoulder restoration.
3. Prior to paving an access driveway, to verify compliance with the Permit plans.
4. To verify proper traffic control is in place prior to and during permitted work.

5. After restoration of emergency work to verify highway is properly restored.

See HOP Condition Codes #306, #308 and #309.

Continuous Inspection

Reimbursable on-site inspection is conducted on a continuous basis if the District determines the work is of sufficient magnitude or importance to warrant assignment of one or more inspectors. The inspector authorized by the District is present full-time during operations within the PennDOT right-of-way. The permit will so indicate and the Permittee will be charged for additional salary, overhead and expenses incurred.

The District Permit Manager may use the following criteria for assigning continuous (full-time) inspectors for permitted work involving:

1. A subsurface facility in limited access highway right-of-way.
2. Trench openings greater than 500 linear feet (LF) for subsurface utility facilities, sewers, and storm drains in the pavement, sidewalk or shoulder (Openings in the pavement, sidewalk or shoulder less than or equal to 500 LF are the responsibility of the permittee to ensure that Form CS-6 (Pipe Installation Inspection Form) and the appropriate Forms TR-478 and/or TR-4276 are completed and submitted to PennDOT within a week of the completion of the work represented on the form. PennDOT will not close-out the permit prior to receiving the completed forms.).
3. Highway improvements such as the construction of auxiliary lanes or additional thru-lanes.
4. A situation which requires extreme care, as determined by PennDOT (e.g., work adjacent to the shoulder, work in a slope “fill” area which provides lateral support to the highway, work in an established “Clear Zone”, work involving unique Work Zone Traffic Control, work requiring mud or dust control, and similar situations).
5. Work involving substantial excavation of the highway, e.g., a project of considerable size, importance or restoration cost.

See HOP Condition Code #318.

The frequency of inspection is based on the type, size, and location of an operation within State highway right-of-way.

If there will be reimbursable plant material inspections or other off-site inspections of fabricated products, the Permit should indicate this as a Condition Code (for example, see HOP Condition Code #319). Arrangements for such inspections should be made with the District Construction Unit prior to issuance of the Permit.

If continuous inspection will be provided on an HOP project, then the permittee must identify a duly authorized representative who will initial the Permit Inspection Costs Form (M-371 A) every workday. These daily initials are essential in settling future billing disputes without having to retrieve the inspector’s FIDs/PSAs for that time period to verify charges are valid. If this representative is not identified during the project pre-construction meeting, documentation identifying the representative should be furnished to PennDOT prior to start of work.

The primary responsibilities of the on-site inspector on a reimbursable or non-reimbursable permit project shall be to verify that the Permittee complies with the following:

1. Highway Occupancy Permit (M-945 P), plans, and attachments.
2. Department Driveway/Utility Regulations.
3. Temporary Traffic Control Guidelines (Chapter 213) and Traffic Control Plan.
4. Highway Material Manuals (Publications 34, 35, 41, 42).
5. Publication 408 Specifications.
6. Roadway Construction Standards (Publication 72M).

Note: Section 3326 of The PA Vehicle Code contains laws governing movement of traffic through work areas.

Under Regulations 441.6(1)(i), 459.7(1)(i), and 459.7(4)(v), the permittee is primarily responsible for complying with all Permit conditions.

Permittee's Inspector-in-Charge

459.7, relating to trenching, backfill and restoration, requires the Permittee to identify to PennDOT both its contractor and its inspector-in-charge assigned to monitor backfill and restoration if work is being performed by a contractor within the improved area.

The Permittee's inspector-in-charge, as well as the Permittee, are responsible for ensuring work is performed in compliance with the permit, this chapter and Publication 408 and Design Manual, Parts 2 and 5. All required documentation must be delivered to the District contact as directed.

On-site Permit Inspector's Responsibilities

All on-site inspectors represent PennDOT's interest, whether assigned by the District or identified to the District as an inspector-in-charge candidate by the Permittee.

The primary responsibilities of the on-site inspector shall be to verify that the Permittee complies with the following non-exhaustive list:

1. HOP (M-945 P), plans, and attachments.
2. PennDOT Driveway/Utility regulations.
3. Temporary Traffic Control Guidelines (Chapter 213) and Traffic Control Plan.
4. Highway Material Manuals (Publications 34, 35, 41, 42).
5. Publication 408 Specifications.
6. Roadway Construction Standards (Publication 72M).

Note: The PA Vehicle Code (i.e., Section 3326) contains laws governing movement of traffic through work areas.

Under 441.6(1)(i), 459.7(1)(i), and 459.7(4)(v), the Permittee is primarily responsible for complying with all Permit conditions. The Permittee's inspector-in-charge, as well as the Permittee, is responsible for ensuring work is performed in compliance with the permit, applicable regulation(s), Publication 408, and Design Manuals Part 2 and 5. Responsibility for verifying whether Permittees adhere to laws, regulations and HOP conditions shall rest with the District Permit Manager through representatives assigned to inspect work done under the Permit.

On-site Permit Inspector's Duties

Comportment

On-site permit inspector(s) represent PennDOT's interest in a courteous and professional manner whenever communicating with the Permittee, its consultant, the Permittee's contractor or the general public. The inspector should be neatly dressed and wear required safety apparel (e.g., hard hat, vest, footwear).

Communication

Project communication is an important duty of the on-site permit inspector since the inspector is the "middle man" in the communication chain. The on-site permit inspector must be available by cell phone during working hours.

Important communication links: District Permit Manager – County Permit Supervisor – on-site permit inspector – Permittee (or designated representative, usually a consultant).

When a link in this chain is broken, communications break down. The on-site permit inspector needs to communicate directly with the Permittee's contractor only if a safety hazard develops when the Permittee or its inspector-in-charge (see 459.7(4)(v)) is not at the work site.

Assignment

When an on-site permit inspector is assigned to a project for continuous inspection, make arrangements through the county permit inspector to obtain a complete copy of the Permit package including Supplements, plans and associated documents (e.g., restoration security, insurance certificate, acknowledgment of additional restoration, ADA documents). PennDOT may require that the Permittee provide printed copies of the complete permit package for use during inspection.

The District Permit Manager ensures that on-site Permit inspection staff is provided with manuals, publications, and forms that will be needed to properly perform their permit inspection duties. These include:

1. Regulations – (Chapters 441, 459, and 212).
2. Temporary Traffic Control Guidelines (Publication 213)
3. Publication 408 – Specifications.
4. Publication 72M – Roadway Construction Standards.
5. CS 4333 – Field Inspector's Diary/Project Site Activity Report (FID/PSA) or equivalent documentation tool.

6. CS-6 – Pipe Installation Inspection Form.
7. TR-478A – Report on Compaction Density Non-Movement
8. TR-4276A – Report on Compaction Density by Nuclear Method
9. M-371 A – Permit Inspection Costs Forms.
10. M-945 C – Departmental Citation Forms.
11. M-945 Y – Notice of Dispute Forms.

Specific Duties

The following duties are the responsibility of the authorized on-site permit inspection staff:

1. Upon reporting to the project:
 - a. Discuss responsibilities and authority on the project with the County Permit Supervisor or designated PennDOT staff.
 - b. Obtain “contact” phone numbers for PennDOT liaison staff, the Permittee, its consultant and contractor, to establish communication links and for use in an emergency.
 - c. Review and complete general information on the Permit Inspection Costs Form (M-371 A). Complete the appropriate row on Form M-371 A and have it signed DAILY by the Permittee’s designated representative. Arrangements should be made to ensure that copies of FIDs, payrolls and billing agreements are received promptly at the end of each payroll period by the District Office. Consultant inspectors should follow their company’s procedures for submitting payrolls. PennDOT inspectors must obtain correct coding for payroll and expense accounts.
 - d. Obtain blank Citation Forms M-945 C and instructions on when and how they are to be used.
 - e. Ensure the copy of the plans and attachments are the same as the Permittee’s.
 - f. Ensure a copy of Permittee’s restoration security is attached to permit, if required.
 - g. If blasting is anticipated in PennDOT’s right-of-way, a Certificate of Insurance clearly indicating that explosion, collapse and underground (XCU) insurance coverage is included in the policy is required before blasting is permitted.
 - h. Become completely familiar with all the work that will be performed by the Permittee.
 - i. Arrange to meet with the Permittee’s project supervisor and explain the responsibilities and authority concerning the project construction, testing, safety, WZTC, etc.
 - j. If unsure of inspection duties, promptly notify the County Permit Supervisor or other PennDOT Permit staff for assistance.
2. Before permitted work begins:
 - a. Check all bi-directional vehicles for backup alarms.
 - b. Check all construction personnel for required attire and equipment (e.g., colored vests, hard hats and safety equipment, including automated location tracking mechanisms).
 - c. Review the work areas to assure the required WZTC set up or attached Traffic Control Plan is being utilized.

- d. Check to ensure Permittee's contractor has material for shoring (if required).
3. After permitted work has begun:
 - a. Review and complete required general information in the Field Inspector's Diary/Project Site Activity Report (FID/PSA) or equivalent documentation tool as indicated below:
 - i. Entry date.
 - ii. Permittee's name.
 - iii. Permit number.
 - iv. Contractor's name.
 - v. Weather conditions.
 - vi. Equipment used.
 - vii. Number of men working.
 - viii. Names of visitors.
 - ix. When WZTC was checked in the morning and evening and any corrective action taken.
 - x. Work performed (e.g., type of work, type of backfill, type of compaction equipment, type of materials, depths, widths, etc.).
 - xi. Any damage to drainage, pavement, guiderail, underdrain, signs and corrective action taken.
 - xii. Instructions to Permittee and corrective action taken, if required.
 - xiii. Hours worked (include stop and start times.).
 - xiv. Daily mileage.
 - xv. Inspector's signature.

Note: Send the copies of FIDs to the District Permit Manager biweekly.

- b. Complete and sign Form CS-6 (Pipe Installation Inspection Form) for trench openings in the pavement, shoulder or sidewalk. Forms TR-478 and/or TR-4276 are to accompany Form CS-6.
 - c. Issue Citations (M-945 C) in order to document violations and to notify affected parties of noncompliance at the work site.
 - d. In case any dispute arises between the Permittee and PennDOT's inspector, PennDOT's inspector has the authority to suspend work until the question at issue may be referred to and be decided by the District Office. Issue a Citation, if warranted.
 - e. Follow guidelines in the documents referenced in 'Assignment', above.
4. When permitted work is complete:
 - a. Make final entry in the Field Inspector's Diary/Project Site Activity Report (FID/PSA) or equivalent documentation tool.
 - b. Notify the PennDOT contact when all work has been completed.
 - c. Make arrangements to surrender all documents (e.g. FID/PSA, CS-6, TR-478A, TR-4276A forms, etc.), plans, "to do lists", etc. in digital format with PennDOT contact.

Identify any highway appurtenance that was not restored consistent with applicable PennDOT requirements and standards.

Acknowledgment of Completion ('Close Out' Inspection)

Once the HOP reaches its assigned expiration date or when an acknowledgment of completion is received from the Permittee, the County Permit Supervisor is responsible for ensuring that a 'close out' inspection of the site is performed, to verify that the occupancy was placed, the work was completed and the highway was restored consistent with the HOP and regulations.

Conduct 'close out' inspections within two weeks after the HOP expiration date in order for the Permittee to have an opportunity to obtain a Supplement (if necessary) within the 30-day period allowed by regulations.

No 'close out' inspection is required for a damaged pole replacement if:

1. the damaged pole has been replaced under an Emergency Permit Certificate/Card and the follow-up application on-site review verifies all work has already been properly completed – including the prompt removal of any damaged "stub" pole(s); or
2. an accident-damaged pole, after both the follow-up application review and on-site review by the Permit Office and Safety Engineer, it is determined that no location change is necessary.

In these situations, the HOP may be closed out upon receipt of the HOP by the County Permit Supervisor.

When performing the 'close out' review, there are *four situations* the inspector may encounter:

1. All work was completed consistent with the HOP and regulations.
2. Work was performed but not consistent with the HOP and regulations.
3. Work was not completed.
4. No work was performed.

Under situation #1, if all work was completed consistent with the HOP, indicate as such in EPS when closing out the permit consistent with statewide procedures as outlined in the EPS training document (posted on the P: drive).

Under situation #2, if work was not done consistent with the HOP, do not 'close out' the HOP. Promptly notify the District Permit Manager so that a determination can be made on whether a Supplement may be issued to authorize the discrepancy, or whether other action will be required to resolve the discrepancy.

If the discrepancy is found acceptable by PennDOT and a supplement may be issued, the supplement application should include a set of as-built plans depicting the work as it was performed. The as-built plans will be maintained with the permanent permit record.

Under situation #3, if work was not completed, do not 'close out' the HOP. Promptly notify the Permittee (see 'Form Letters' Folder (posted on the P: Drive)) that a Supplement will be required to complete the work. If the Permittee does not apply for a Supplement (after receiving a Permit expiration notice) and the Permittee does not restore the highway, promptly notify the District Permit

Manager. See Appendix D6 of this manual. In EPS, close out the HOP as such consistent with statewide procedures as outlined in the EPS training document (posted on the P: drive).

Under situation #4, if no work was performed and the Permittee did not apply for a Supplement (after receiving a Permit expiration notice), within the 30-day grace period, 'close out' the HOP in EPS as such consistent with statewide procedures as outlined in the EPS training document (posted on the P: drive).

If a Permittee fails to complete all work authorized by the HOP, 441.5(g) and 459.5(d) state that "...an application shall be submitted requesting a time-extension..." Any Permittee who fails to request such a time-extension and has not completed the work required by the HOP stands in violation of the regulations.

441.10 and 459.11 provide that any violation of these regulations or the HOP requirements shall constitute grounds for:

Revocation of the Applicant's permit or emergency permit certificate or card

Once the permitted period for construction within the right-of-way has expired and work authorized or required by the HOP is incomplete, regulations mandate further action. Revocation is normally an appropriate course of action. The incomplete HOP cannot be 'closed out' without further action. Unless revoked, the HOP continues to provide a legitimate basis for ingress and egress to the subject property or continued occupancy of the right-of-way by the utility facility or other structure. Refer to Appendix 6, Progressive Sanction Guidelines, for more information and guidance on the revocation process.

Also refer to Appendix 9, Administrative Law and Procedure. Other questions about revocation may be addressed to Central Office Permit staff and the Office of Chief Counsel (OCC).

Notifying others of completed roadway changes

If completed work done under authority of a Permit results in a change to the roadway (e.g., addition of a new local road, addition of a new auxiliary lane, elimination of a median) the District Permit Manager should promptly notify: (1) the District RMS Coordinator, (2) the District Right-of-Way Unit, and (3) the Central Office Bureau of Planning and Research, Geographic Information Division, so that appropriate PennDOT databases, records, and maps may be updated. The notification should include a copy of the Permit (to identify the County, municipality, SR, beginning and ending Segment(s) and Offset(s), local road name where applicable and other Permit information) and a copy of the relevant plan detail (if available, a copy of the as-built plan is preferred).

Subsequent Inspections after PennDOT's Acknowledgement of Completion

Every year each District will QA at least 50% (per County) of randomly chosen permanent pavement and/or paved shoulder restorations within one to two years from PennDOT's acknowledgement of completion of the permitted work and will document the results (Form M-945 SI and EPS).

The Permittee has absolute responsibility to make temporary and permanent restoration if there is a

failure in the area of the permitted work within two years after the acknowledged completion by PennDOT and provided there is no similar failure beyond the area of the permitted work. Any failure of the highway in the area of the permitted work identified by the District to the Permittee and/or its contractor shall be restored in accordance with the permit or as further specified by the District within 30 days (immediately if considered a safety concern), subject to final inspection by the District. A failure of the highway may be considered but not be limited to the various conditions identified in Publications 33 and 336 which are classified as medium severity.

The Regulations allow for the Permittee to deliver clear and convincing evidence demonstrating that a highway failure was caused by another party. If the Permittee claims in writing that a highway failure was caused by another party, clear and convincing evidence and documentation thereof must be submitted together with the Permittee's request for waiver of responsibility. After the Permittee provides evidence that it has provided written notice to any other party claimed by the Permittee to be responsible for the highway failure, PennDOT will investigate and make a written determination. If any affected party does not agree with PennDOT's determination, an administrative hearing may be requested within 30 days of PennDOT's written determination.

A failure of the highway more than two years after the acknowledged completion by PennDOT does not relieve the Permittee of responsibility to restore the highway. While the Permittee has absolute responsibility to restore highway failures within two years after the acknowledged completion of the permitted work, PennDOT may pursue the Permittee to correct highway failures after two years where PennDOT believes the highway failure was caused by the permitted work as provided by general principles of law.

Field Inspector's Diary

All Permit inspections shall be documented in the Field Inspector's Diary/Project Site Activity Report (FID/PSA) or equivalent documentation tool, uploaded to EPS/EDMS, and shall contain the following information:

County Permit Supervisor

The County Permit Supervisor's diary shall contain the following information:

1. Applications field viewed – application numbers.
2. Permits inspected and closed out – Permit numbers.
3. Spot reviews of projects – problems encountered, corrective actions taken, on-site permit inspector's comments.
4. Spot reviews made on utilities to verify a Permit or a properly completed original Emergency Permit Certificate/Card is on site (if work involves surface openings or placement of structures or facilities within the right-of-way) and that all work is consistent with the Permit.
5. Spot reviews made on access locations under construction or alteration to verify a Permit is on site and that all work is consistent with the Permit.
6. Departmental Citations. Citation number(s) and to whom issued.

EPS Registration

The Permittee will be e-mailed invoices for incurred inspection costs via EPS. If not an EPS Business Partner, the Applicant/Permittee will need to obtain a Business Partner ID prior to HOP issuance. To register for a BP ID, visit:

<https://www.dot14.state.pa.us/EPS/home/manageBPRRegistration.jsp>

7. General notes (e.g., meetings attended, important phone conversations).
8. Daily mileage.
9. Signature and hours worked, including work start and stop times.

County Permit Inspector

When additional inspectors are assigned to a County Permit Office to assist the County Permit Supervisor with permit-related duties, their FID/PSA or equivalent documentation tool shall also include the information listed above.

On-site Permit Inspector(s)

Refer to the “On-site Permit Inspector’s Duties” section above within this Subchapter for information to be completed in the FID/PSA when assigned to a project.

Permittee’s Reimbursement of Inspection Costs Incurred by PennDOT

Applicants and Permittees are encouraged to include inspection costs as a line item in their construction contracts to assure PennDOT will be reimbursed if PennDOT or PennDOT contracted consultant inspection staff is assigned to perform continuous inspection on the project. Typically, these costs are approximately 10% of the construction cost.

A minimum number of hours of inspection work (normally 2-4) will be billed for each site visit.

During the Pre-construction meeting, the Permittee will designate a point of contact that will be responsible for inspection and reimbursement oversight. The estimated inspection costs shall also be discussed, including how to reduce those costs through proper scheduling of work, including utilization of the Permittee’s identified inspector-in-charge, as appropriate.

If continuous inspection is contemplated the District staff should advise Applicants early in the application review process (e.g., during the scoping meeting or initial application submission) that they will be required to reimburse PennDOT for inspection. Condition code #318 will be included on the HOP, which states,

“AN INSPECTOR, WHEN AVAILABLE, WILL BE ASSIGNED ON MORE THAN A SPOT INSPECTION BASIS. PERMITTEE WILL BE CHARGED ALL INSPECTION COSTS INCURRED BY THE DEPARTMENT.”

5.3 – SUBSTANTIAL PROJECT MEETINGS

Substantial projects include both access and utility projects which may include significant amounts of work such as widening, turning lanes, acquisition of right-of-way, extensive trenching, long-term projects, limited access right-of-way, local roads and State highways, parallel drainage, etc.

District Permit Managers and Permittees coordinate and facilitate meetings related to these substantial projects to ensure the projects run smoothly.

Pre-construction meetings facilitate communication and coordination of construction, inspection and related activities.

Semi-Final Restoration and Final Inspection meetings document completion of work and facilitate Permit work close-out.

1. Pre-Construction Meeting. This meeting will be attended by the Permittee, its consultant, the Permittee’s contractor(s), and representatives of PennDOT. PennDOT representatives may include the District Permit Manager or an appointed subordinate, County Permit Inspector, and Assistant County Maintenance Manager and construction inspection staff.

The District representative will review each of the items on the pre-construction checklist (see Appendix C7 of this manual) in addition to answering specific questions relating to the project.

HOP Condition Code #336 may be used to inform the Permittee that a two-week notice is required for PennDOT staff to attend a pre-construction meeting.

Districts should document the meeting with minutes that should be stored in EPS/EDMS.

2. Semi-final Restoration Meeting. This on-site meeting will be attended by the Permittee, its consultant, the Permittee’s contractor(s), and representatives of PennDOT. The purpose of this meeting is to review the project, after the permitted facility, access or structure has been placed, to determine the extent of permanent highway restoration that will be required. This on-site review involves walking the entire project; "windshield" evaluations are not adequate.

Districts should document the meeting with minutes that should be stored in EPS/EDMS.

The District Permit Manager, after receiving input from the other PennDOT representatives, will determine the amount and type of restoration that is required to *restore the right-of-way to at least the same condition as existed before the start of work* under the Permit. The required restoration will be based on the restoration specified in the Permit and regulations, plus any additional damage occurring since the start of work under the Permit (e.g., pavement scarring, guiderail damage or removal, shoulder damage from traffic, damage to drainage infrastructure, damage to signs, signals and markings).

PennDOT will provide information on the material and thickness of the restoration.

HOP Condition Code #339 may be used to notify a Permittee that the semi-final meeting is required and that two weeks’ notice is required.

3. **Final Inspection Meeting.** This on-site meeting will be attended by the Permittee, its consultant, the Permittee's contractor(s) and representatives of PennDOT. This meeting will be held after the Permittee or its contractor(s) has performed all final restoration.

The purpose of this meeting is to review and verify the Permittee's final restoration is consistent with the semi-final notes and to identify any highway areas that were not restored consistent with the Permit, regulations and the semi-final notes.

This meeting is necessary since the HOP cannot be "closed out" until all Segments of the highway and disturbed structures are restored to a condition *at least equal to that which existed prior to the start of work* under the Permit.

Districts should document the meeting with minutes that should be stored in EPS/EDMS.

5.4 – COORDINATION WITH SPECIAL HAULING PERMIT MOVEMENTS

If work performed under authority of the HOP authorizes either:

1. a physical lateral lane restriction for *more than four hours*, which results in less than 16 feet of remaining pavement and shoulder width, or
2. traffic to be detoured for *more than four hours*, notify the District Hauling Permit Office APRAS Coordinator so that vehicles operating under an oversize or overweight Permit may also be detoured in advance onto permitted routes.

Consistent with Publication 408, Section 901.3(m), notification must be made:

1. at least 14 days before *implementing or changing* any lateral lane restriction or detour, and
2. at least 7 days before *removing* the lane restriction or detour.

Special Hauling Permits are valid for at least five consecutive days.

The Permittee is required to provide the timely notification to the District HOP Office (via Form M-937R) before starting work and before completing work, which restricts the flow of traffic through the work zone. The District HOP Office, in turn, will notify the District Hauling Permit Office by forwarding the completed Form M-937R at least 10 business days, not including holidays, in advance of the restriction.

When a restricted highway is to be opened, the same notice must be provided by the District HOP Office to the District Hauling Permit Office at least 5 business days in advance (via Form M-937 RO).

The APRAS Coordinator can create one (or more) restriction(s) to ensure permitted vehicles are not routed through the temporary HOP project restriction.

The maintenance of temporary HOP project detours is a cooperative effort among District Hauling and Occupancy Permit staffs and requires prompt notification from the Permittee to be successful.

5.5 – CRASH DOCUMENTATION ON HOP PROJECTS

PennDOT delivers a safe highway environment to the motoring public. Reducing the number and frequency of crashes is important. PennDOT has established staff procedures to help reduce future tort claims for crashes that are fatal, personal injury crashes, multiple vehicle crashes, high property damage crashes and crashes where a traffic control device or roadway geometry may be alleged to be a cause or a contributing factor.

The following procedure will provide documentation:

The on-site permit inspector shall be responsible for collecting data on any crash observed on the project. The data to be collected for each crash shall include:

1. Actual traffic control in effect at time of crash (e.g., Publication 213 Figure or plan).
2. Distances to nearby traffic control devices and other roadside features (e.g., guiderail).
3. Nearby sign messages (temporary and permanent).
4. Weather.
5. Pavement markings.
6. The location of vehicles and fixed objects.
7. The time (date/hour) of the crash.
8. Names of people at or near the scene (e.g., Permittee and PennDOT employees).
9. Actions taken by PennDOT (e.g., notifications, work orders, directions to Permittee).
10. New skid mark locations.
11. Other related data as determined on-site.

The on-site permit inspector should, if it is feasible and safe to do so, take photographs of the location to include:

1. All signs and other traffic control devices.
2. Other roadside hardware.
3. All approaches to the point of crash impact to include roadway geometry.
4. Skid marks.
5. Sight distance (if applicable).
6. Conditions of roadway and shoulders.
7. Vehicles involved showing their position and damage.
8. Other related photographs as determined on site.

Each piece of collected data and each photograph shall be labeled to include:

1. Permit number.

2. Names of vehicle/equipment operators.
3. County, Municipality, Township Route, SR, Segment, Offset and direction of travel.
4. Date and time and Name of data collector.

All collected data shall be recorded in the Field Inspector's Diary/Project Site Activity Report (FID/PSA) or equivalent documentation tool and a copy along with the photographs shall be sent promptly to the District Permit Manager. The District Permit Manager will forward the data and photographs to the Traffic Control Specialist Manager in Central Office for tracking purposes.

CHAPTER 6 – UTILITY EMERGENCIES

6.1 – EMERGENCY OVERVIEW

Because emergency repairs must be made promptly to existing utility facilities to protect the public and to avoid long utility service disruptions, PennDOT's Utility regulations contain a special Permit procedure for emergency repairs (See 459.6). With the incorporation of emergency permitting into EPS, this procedure has been streamlined to reflect current technology.

Note: Proposed revisions to Chapter 459 will mirror EPS procedures that are comparable to the process presented in the current regulation.

"Emergency" is defined in 459.1 as ... an unforeseen occurrence or combination of circumstances which calls for immediate action or remedy.

"Emergency repair" is defined as ... repair to a utility facility undertaken under 459.6 to repair damage resulting from a vehicle accident or collision with the facility, a failed component or storm damage. The term does not include service connections or disconnections unrelated to vehicle accident, a failed component or storm damage.

PennDOT's Emergency Permit procedures afford utility owners the opportunity to respond promptly to bona fide emergencies, prior to obtaining a Permit, provided they have obtained an Emergency Permit Certificate through EPS. Emergency procedures are not to be utilized for non-emergency work, or avoid advance application for a Permit or to avoid relocating aboveground facilities, overlaying multiple pavement openings, or associated fees and costs.

PennDOT is in the process of replacing the previously utilized Emergency Permit Card (EPC, Form M- 940) with an Emergency Permit Certificate (Form M-940 C), issued through EPS, which authorizes utilities to perform emergency repairs. At the time of an emergency, utilities should provide preliminary application information through EPS or by calling the appropriate District office (at the contact phone numbers provided on Form M-940 C). Because Emergency Permit Certificates are distributed electronically and printed by the Applicant, the \$5.00 fee for obtaining a card does not apply to certificates.

When a utility provides information to PennDOT at the time of an emergency, EPS will automatically notify critical personnel identified by each District—this can include first responders, Traffic Management Center (TMC) staff, county maintenance managers, and other contributors who can assist with emergency response.

As was the case prior to EPS, utilities will have 15 calendar days following the emergency to submit the formal permit application associated with that emergency.

Until Chapter 459 is revised, PennDOT will continue allowing the use of Emergency Permit Cards (EPC) by utility facility applicants who are unwilling or unable to access EPS. For more information on the use of Emergency Permit Cards, refer to Subchapters 6.5-6.8.

Emergency Repairs - Shared Utility Facilities

459.7(9) establishes that sharing utility facilities is encouraged by PennDOT and may be authorized under one Permit. Sharing utility facilities is encouraged because sharing results in fewer aboveground facilities and fewer surface openings and restorations within highway right-of-way. Permittees are encouraged to clearly mark ownership of shared facilities. When a shared utility facility undergoes emergency repair, not every utility owner sharing the primary facility will work simultaneously at the emergency site. Nevertheless, emergency repairs to a facility are authorized under one Permit, in accordance with the following policies:

1. Either the Permittee/owner or one of its “sharers” may perform the initial emergency repair under authority of their assigned Emergency Permit Certificate (M-940 C). The Utility performing the emergency repair needs to complete their preliminary emergency permit application, consistent with 459.6. However, the formal Permit application must be submitted by the primary utility facility Permittee/owner, consistent with regulation 459, and needs to identify the Certificate No. under which the emergency repairs (that require a Permit -- see 459.3(a)(3)) were done.
2. Either the Permittee/owner of the primary facility or one of its “sharers” may also remove a utility facility that is being replaced under authority of their assigned Emergency Permit Certificate. For example, in the case of so-called “stub” poles, third-party agreements between Utilities (e.g., National Joint Utilities Notification System (NJUNS) initiative) typically have the last Utility that transfers its conductor to the new pole also remove the damaged pole “stub”. Prompt removal of “stub” poles is in the public interest to reduce unnecessary objects in the highway right-of-way.

6.2 – ISSUANCE OF AN EMERGENCY PERMIT CERTIFICATE

A utility facility owner may apply for an Emergency Permit Certificate (Form M-940 C) by submitting an application in EPS to the District Permit Office in which the utility's facilities are primarily located. Although the Certificate is being approved and issued by a particular District, it will authorize the utility to perform emergency repairs statewide. The Certificate is valid for one year, at which point the utility will need to renew its Certificate through EPS.

Because Emergency Permit Certificates are issued through EPS, and copies are printed at the expense of the utility, there are no fees for obtaining a Certificate.

If a utility owner is eligible to perform emergency work in the PennDOT right-of-way, District Permit Office staff will issue the Emergency Permit Certificate.

6.3 – USE OF AN EMERGENCY PERMIT CERTIFICATE

All work performed under authority of an Emergency Permit Certificate shall conform to Chapter 459.

After a utility facility owner has been issued an emergency permit certificate, the utility owner *must notify* PennDOT promptly to conduct all activities identified in 459.3(a) – emergency surface openings/excavations to place/replace/relocate an aboveground or sub-surface utility (*permit required*), or occupying the right-of-way to modify parts of a facility without surface openings including stringing overhead lines and accessing a facility through a manhole (*no permit required*).

Note: Service connections or disconnections or scheduled work are not defined as emergency repairs and are not authorized under authority of an Emergency Permit Certificate.

Prior to any emergency placement of a utility facility or opening of the highway right-of-way surface, utility owners will contact PennDOT by entering preliminary application information in EPS at any time of day, or by calling the appropriate District office's telephone number provided on the Emergency Permit Certificate (Form M-940 C) during the hours of 8:00 A.M to 4:00 P.M., Monday thru Friday.

When the type of emergency work does not require a subsequent HOP (e.g. no surface opening), but work zone traffic control is required in accordance with Publication 213, a utility should submit a preliminary application to notify PennDOT that emergency work is underway; PennDOT will subsequently ask the Applicant to withdraw its final HOP application in EPS, or if the application has already been submitted, it will be returned as "permit not required."

Utility applicant representatives calling in an emergency should have a copy of the Emergency Permit Certificate on hand, so that the utility's EPS Business Partner ID and/or Certificate No. can be provided to PennDOT staff entering the emergency into EPS.

Information required as part of a preliminary emergency permit application includes the following:

1. Location of emergency work site (S.R.is always required; Segment, Offset, house number, and/or distance from intersection should also be provided if possible).
2. Description of repair work, including the utility facility's permit subtype and use.
3. Current work status (pending or complete).
4. Road status during repair (e.g. Lane closure, shoulder closure, flaggers, etc.), if work status is 'pending.'
5. Date emergency work was completed, if work status is 'complete.'

If work status is identified as 'pending,' EPS will automatically notify critical personnel identified by each District—this can include first responders, TMC staff, county maintenance managers, and other contributors who can assist with emergency response. For this reason, and because preliminary application information can be entered quickly and easily at all times, use of EPS when an emergency occurs is strongly recommended.

If EPS is not functional due to a software update or other outage, Utility permittees must enter the emergency in EPS as soon as the system becomes available.

Utility permittees without EPS access conducting emergency work under a card must call the District Permit Office on the next business day.

Utility facility permittees conducting emergency work requiring an HOP must complete a full application within 15 calendar days of the emergency to confirm and set forth, in detail, any work performed in an emergency situation.

Note: A copy of the utility's active Emergency Permit Certificate (or active Emergency Permit Card, see Subchapter 6.5) will be accepted as legal authorization to perform work (requiring a Permit) prior to the issuance of the Permit.

Bar Holes

A bar hole is a hole two inches or less in diameter which is placed in the pavement for the purposes of leak detection and/or venting of gases. Generally, there will be multiple bar holes at a leak site.

The holes are considered part of emergency repair work and will be made under an Emergency Permit Certificate.

These holes are filled within 15 calendar days of placement. If there is a need to allow them to remain open more than 15 days, the utility is to notify the District Office.

The placement of bar holes meeting the above listed criteria will be considered to be part of the Emergency Permit Certificate and will not be subject to the additional inspection fee of \$5 per hole for non-emergency test holes specified in 459.4(b)(6).

6.4 – VIOLATION OF AN EMERGENCY PERMIT CERTIFICATE

When utility facility owner violates the rules pertaining to Emergency Permit Certificate use, the following measures may be taken by the District:

1. Issuance of a Citation (Form M-945 C).
2. Non-renewal of the Certificate.
3. Revocation of the Certificate.
4. Suspension of a blanket billing account.
5. Debarment of the utility facility owner, its employees, agents, consultants and contractors.

Examples of a major Emergency Permitting violation include:

1. Failure to notify PennDOT of emergency work.
2. Failure to have a copy of the Emergency Permit Certificate at the work site.
3. Performing work other than emergency work.
4. Failure to apply for a Permit within 15 days after the preliminary emergency permit application is made.

In the event of repetitive violations by a utility, District staff may arrange a meeting with the utility management staff prior to renewing an Emergency Permit Certificate.

6.5 – EMERGENCY PERMIT CARD (EPC), FORM M-940

All utility facility owners are encouraged to utilize EPS to facilitate efficient emergency repair

operations. Until Chapter 459 is revised, PennDOT will continue allowing the use of Emergency Permit Cards (EPC)

by Utilities who are unwilling or unable to access EPS. For Utilities using this paper option, the process will remain unchanged and is summarized here.

A utility owner may apply for an Emergency Permit Card (EPC – Form M-940) by submitting an Application for HOP (Form M-945 A) to each District Permit Office in which the utility's facilities are located. The issued EPC is only valid in the District from which it is received and cannot be used statewide. The number of EPC issued to each person will depend on his or her needs and personnel assigned to emergency repair operations. The EPC is valid for one year or 25 emergencies, whichever occurs first. Once the EPC is no longer valid due to one of the above circumstances, the Applicant's copy of the EPC shall be returned to the District Permit Office within 15 calendar days.

The EPC fee is \$5.00 per card for a corporate utility. A governmental utility is issued EPCs at no charge. EPCs cannot be charged to a utility's Permit Account Number (under current software).

The two parts of the EPC Form are distributed as follows:

1. PennDOT Copy. – Retain in the District Permit Office and file by name of utility owner, then Emergency Permit Card number.
2. Applicant Copy. – Forward to utility owner where application originated.

When using an Emergency Permit Card, PennDOT must be promptly notified by using the telephone number provided on the Emergency Permit Card. Line items are to be completed on the card as indicated. In this case, the EPC serves as legal authorization to perform work prior to the issuance of the Permit.

6.6 – ISSUANCE OF AN EPC

A utility owner may apply for an Emergency Permit Card (EPC -- Form M-940) by submitting an Application for Highway Occupancy Permit (Form M-945 A) to each District Permit Office in which the Utility's facilities are located. The number of Emergency Permit Cards (EPCs) issued to each person will depend on their needs and personnel assigned to emergency repair operations. The EPC is valid for one year or 25 emergencies, whichever occurs first.

The EPC fee is \$5.00 per card for a corporate Utility. A governmental Utility is issued EPCs at no charge. EPCs cannot be charged to a Utility's Permit Account Number (under current software).

If a utility owner is eligible for an EPC, District Permit Office staff will issue the EPC.

6.7 – USE OF AN EPC

EPCs are required to be completed only for activities identified in Regulation 459.3(a).

Prior to any emergency placing of a utility facility or opening of the highway right-of-way surface, utility owners are required to contact PennDOT by using the telephone number provided on the Emergency Permit Card. PennDOT shall be immediately notified by telephone, when emergencies occur during

the hours of 8:00 A.M. to 4:00 P.M., Monday thru Friday. Emergency work occurring at other times shall be reported to PennDOT on the following workday. Before placing a utility facility or opening the surface within the right-of-way, the Utility work crew shall enter the following information on the EPC:

1. Date emergency work is started.
2. Time emergency work is started.
3. Location of emergency work site (S.R., Segment, Offset; or house number; or distance from intersection).
4. Description of repair work.

In addition, the Permit applicant is required to insert the HOP application number on the Emergency Permit Card once an application is submitted. An HOP shall be applied for within 15 days to confirm and set forth, in detail, any work performed in an emergency situation.

Only the completed and original EPC shall be accepted as legal authorization to perform work (requiring a Permit) prior to the issuance of the Permit.

All work performed under authority of an EPC shall conform to Chapter 459.

Service connections or disconnections or scheduled work are not emergency repairs (as defined) and therefore are not authorized under an EPC.

Follow-up

Follow-up work may be performed on an emergency which has been entered on the EPC provided the applicant contacts the District Permit Office at the start of each additional workday until necessary repairs are completed on a damaged facility. Otherwise, a new EPC line entry is required. Only one such line entry is required on the EPC for each emergency work location but all authorized workdays must be documented.

The applicant's copy of the EPC shall be returned to the District Permit Office within 15 days after either the twenty-fifth emergency repair authorized by the EPC or one year from the EPC issuance date, whichever occurs first.

6.8 – VIOLATION OF AN EPC

If a utility owner violates any of the rules pertaining to EPC use, the following measures may be taken to correct the violation:

1. Issuance of a Citation (Form M-945 C).
2. Confiscation of the Card.
3. Revocation of the Card.

Examples of a major EPC violation include:

1. Failure to complete an entry on the EPC before starting work.

2. Failure to have an original EPC at the work site.
3. Performing work other than emergency work.
4. Failure to call the District to report the use of an EPC.
5. Failure to apply for a Permit within 15 days after the emergency call in.

In the event of repetitive violations by a Utility, District staff may arrange a meeting with the Utility management staff prior to issuing replacement EPCs.

CHAPTER 7 – RESOLUTION OF DISPUTES AND COMPLAINTS

District staff should utilize formal and informal means to address and resolve complaints, disputes and other problems expeditiously and satisfactorily. This chapter addresses unpermitted and non-complying access, PennDOT citations and the Dispute Review Process. District staff should also refer to Appendix D6 – Progressive Sanction Guidelines, for guidance on suggested resolution, dispute closure processes and enforcement.

7.1 – ACCESS AND DRAINAGE PROBLEMS

PennDOT provides a safe intermodal transportation system for businesses, residents and the traveling public. Unpermitted access and facilities constructed or emplaced and operated in a manner that does not comply with PennDOT regulations, policies and requirements undermines the safe and efficient function of the transportation system.

News Releases

To notify and remind the public of its legal obligations and to increase compliance, each District Permit Manager should have the District Community Relations Coordinator (CRC) distribute a news release each spring, urging the public to obtain a Driveway Permit before they build on their property or alter an existing access. A draft news release is posted in the 'Form Letters' Folder (posted on the PennDOT P: drive).

Unpermitted/Noncomplying Access

Property owners abutting a State highway have a constitutional right of reasonable (i.e., safe and operationally sound) access to public roads. However, along with this right is also a responsibility to provide continued safe and operationally sound access to motorists and a responsibility not to adversely affect the rights thru-traffic has to safe and operationally sound highway movement.

PennDOT may restrict an access constructed without a Permit or in violation of Chapter 441 consistent with the following statewide policy. Also see 441.6(1) and 441.10.

Limiting and blocking. There are two ways to restrict an unpermitted/noncomplying access:

Limiting – (resolved by "work and bill", if violation is correctable by this method). This method *limits* the location and/or width of a particular access by selectively restricting access to/from portions of the property which abuts a State highway. PennDOT may limit access through traffic control device signing, the HOP process, or by physical means. Limiting an access must be accomplished within PennDOT's legal right-of-way.

Blocking – (resolved by court order or by "work and bill", but the appropriate level of concurrence is required prior to blocking any access location). This method *prohibits* vehicular ingress and egress by blocking either (1) a particular access which PennDOT determines to have an adverse impact on the highway, or (2) the entire length of property which abuts a State highway. Blocking an access must be accomplished within PennDOT's legal right-of-way.

No Operational or Safety Problems. If an unpermitted/noncomplying access does not pose an operational or safety problem, PennDOT will normally not pursue blocking the access, unless the owner or operator of the driveway or local road fails to apply for a Permit – at PennDOT's request – or fails to comply with the requirements of a Permit.

In cases where the property owner is not willing to apply for a Permit, PennDOT must determine whether the owner has access at any other location on the property.

- If the owner has reasonable access at another location, notify the owner, by a Citation (Form M-945 C), of the violation and of the need to obtain a Permit. If reasonable efforts are unsuccessful, either "limit" the access (e.g., by "work and bill") or – if "limiting" will not correct the violation – request the appropriate level of concurrence to block the unpermitted/noncomplying access (see next section), for the protection of the traveling public. PennDOT need only allow reasonable (i.e., safe and operationally sound) access, not unlimited access.
- If the owner has no other access, then notify the owner, by a Citation (Form M-945 C), of the violation and of the need to obtain a Permit. If reasonable efforts are unsuccessful, "limit" the access (e.g., by "work and bill").

Operational or Safety Problem. If the District Traffic Unit determines an unpermitted/noncomplying access does pose an operational or safety problem, either "limit" the access (e.g., by "work and bill") or – if "limiting" will not correct the violation – request the appropriate level of concurrence to block the unpermitted/noncomplying access (see next section) for the protection of the traveling public.

Costs. Charge all costs incurred by PennDOT to Program 612 using the applicable Object Codes. The owner will be billed by the District for restricting and unrestricting the access once documented costs are received. Document the actual cost of blocking, unblocking or limiting an access.

D.E. concurrence. The District Executive must personally concur with each access location under staff review for corrective action before the "limiting" of an access and before requesting the appropriate level of concurrence to "block" an access.

Note: If an access is altered by PennDOT (i.e., authorized on a construction project plan), the District should issue an HOP consistent with the approved plan, otherwise the property owner should apply for an HOP. An access altered or constructed by PennDOT must conform to Chapter 441 and PennDOT policies, including but not limited to, Publication 13M (DM-2), Publication 408, and this Manual.

Obtaining Concurrence Prior To Blocking an Access by Physical Means or Court Order

No existing access shall be blocked by guiderail, fence, curb, stone, posts or any other means without the prior appropriate level of concurrence. A property owner may be advised that appropriate legal action may be initiated, but District staff should not inform any property owner(s) that an access will be blocked until after the appropriate level of concurrence is obtained.

Appropriate Level of Concurrence

Following are the appropriate levels of concurrence that must be obtained before blocking an access:

HIGHWAY OCCUPANCY PERMIT OPERATIONS MANUAL
Chapter 7 – Resolution of Disputes and Complaints

Access Type	Appropriate Level of Concurrence
Minimum Use	District Executive
Low Volume and joint-use	BOMO Director
Medium Volume	Deputy Secretary for Highway
High Volume and local road	Secretary of Transportation

Concurrence Justification

When requesting approval to block an access, the District Permit Manager must submit a justification letter with documentation, including photographs, to the District Executive. The letter will address and answer each of the following questions:

1. What specific violation(s) exists?
2. How long has this situation existed?
3. Is there a crash history at this location? Include crash history printout.
4. What steps were already taken to gain compliance (list in chronological order)? Attach a copy of all related correspondence (in chronological order).
5. What options have not yet been pursued, and why?
6. What access remains for this property, and its design? Include sight distance measurements.
7. What are the design details (including sight distance measurements) of the driveway to be blocked?
8. What are the roadway ADT and access ADT?
9. Do similar problems exist at other nearby driveways?
10. What is the width of the right-of-way?
11. Is there an existing permit at the location, or is there evidence that there was a permit at one point in time?

A concurrence justification questionnaire form containing the above questions can be found on the P: drive.

Concurrence

The justification letter will be reviewed by the District Executive for concurrence and, except for Minimum Use, forwarded to Central Office for the appropriate level of concurrence. If all questions have been satisfactorily answered, the appropriate level of concurrence will decide whether the access may be blocked, or whether other action is appropriate, such as court action. The decision to initiate a court action requires consultation with the Office of Chief Counsel (OCC) Permit Section. If court action is pursued, District staff will likely need to provide additional background, evidence and testimony.

If approval is received from the appropriate level of concurrence to block an access, the property owner is to be notified by certified mail to immediately discontinue use of the access for ingress and egress and apply for a permit that complies with the regulation within 30 calendar days, or the access will be blocked, and he/she will be billed for all costs incurred by PennDOT.

This *statewide* policy is intended to balance the conflicts that exist between access traffic and highway traffic. Its successful implementation requires not only reasonable engineering judgment, but also includes legal and administrative considerations which will collectively result in a recommended course of action for resolving problems associated with unpermitted/noncomplying access locations.

Access Storm Water Problems – Maintenance and Responsibility

If an icing, debris or drainage problem is caused by an improperly constructed or maintained access, follow this *statewide* policy to correct the problem.

If an unpermitted or permitted access driveway is channeling drainage onto the roadway, the District will notify the property owner to have the problem corrected as soon as feasible. It is helpful, but not necessary to determine whether an HOP exists because:

1. State Highway Law, Section 420(e), makes it a summary offense for any person to:
 - a. Violate any rule or regulation (i.e., Chapter 441) promulgated under authority of Section 420 of the State Highway Law.
 - b. Willfully destroy, injure, or damage any State highway, by any method or device.
2. An HOP does not guarantee that drainage into the right-of-way is legal.

If the drainage is damaging the right-of-way (e.g., washing some of the shoulder material onto the highway), action must be taken to mitigate the damage. If the landowner/permittee/facility owner fails to fix the drainage problem and restore the highway after the District issues notice to do so, the property owner/permittee/facility owner is violating Section 420(e) of the State Highway Law by willfully allowing the damage to continue, whether or not an HOP exists.

Permits are revoked before a District Justice complaint is filed

District staff should determine if an HOP exists before filing a complaint with a District Justice. If an HOP exists, the HOP will be revoked for failure to comply with its terms and conditions, regulations, and standards before the complaint is filed with the District Justice.

441.7(a) states that “driveways shall be located, designed and maintained in such a manner as not to interfere or be inconsistent with the design, maintenance and drainage of the highway.” A driveway that is draining onto the highway, or damaging the shoulder, is interfering with the proper drainage of the highway, and may be a hazard to the motoring public.

Even if there is an HOP, if the drainage problem creates a dangerous condition of the highway (e.g., icing), prompt corrective action must be initiated.

When feasible, the property owner/permittee/facility owner should be given advance notice of PennDOT's intention to repair or correct the violation, and an opportunity to make corrections at its own expense.

Resolution of driveway drainage problems requires a cooperative effort by the County Maintenance Manager, the District Permit Manager and the property owner/permittee/facility owner.

It is important to notify the District Permit Manager about any drainage problem caused by construction of a driveway. County/District staff should not routinely refer drainage problems to the District Permit Manager for resolution, because the Permit Manager is not solely responsible to resolve conflicts between property owners, permittees and facility owners. Generally, the District employee who discovers the drainage problem in coordination with appropriate District staff makes initial contact with the property owner/permittee/facility owner. It is not necessary to determine a problem driveway's permit status prior to taking initial action and notifying the responsible property owner/permittee/facility owner of a violation.

The County Maintenance Manager is responsible for actions such as work and bill, disposition of excavated earth and disturbed vegetation, authorizations to enter, negotiations on pipe culvert size increases, and any other actions that may be necessary to have the drainage problem corrected.

When responsibility for correcting driveway drainage problems overlap, the District Permit Manager will pursue compliance with the Driveway Permit and Chapter 441, and the County Maintenance Manager will resolve drainage problems affecting the right-of-way wherever possible in coordination and cooperation with the property owner/permittee/facility owner.

Also see *The PennDOT Maintenance Manual*, Publication 23, Chapter 8.

7.2 – DEPARTMENTAL CITATIONS

The Citation Form (M-945 C) is designed to assist District staff in documenting HOP violations, as well as violations of State Highway Laws, regulations and the Vehicle Code. The Citation assists District field staff to notify a violator – in writing, as required herein and by 441.10 and 459.11 – of violations and necessary corrective action. A Citation also provides written notice to all concerned persons about a violation.

Since Chapters 441 and 459 require oral notice of violations to be followed with written notice within ten calendar days, the Citation Form documents violations consistent with the regulations. Citations also provide documentation for hearings and court proceedings.

When feasible, District staff will complete the Citation Form at the site of the violation and give the violator its appropriate copy at this time. The "work crew leader" copy should not be mailed unless there is no violator at the site. If the Property owner/Permittee/facility owner is other than the person performing the work, the "Permittee Copy" will be forwarded to the property owner/Permittee/facility owner. Citations involving Permit violations will be issued to the Permittee. A copy will be provided to the permittee's consultant and contractor, as appropriate.

In the Description of Work section, *all* violations will be described with specific reference to the applicable regulation(s) and Permit conditions.

In the Violation section, more than one block is normally checked. If the violation involves an access, blocks for both State Highway Law and Highway Access regulations will be checked. If a utility violation, blocks for both State Highway Law and Utility regulations will be checked. If a Utility Permittee's contractor is operating a tracked vehicle on the pavement or shoulder without an executed Form M- 945 U, the blocks for both Utility regulations and Vehicle Code will be checked. If a Work Zone Traffic Control violation, blocks for Work Zone Traffic Control, the corresponding Permit regulation, and Vehicle Code will be checked.

In the Corrective Action section, sound judgment must be used in determining which block to check. The violator should be given reasonable time to correct a non-safety violation (e.g., up to 24 hours). Where a safety violation is not corrected immediately, all permitted work must be stopped until the violation is corrected. No work authorized under any other Permit will be stopped, unless the violation relates to that Permit as well. Typical safety violations would include O.S.H.A. violations (e.g., improper shoring or inoperable backup warning alarms) or Work Zone Traffic Control violations.

A County Permit Supervisor, County Permit Inspector, or on-site Permit Inspector hereby has the authority to annul a Permit, but must obtain concurrence from the District Permit Manager or higher authority before completing the Citation Form if corrective action #4 is to be checked.

Detailed information on the completion of Departmental Citations is in Chapter 9.

7.3 – DISPUTE REVIEW PROCESS – DURING APPLICATION

Purpose

This dispute review process was established to promote the uniform application of the HOP design requirements, to resolve disputes over design in an impartial and timely manner, to improve communication among PennDOT and Applicants, and to help establish PennDOT's position on disputed regulations, policies, and procedures. Intervention by a Dispute Review Panel during the application process is intended to resolve disagreements between the Applicant and the District by finding solutions. The Applicant or District may utilize this process at any point after the first application submission and prior to HOP issuance, denial or determined that no permit is required. Utilizing this process will not affect the timeliness of the HOP application review process. Meaning, if an application is under review, a timely response must still be made consistent with current law, regulation and policy, regardless of whether the dispute has been resolved.

Scope

This statewide policy applies to all “Notice of Dispute – HOP Applicants” (Form M-945 Y2) submitted by Applicants or the reviewing District, relating to disputes arising out of design submitted under an HOP Application. This process may result in a recommended decision for the District, but does not apply to appeals of denied applications nor does it apply to work performed under a permit. For applications requiring FHWA approval, as described in the FHWA/PennDOT Stewardship & Oversight Agreement, this informal process cannot be used to dispute FHWA requirements or decisions.

Responsible Organizations

The organization with primary responsibility in a dispute review process is the District reviewing an Application in dispute (Application District). The Highway Safety and Traffic Operations Division (HSTOD) of the Bureau of Maintenance and Operations (BOMO) is responsible for serving on the Applicant Dispute Review Panel (Panel) with the Application District as well as a second District. The Panel is authorized to suggest a resolution to disputes consistent with existing laws, regulations, standards, and statewide policy and procedure. The Application District is responsible for resolving the dispute.

Policy

Settlement of Disputes. The Application District shall promptly respond to all Notices of Dispute during the HOP application process. The Application District shall:

1. Review the facts of each dispute within five working days of receipt of a “Notice of Dispute – HOP Applicants”, and take action.
2. Act on unresolved disputes as directed by the District Executive (DE) or by considering recommendations by the Panel. The Panel shall be chaired by the Division Chief of HSTOD, or an assigned representative. Other voting Panel members shall be the District Executives (DE) from the two Districts (Panel Districts). The DEs from the Panel Districts may be represented by the Assistant District Executives (ADE) from their Districts.

Responsibilities

1. Application District:
 - a. Responsible for the disposition of disputes either by its unilateral determination or by recommendation of the Panel.
 - b. The DE and staff will assure comprehensive and adequate documentation of all items that are related to the dispute and furnish copies of same for the Panel.
2. HSTOD
 - a. Provide advice and assist the Application District in discussions, as requested; and participate in Panel meetings as the Chairperson.
3. Applicant Dispute Review Panel (Panel)
 - a. Provides a final recommendation on disputes for which Panel review has been requested by

the Application District or by the Applicant (if request for review is approved). Panel functions as sole and final internal authority for Panel dispute review.

- b. Panel membership:
 - i. Application District – District Executive (DE) or Assistant DE (ADE) – voting.
 - ii. Guest District – District Executive (DE) or Assistant DE (ADE) – voting.
 - iii. HSTOD – Division Chief (or Designee) – Chairperson, voting.
- c. Panel Chairperson will assign staff the task of taking minutes and drafting the Panel report. Staff assisting with the Panel meetings is non-voting.
- d. Establish Panel’s position on disputes by majority vote.

Procedure

1. Notice of Dispute – HOP Applicant:
 - a. If an Applicant disputes the Application District’s interpretation of PennDOT’s regulations or policies, or if the Application District has a sense that denial of an application is imminent and that a solution to the dispute might be found, a meeting with the Panel may be requested. For the purposes of documentation and requesting Panel consideration, a “Notice of Dispute – HOP Applicant” form must be completed.
 - b. When a “Notice of Dispute – HOP Applicant” is received, the DE will assign a Dispute File Number.
 - c. Completion of the “Notice of Dispute – HOP Applicant” form, requesting a meeting with the Panel, may be filed by the Applicant or the Application District Permit Office. The request is made to the DE of the Application District.
 - d. If the District position is consistent with law, regulation, statewide policy and procedure, and the DE, after review of the Notice of Dispute, determines that a panel review is not required, the District will respond, in writing, within five workdays of receipt of "Notice of Dispute – HOP Applicant”.

Include in the response letter the following paragraphs:

"Please be advised that the "Notice of Dispute" that you submitted on (date), will not be forwarded to the Dispute Review Panel for further action for the following reasons:

<The District shall prepare and insert a list of reasons>

If you are of the opinion that your request has merit and can be substantiated before the Department, you may contest the District's decision by requesting a meeting with the Dispute Review Panel. This request shall be filed with the District Executive. The granting of such a meeting shall be at the Panel's discretion."

- e. If the DE, after review of the “Notice of Dispute – HOP Applicant”, determines that a panel review is required, or if the Applicant contests the District’s initial decision to not forward the “Notice of Dispute – HOP Applicant” and requests a meeting with the Dispute Review Panel, the DE will notify the Division Chief of HSTOD within five workdays of receiving a “Notice of

Dispute – HOP Applicant” or the Applicant’s Dispute Review Panel meeting request.

- f. The Division Chief of HSTOD will convene the Panel within ten workdays of receiving the “Notice of Dispute – HOP Applicant” from the Application District’s DE.

2. Documentation:

- a. The DE or ADE at the Application District will assure the collection and documentation of District Permit Office information relevant to the circumstances of the dispute.
- b. The DE or ADE at the Application District will assure and document timely communication between the involved parties to provide the opportunity for the Panel to consider all reasonable options.
- c. When a Panel meeting is requested, the DE or ADE shall forward a “Chronological Description” of the dispute to HSTOD and the applicant. The Division Chief of HSTOD will then forward the “Chronological Description” of the dispute to the DE of the other Panel District. The “Chronological Description” shall be accompanied by references to, and copies of, correspondence, regulations, policies, and other documentation relevant to the dispute.

3. Panel Review Meetings:

- a. Panel meetings will be held at the Application District Office. HSTOD and Panel District representatives must attend Panel meetings in person.
- b. The Applicant’s consultant and contractor may be present at the Panel meeting, but may not serve as a representative for the Applicant without a written request from the Applicant, approved by the Panel Chairman at least one day prior to the Panel meeting. Because this is a discretionary, non-binding process, participation by the Applicant’s counsel is strongly discouraged. If the Applicant’s counsel is present, PennDOT counsel may also participate.
- c. The Panel meeting will follow this format:
 - i. Applicant presents its position, orally and with documents.
 - ii. Applicant is questioned by the Panel on its position.
 - iii. Application District presents its position, orally and with documents.
 - iv. Application District is questioned by the Panel on its position.
 - v. Panel members deliberate in private, considering relevant statements and documents in arriving at a reasonable recommendation.
- d. Panel recommendations shall be made in writing and shall be signed by the Chairman.
- e. Possible Panel recommendations are to deny the application based upon the regulations and policies of the Commonwealth, or to recommend a solution to the dispute that retains the integrity of the regulations and policies of the Commonwealth while satisfying the concerns of the Applicant. The Panel is not authorized to award compensation to the Applicant or fine the Applicant.
- f. The Application District shall resolve the dispute with the Applicant using the Panel’s recommended solution as advice.
- g. If the District ultimately denies the application and the Applicant appeals the denial to an Administrative Hearing, the DE from the Application District or designee will assist the Office of Chief Counsel, as requested, in the defense of formal appeals.

4. Panel Report and Notifications

- a. Issue a report with copies to the Panel members – not the Applicant – using the “HOP Dispute Review Final Report” (Form M-945 Z). The Chairman will brief the Deputy Secretary prior to finalizing the report.
- b. Notification to Applicant:
 - i. Dispute has been resolved in Applicant’s favor, with details of that resolution in writing to the Applicant or by issuance of the HOP, or
 - ii. Dispute has been resolved in District’s favor, with details of the decision. If the application is currently under review, the Application may be returned or denied detailing the District’s decision.

It is expected that notification to the Applicant will occur expeditiously, but should not extend beyond 60 calendar days of the District’s receipt of the “Notice of Dispute - HOP Applicant”.

- c. If changes to policies are considered advisable, make a recommendation to HSTOD, with a description of the dispute circumstances and the recommended changes.

Instructions for completing the "Notice of Dispute – HOP Applicant", Form M-945 Y2, as well as the “HOP Dispute Review Final Report”, Form M-945 Z, are in Chapter 8.

7.4 – DISPUTE REVIEW PROCESS – AFTER ISSUANCE OF PERMIT

Purpose

This dispute review process was established to promote the uniform application of the HOP work requirements, to resolve disputes over work in an impartial and timely manner, to improve communication among PennDOT and Permittees, to help establish PennDOT's position on disputed regulations, policies and procedures, and to provide the Permittee with an informal alternative to requesting a formal administrative hearing.

Scope

This statewide policy applies to all “Notice of Dispute” (Form M-945 Y) submitted by Permittees, relating to disputes arising out of work performed under a Highway Occupancy Permit. This informal process does not apply to denials of applications or the eligibility to apply for Permits.

Responsible Organizations

The organization with primary responsibility in a dispute review process is the District that issued the permit under dispute (Permit District). The Highway Safety and Traffic Operations Division (HSTOD) of the Bureau of Maintenance and Operations (BOMO) is responsible for serving on the Permittee Dispute Review Panel (Panel) with the Permit District as well as a second District. The Panel is authorized to suggest a resolution to disputes consistent with existing laws, regulations, standards, statewide policy and procedure. The Permit District is responsible for resolving the dispute.

Policy

Settlement of disputes. The Permit District shall promptly respond to all "Notices of Dispute". The Permit District shall:

1. Review the facts of each dispute within five working days of receipt of a "Notice of Dispute" and take action.
2. Act on unresolved disputes as directed by the District Executive (DE) or by considering recommendations by the Panel. The Panel shall be chaired by the Division Chief of HSTOD, or an assigned representative. Other voting Panel members shall be the DEs from the two Districts (Panel Districts). The DEs from the Panel Districts may be represented by the Assistant District Executives (ADE) from their Districts.

Responsibilities

1. Permit District:
 - a. Responsible for the disposition of disputes either by its unilateral determination or by recommendation of the Panel.
 - b. The DE and staff will assure comprehensive and adequate documentation of all items that are related to the dispute and furnish copies of same for the Panel.
2. HSTOD.
 - a. Provide advice and assist the Permit District in discussions, as requested; and participate in Panel meetings as the Chairperson.
3. Permittee Dispute Review Panel (Panel)
 - a. Provides a final recommendation on disputes for which Panel review has been requested by the Permit District or by the Permittee. Panel functions as sole and final internal authority for Permittee dispute review.
 - b. Panel membership:
 - i. Panel District – District Executive (DE) or Assistant DE (ADE) – voting.
 - ii. Panel District – District Executive (DE) or Assistant DE (ADE) – voting.
 - iii. HSTOD – Division Chief (or Designee) – Chairperson, voting.
 - c. Panel Chairperson will assign staff the task of taking minutes and drafting the Panel report. Staff assisting with the Panel meetings is non-voting.
 - d. Establish Panel's position on disputes by majority vote.

Procedure

1. Notice of Dispute:
 - a. When a "Notice of Dispute" is received, the DE shall assign a Dispute File Number.
 - b. The DE shall review each "Notice of Dispute" within five workdays of receipt by Permit Office. Whenever feasible, promptly resolve dispute and notify Permittee.
 - c. The DE shall assure the collection and documentation by inspection forces of information

relevant to the circumstances of the dispute.

- d. The District Permit Manager shall complete items 1, 2, and 3 of the "Department Use Only" section on the rear of the form and place his/her recommendation in item 4, including underlying reasons.
- e. If the District position is consistent with law, regulation, statewide policy and procedure, and the DE, after review of the "Notice of Dispute", determines that a panel review is not required, the District will respond, in writing, within five workdays of receipt of "Notice of Dispute".

Include in the response letter the following paragraphs:

"Please be advised that the "Notice of Dispute" that you submitted on (*date*), will not be forwarded to the Dispute Review Panel for further action for the following reasons:

If you are of the opinion that your request has merit and can be substantiated before the Department, you may contest the District's decision by requesting a meeting with the Permittee Dispute Review Panel. This request shall be filed with the District Executive."

- f. If the DE, after review of the "Notice of Dispute", determines that a panel review is required, or if the Permittee contests the District's initial decision to not forward the "Notice of Dispute" and requests a meeting with the Dispute Review Panel, the DE will notify the Division Chief of HSTOD within five workdays of receiving a "Notice of Dispute" or the Permittee's Dispute Review Panel meeting request.
- g. The Division Chief of HSTOD will convene the Panel within ten workdays of receiving the "Notice of Dispute" from the Permit District's DE.

2. Documentation:

- a. The DE or ADE at the Permit District will assure the collection and documentation of District Permit Office information relevant to the circumstances of the dispute.
- b. The DE or ADE at the Permit District will assure and document timely communication between the involved parties to provide the opportunity for the Panel to consider all reasonable options.
- c. When a Panel meeting is requested, the DE or ADE shall forward a "Chronological Description" of the dispute to HSTOD and the Permittee along with a copy of the "Notice of Dispute". The Division Chief of HSTOD will then forward the "Chronological Description" of the dispute and the "Notice of Dispute" to the DE of the other Panel District. The "Chronological Description" shall be accompanied by references to, and copies of correspondence, regulations, policies, and other documentation relevant to the dispute.

3. Panel Review Meetings:

- a. Panel meetings will be held at the Permit District Office. HSTOD and Panel District representatives must attend Panel meetings in person.
- b. The Permittee's consultant and contractor may be present at the Panel meeting, but may not serve as a representative for the Permittee without a written request from the Permittee, approved by the Panel Chairman at least one day prior to the Panel meeting. Because this is a

discretionary, non-binding process, participation by the Permittee's counsel is strongly discouraged. If the Permittee's counsel is present, PennDOT staff counsel may also participate.

- c. The Panel meeting will follow the following format:
 - i. Permittee presents its position, orally and with documents.
 - ii. Permittee is questioned by the Panel on its position.
 - iii. Permit District presents its position, orally and with documents.
 - iv. Permit District is questioned by the Panel on its position.
 - v. Panel members deliberate in private, considering relevant statements and documents in arriving at a reasonable decision.
- d. Panel recommendations shall be made in writing, and shall be signed by the Chairman and the Deputy Secretary for Highway Administration.
- e. The Panel is not authorized to award compensation to the Permittee or fine the Permittee.
- f. The Permit District shall resolve the dispute with the Permittee using the Panel's recommended solution as advice.
- g. If the District's ultimate decision is unsatisfactory to the Permittee, the decision may be appealed to an Administrative Hearing. The DE from the Permit District or designee will assist the Office of Chief Counsel, as requested, in the defense of formal appeals.

4. Panel Report and Notification:

- a. Issue a report with copies to the Panel members – not the Permittee – using the “HOP Dispute Review Final Report” (Form M-945 Z). The Chairman will brief the Office of Chief Counsel and request the Deputy Secretary for Highway Administration's approval prior to finalizing the report.
- b. Notification to the Permittee:
 - i. Dispute has been resolved in Permittee's favor, with details of that resolution in writing to the Permittee or by issuance of a Supplemental HOP, or
 - ii. Dispute has been resolved in District's favor. In this case advise the Permittee to bring itself in compliance with PennDOT's decision, within the Permit's scope of work. If the Permittee fails to comply, revoke the Permit consistent with established procedures

It is expected that notification to the Permittee will occur expeditiously, but should not extend beyond sixty (60) calendar days of the District's receipt of the “Notice of Dispute”, or if applicable, receipt of the Permittee's Dispute Review Panel meeting request.

- c. If changes to policies are considered advisable, make a recommendation to HSTOD, with a description of the dispute circumstances and the recommended changes.

Instructions for completing the "Notice of Dispute", Form M-945 Y, as well as the “HOP Dispute Review Final Report”, Form M-945 Z, are in Chapter 9.

CHAPTER 8 – PUBLICATIONS & REGULATIONS

8.1 – IMPORTANT LINKS

[Manual on Uniform Traffic Control Devices \(MUTCD\)](#) – Federal Highway Administration (FHWA)

[PennDOT Straight Line Diagrams](#)

[PennDOT Electronic Permitting System \(EPS\)](#)

[PennDOT HOP Homepage](#)

[PennDOT Internet Traffic Monitoring System \(iTMS\)](#)

[PennDOT Video Log](#)

8.2 – PUBLICATIONS

The following publications are either referenced in this manual or are useful in the HOP process. Hyperlinks are provided for your convenience.

<u>PUB NO.</u>	<u>DESCRIPTION</u>
Pub 10	Design Manual, Part 1
Pub 10A	Design Manual, Part 1A
Pub 10X	Design Manual, Part 1X
Pub 13M	Design Manual, Part 2
Pub 16M	Design Manual, Part 5
Pub 19	Field and Laboratory Testing Manual
Pub 23	Maintenance Manual
Pub 33	Shoulder & Guiderail Condition Survey Field Manual
Pub 34	Approved Aggregate Producers
Pub 35	Approved Construction Materials (Bulletin 15)
Pub 41	Producers of Bituminous Mixtures
Pub 42	Producers of Redi-Mixed Concretes
Pub 46	Traffic Engineering Manual
Pub 70M	Design of Local Roads and Streets
Pub 72M	Roadway Construction Standards
Pub 73	Drainage Condition Survey Field Manual
Pub 148	Traffic Standards Signals (TC-8800 Series)
Pub 149	Traffic Signal Design Handbook
Pub 212	Official Traffic Control Devices
Pub 213	Work Zone Traffic Control Guidelines
Pub 218M	Bridge Design - BD-600M Series
Pub 219M	Bridge Construction - BC-700M Series
Pub 234	Flagging Handbook
Pub 236	Handbook of Approved Signs
Pub 242	Pavement Policy Manual
Pub 312	Guide for Obtaining Minimum Use Driveways
Pub 336	Automated Pavement Condition Surveying Field Manual
Pub 408	Specifications
Pub 584	PennDOT Drainage Manual
Pub 669	Traffic Signal Inspection Pocket Guide

8.3 – REGULATIONS

Note: Paper version may not be current, due to possibility of editorial updates by Legislative Reference Bureau (e.g., in response to Court decisions and Administrative Hearing Officer Orders).

Refer to www.pacode.com site for current electronic versions.

Pa Code, Title 67, Chapter 441 – Driveway Regulations

<http://www.pacode.com/secure/data/067/chapter441/chap441toc.html>

Pa Code, Title 67, Chapter 459 – Utility Regulations

<http://www.pacode.com/secure/data/067/chapter459/chap459toc.html>

CHAPTER 9 – USE OF FORMS

9.1 – GENERAL INFORMATION ON FORMS

The basic purpose of a form is to provide for the uniform recording, transmitting, and data processing of information. Forms allow information processing (and service to the public) to be more efficient than would otherwise be possible.

All forms must be used as designed and published, unless specifically exempted in this Manual (e.g., Letters of Credit are specifically authorized to be retyped on Bank stationary). *Revisions* to official *statewide* HOP forms published by Office Services or appearing on the PennDOT P: drive or PennDOT Web Site are not permitted by District or County staffs, Applicants, Permittees, consultants or citizens.

Applicants and others are encouraged to check on-line for forms available in electronic format. See <http://www.penndot.gov/layouts/pa.penndot.formsandpubs/formsandpubs.aspx>. Direct links to forms that are available online can be found in Chapter 9.2 with the description and instructions to fill out the forms.

Some permit forms are stored in the PennDOT Forms and Publications Warehouse. These permit forms may be ordered on PennDOT Form OS-511, entitled Forms Requisition.

However, "controlled" Permit forms (e.g., forms with sequential Numbers) may be ordered by the District only through the Central Permit Office (on Form OS-511), for assignment of a number series or a requisition quantity.

The District Permit Office must acknowledge to the Central Permit Office receipt (by e-mail) of all "controlled" forms as soon as the order is received in the District.

It is important that all publications, notices and documents posted in the District and County Offices or furnished to anyone are current.

Promptly remove obsolete notices and documents.

9.2 – GENERAL INFORMATION ON USE OF FORMS

This Chapter contains information about the use and completion of PennDOT forms that are used in the HOP and BOL Programs. Each form is listed by its title and form number and includes a purpose and information on how to complete and process that form.

Modifications to HOP forms are not authorized by Applicants, consultants, District staff, County staff or other persons that are not responsible for the *statewide* administration of any HOP Program or BOL Program. Forms are both a reflection and extension of laws, regulations and established *statewide* policy. Forms facilitate *statewide* uniformity and efficiency by ensuring basic information is consistently provided and processed. Ensure that the form being used is the current version by using the links to the digital files (where applicable).

As a general rule, submitted forms must be complete and accurate. All forms must be completed properly by the Applicant and PennDOT staff. All information, including signatures, titles and dates must be completed in the proper location for all blanks.

In some instances, the form itself contains additional instructions which must be followed. Also, additional forms that are to be attached to make a complete package are identified.

When submitting forms for execution and approval, the originally signed forms must be provided when required, for example, when a form must be recorded or an original is required by a third party.

The following forms must be submitted with original signatures:

- M-945 I, Indemnification (Utility)
- M-945 K, Highway Restoration & Maintenance Bond (Utility)
- M-945 L, Irrevocable Letter of Credit (Utility)
- M-945 R, Resolution
- M-945 RC, HOP Recording Copy M-946, Access Covenant
- M-947, Drainage Release
- M-950 CFO, Consent of Fee Owner
- M-950 D1, Deed, Fee Simple M-950 D2, Deed of Easement
- M-950 IA, Indemnification (relating to lane in front of property)
- M-950 IC, Declaration of Covenant
- M-950 ID, Indemnification (relating to drainage)
- M-950 IDW, Indemnification (relating to design waiver)
- M-950 IFO, Indemnification (relating to non-fee owner applicants)
- M-950 K, HOP Obligation Bond (Access)
- M-950 K1, HOP “Blanket” Bond (Access)
- M-950 L, Irrevocable Letter of Credit (Access)

The following forms may be submitted in EPS as digital images of original signatures:

- M-906 A, Application for Bridge Occupancy License
- M-945 A, HOP Application
- M-945 H, Acknowledgment – Reimbursement Obligation for Application Review (Utility Permit)
- M-945 U, Acknowledgement-Permittee’s Restoration Obligations
- M-945 Y, Notice of Dispute
- M-945 Y2 Notice of Dispute – HOP Applicant M-948, Assignment of Permit/License
- M-950 A, Application for Minimum Use Driveway
- M-950 AA, Applicant’s Authorization for Agent to Apply for Highway Occupancy Permit M-950 H, Acknowledgement-Reimbursement Obligation for Application Review
- M-950 MPC, Land Use Questionnaire

There are a few representatives of Surety Companies, Insurance Companies and Banks that are unwilling to complete and submit PennDOT’s standard Bonds and Letters of Credit. Applicants are advised to do business with one of the many PA Surety Companies, PA Insurance Companies and

PA Banks that are willing to submit PennDOT's HOP/BOL Forms without modifying the text, terms or conditions on these standard forms. Even if the Office of Chief Counsel agrees to consider reviewing a modification to a standard form, the special review will increase the application processing time and costs.

Application Review / Permit Inspection Costs; Form M-371 A and Delinquent Invoice Procedures

Purpose

This form is used to document costs and to invoice Applicants/Permittees to **reimburse** PennDOT for significant *additional* application review and significant *additional* (resident) inspection costs incurred by the Commonwealth, consistent with section 420 of the State Highway Law and 441.4(d) and 459.4(d). The form is to be used both by PennDOT staff and Consultant Agreement personnel assigned to significant *additional* application review or significant *additional* (resident) Permit inspection.

Preparation

Every assigned PennDOT reviewer/inspector that will incur significant *additional* costs for the Commonwealth and every assigned Consultant reviewer/inspector is personally responsible for accurately completing Form M-371 A and submitting it biweekly to the District Permit Office. However:

1. Do not charge any Applicant *additional* application review fees under Form M-371 A unless an Acknowledgment – Reimbursement Obligation for Application Review (use Forms M-945 H and M- 950 H) has been signed by both the Applicant’s representative and the District Executive.
2. Do not charge any Permittee *additional* inspection fees under Form M-371 A unless the Permit – or a Supplement – indicates such charges may be assessed (use HOP Condition Code #318).

Each assigned reviewer/inspector shall accurately complete a separate Form M-371 A for each application/permit.

All headings on this form are to be completed the first day the reviewer/inspector is assigned to review an application or inspect permit work, including the Applicant/Permittee’s name and complete mailing address.

PennDOT employees shall complete the expense section daily, consistent with the current Travel Expense Manual (Publication 142) and show all expenditures as listed on the employee's Travel Expense Voucher (Form C-62). The salary section shall show the number of hours worked each day multiplied by the hourly rate; overtime hours are typically multiplied by 1½ the hourly rate. Completion of Form M-371 A by a consultant employee or authorized inspector shall be consistent with the District's current Consultant Agreement and/or District guidelines for authorized inspectors.

On days when an inspector reports for work and there is inclement weather and/or the Permittee’s contractor does not report without prior notification, the Permittee shall be charged reporting time (typically a minimum of two hours) in addition to expenses. However:

1. Do not use this form to charge any Applicant for routine application review.
2. Do not use this form to charge any Permittee for “spot” inspections by District Permit Managers, County Permit Supervisors, or County Permit Inspectors not assigned as resident inspectors.

Acknowledgment

Every assigned inspector must complete that day's row on Form M-371 A every workday; this includes obtaining initials daily from the Permittee or its duly authorized representative. These daily initials are essential in settling future billing disputes without having to retrieve the inspector's FIDs for that time period to verify charges are valid.

Payroll Additive and Benefit Rate

The Bureau of Fiscal Management will periodically update the payroll additive and benefit rate. The payroll additive and benefit rate shall be added to all PennDOT labor costs, but not to consultant costs. **Payroll Additive** is the payroll overhead cost which results from the application of an overhead rate (revised yearly) to all direct labor charges. This cost is charged as a means of recovering indirect labor charges. Indirect payroll charges being recovered include annual leave, sick leave, the state's share of unemployment insurance and medical/hospital insurance, etc. The **Benefit Rate** is a combination of charges applied to an employee's salary for health benefits, social security, life insurance, workers' compensation, unemployment compensation, leave payouts, and retirement.

Submission

It is the District Permit Office's responsibility to verify each Form M-371 A is correct and properly completed.

A properly completed Form M-371 A can eliminate most disputes over invoice amounts.

When reviewing form the M-371 A, the District Permit manager or staff is responsible to verify documentation submitted by the inspector in EPS/ECMS, including cross referencing Field Inspection Diaries (FIDs). PennDOT staff approving invoices shall check for:

1. Appropriate miles & rate (mileage should be actual, not rounded).
2. Hours of inspection performed.
3. Approved wage rates.
4. Invoices are properly acknowledged by the Permittee and the authorized inspector.
5. If overtime is claimed and the inspector has worked on two different projects, that the backup from both jobs are attached and signed.

Each Form M-371 A on each Application/Permit shall be numbered consecutively. When the final bill is submitted, it shall contain the consecutive billing number and the word "final" (e.g., fifth and final).

The District should require the HOP applicant to register for a BP ID prior to permit issuance. No work shall commence within the right-of-way until the BP ID has been obtained and the Permittee has provided its BP ID number to the District.

The District will forward the invoice and a copy of Form M-371 A to the Permittee. The invoice and Form M-371 A will be maintained in EPS as part of the Application/Permit.

Delinquent Payment Procedures

Invoices represent a debt owed by the Permittee to PennDOT. The following process applies to collection of HOP inspection fees.

First Dunning Notice. If full payment is not received by the invoice due date, the Bureau of Fiscal Management will dun the Permittee in writing on the 1st day after the due date to ensure collection of the receivable account and copy the District and BOMO.

The notice will advise the Permittee that if payment is not received, the District may exercise its authority to act on the bond or letter of credit provided to the District as a condition to issuance of the HOP, suspend the Permittee's centralized billing account, suspend the Permittee's EPS Business Partner ID, revoke the permit, offset delinquent invoices amounts against other payments due to be paid, and/or initiate legal action against the Permittee.

Action by District After First Notice. The District Permit manager is responsible to review payment status of invoices after their due date in EPS.

Second Dunning Notice. If payment is not received within 30 calendar days after the original invoice due date, the Bureau of Fiscal Management will again dun the Permittee.

Action by District after Second Notice. After the Second Notice, the District will review the invoice and Permit record in EPS and communicate with the Permittee to investigate non-payment of the account. The District is responsible to complete its investigation within 30 calendar days. The District must determine if the invoice is correct – and as such is delinquent without good cause, or incorrect. If the District determines the invoice was incorrect or improper, the District will coordinate with the Permittee, BOMO and the Bureau of Fiscal Management to adjust the amount of the invoice to properly reflect amounts owed and have it reissued or canceled as appropriate. If the District requests, BOMO may communicate with Bureau of Fiscal Management to delay dunning if the situation warrants based on the District investigation. The District will prepare a memorandum for record detailing its investigations, the results, and action taken. Store the memorandum in EPS/EDMS

If payment is not received within 60 calendar days after the invoice due date the District will take appropriate action to ensure collection of the account by initiating *any or all* of the following actions, considering the nature of the Permittee, the amount of the invoice, and the circumstances of non-payment:

- suspend the Permittee's centralized BOMO billing account;
- recommend BOMO - CPO suspend the Permittee's EPS business partner identification;
- act on the bond, letter of credit or other security provided by the Permittee as a condition to issuance of the HOP in coordination with the Permits Section of the Office of Chief Counsel as required.

Third Dunning Notice. If payment is not obtained within 60 calendar days from the original invoice due date, the Bureau of Fiscal Management will again dun the Permittee.

Action by District After Third Notice. If payment of a delinquent account has not been obtained, adjusted or a payment schedule established within 90 calendar days from the original invoice due date, on the 91st day after the invoice due date the District Permit Office will notify the Permittee that its Permit will be revoked for nonpayment, as specified under 441.10 and 459.11 and in accordance with 441.4(d) and 459.4(d). Use the Notice of Revocation Letter (see 'Form Letters' Folder posted on the P: drive) to revoke a Permit for non-payment (note: delete the highway safety paragraph).

If there is a bond or letter of credit not previously acted on covering the Permittee's obligation to pay all fees and costs associated with the HOP, provide the Surety/Bank with a copy of the Notice of Revocation and act on the bond, letter of credit or other security provided by the Permittee as a condition to issuance of the HOP in coordination with the Permits Section of the Office of Chief Counsel as required.

If there is no security, once the Permit is revoked and not appealed, PennDOT may choose to take appropriate action, consistent with current statewide policy, to block driveways, or sever, remove or block drainage facilities which remain in State highway right-of-way without a Permit.

Fourth Notice, Action by Bureau of Fiscal Management - Referral to Office of Chief Counsel. Delinquent accounts are delegated to PennDOT's Office of Chief Counsel, Collections Attorney, Highway Construction and Claims Division, for collection.

On the 91st day after the invoice due date, the Bureau of Fiscal Management will refer delinquent accounts to the Collections Attorney of the Office of Chief Counsel for collection and notify the District and BOMO.

The Collections Attorney will consult with the District and/or BOMO when a delinquent account is referred to determine the status of other actions taken to collect the debt, including acting on security, revoking the permit, suspending central billing and/or EPS privileges, and other self-help sanctions. If not already taken, some of these actions may be recommended by the Collections Attorney before further legal action is taken.

Legal action to collect the debt will not be taken if the permit has been revoked unless no appeal has been taken or the appeal has been prosecuted to a final adjudication against the Permittee.

For claims referred to the Office of Chief Counsel, the Collections Attorney will prepare a memorandum closing the file when a debt is compromised, written-off or brought to final judgment through litigation. The District Permit Manager is responsible to ensure that compromise or write-off documentation is stored in EPS/EDMS as part of the permanent permit file.

Inquiries

Occasionally, BOMO receives inquiries from the Permittee regarding an invoice. These inquiries may be referred by BOMO to the District Permit Office for investigation.

After completing the investigation, District Permit Office staff shall reply directly to the Permittee unless specifically directed otherwise by BOMO. A copy of the District Permit Office's reply shall be forwarded to BOMO as directed.

If the District Permit Office determines that a revised invoice or adjustment is warranted, the District Office will issue a revised invoice based on the particulars provided by the District Permit Office and will prepare all documents necessary to adjust the accounts receivable database.

Application for Bridge Occupancy License (BOL); [Form M-906 A](#)

Purpose

This form provides Applicants a standard form which is used to apply for utility occupancy of a State bridge. It also provides the District Bridge Unit with clear and concise information required to begin a license application review. This form should only be used in lieu of EPS when specifically authorized by PennDOT.

Preparation

459.10a contains the required information necessary to properly complete the application form. District Bridge Unit staffs assist Applicants in the preparation of this form upon request.

If – after review of the application and the on-site review – it is found that errors or omissions exist, or if the application is not complete and accurate, District Bridge Unit staff will assist the Applicant by giving detailed instructions on problems which must be addressed.

The "Department Use Only" fields are to be properly completed by District Bridge Unit staff before each application is submitted to the District Permit Office for entry in EPS and License issuance. Missing application data (e.g., SR, Segment, Offset, facility weight data, type of Applicant) will result in the application being returned to the District Bridge Unit.

There are general instructions on the Applicant's copy of the application detailing additional information pertaining to submission of an application.

Bridge Occupancy License (BOL); Form M-906 L

Purpose

This form provides PennDOT a standard form which is used statewide to issue a formal BOL for utility occupancy of a State bridge.

Preparation

This form is generated by District Office staff (via EPS) upon approval of the BOL application that is complete and accurate, consistent with law, regulation 459, and this Manual.

Data is captured in EPS to document the issuance of the BOL, to populate pertinent data on this form, to enable the preparation of license fee and annual invoices, and to allow for other reports to be generated.

The licensee is responsible for retaining the BOL as a permanent record until the facility is removed and the license revoked.

Emergency Permit Card (EPC); Form M-940

Purpose

This form provides an alternative method for public and municipal utilities to perform emergency repairs to their facilities statewide prior to issuance of a formal HOP in lieu of utilizing the Emergency Permit Certificate through EPS. The preferred method is the Emergency Permit Certificate.

Preparation

Upon receipt of a properly completed HOP Application (Form M-945 A) from a public utility or municipal utility, District staff will complete the EPC by entering all required information. The expiration date will be one year from the date the card was issued. Complete the telephone information field by typing the District number and the telephone number at which the utility can contact the District during normal working hours. Enter the current Secretary of Transportation's name, and the date issued. The District Permit Manager will sign the card on the line entitled BY _____.

When the new Emergency Permit Card is received by the Applicant, the back of the card shall be signed by an authorized representative of the company or municipality.

Place the first copy of the card in a file with other cards assigned to this utility. Cards should be kept within easy access of the person who will be receiving the emergency calls. Forward the second copy to the utility requesting the card. Emergency Card fees are to be charged under 459.4.

When receiving an emergency call, pull the card and place the information on the line identified by the caller, while the information is being received. Remind the caller to enter the Emergency Permit Card number and line number in the correct blocks on the application before submission.

EPS generates notification for delinquent emergency permits. The District Permit Manager will maintain a "tickle" system and contact paper Applicants if an application has not been received within 15 calendar days of the emergency call. Use Form M-940 TL for this purpose. See next section.

After a period of one year or whenever all lines on the card are completed, the cardholder shall return the card to the issuing District Permit Office. Upon receipt, the District must compare the Applicant's copy against the District copy to verify that no discrepancies appear. The two copies of the card will then be retained for a period of two years from the date of receipt of the Applicant's copy, in an orderly, promptly retrievable manner.

EPC “Tickle” Log; Form M-940 TL

Purpose

This form provides an alternative method for HOP staff to monitor compliance with the Emergency Permit Card (EPC) requirements under 459.6 (Emergency Work) outside of EPS. Public and municipal Utilities may be authorized to perform emergency repairs to their facilities prior to issuance of a formal HOP under 459.6. However, PennDOT staff must be promptly notified, the emergency must be logged on the EPC and an application must be submitted consistent with 459.6 and Form M-940.

Preparation

It is the duty of the District Permit Office to maintain a “tickle” system and to contact Applicants if an application has not been received within 15 calendar days of the emergency call. Use Form M-940 TL (posted on the PennDOT P: drive) for this purpose. The recommended “tickle” procedure is:

1. if an application is not received within 15 calendar days, phone the Applicant;
2. if the application is not received within 30 calendar days, write the Applicant;
3. if the Applicant does not apply for a Permit 30 calendar days after the emergency call, initiate procedures outlined in Violation of an EPC.

Application for HOP; [Form M-945 A](#) (or “create application” in EPS)

Purpose

This form provides Applicants (except for Minimum Use driveways) a standard form which can be used statewide to apply for occupancy of State highway right-of-way, including utility, access, drainage, and structures. It also provides the Permit staff with clear and concise information required to begin a Permit application review. This form should only be used in lieu of EPS when specifically authorized by PennDOT.

When applying for a permit using the “create application” option through the Electronic Permitting System (EPS), input fields generally reflect those used on Form M-945 A. Discrepancies between Form M-945 A and the EPS application form are noted below.

Preparation

When submitting applications, the following information must be correctly completed by the Applicant before submitting. PennDOT staff will assist Permit Applicants while also verifying each application complies with applicable laws, regulations and statewide policy.

If – after review of the application and the on-site review – it is found that errors or omissions exist, the District or County Permit staff will assist the Applicant by giving detailed instructions on problems which must be addressed.

Applicant/Owner – The applicant’s name. For additional information on who can apply for a permit, see Chapter 2.

Address – Applicant’s complete current address.

BP ID (EPS only) – Business partner identification number assigned by PennDOT after applying for an EPS account.

Phone – Current telephone number (8:00 a.m. to 4:00 p.m., weekdays).

Email Address – Email address used for permit application-related correspondence. If a valid e-mail address is provided on the application form, the approved permit will be sent via e-mail.

District – Where proposed work is to be performed. No Permit may be issued for occupancy or work in more than one Engineering District.

County – Where proposed work is to be performed.

Municipality – Where proposed work is to be performed.

Permit Type (EPS only) – Driveway, utility, or miscellaneous.

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Permit Sub Type, Use, Sub Use (EPS only) – Provides greater level of detail on the permit type selected.

Date Work Is Scheduled To Begin – Date Applicant expects to begin proposed work.

Approximate Date When Work Will Be Completed – Date Applicant expects work to be completed.

If Utility (Line 1) – Enter length of proposed work to be completed in each highway area.

If Utility (Line 2) – Check off exact type of work to be performed. One block must be checked and Emergency Permit Certificate/Card number and entry must be completed if Emergency Permit Certificate/Card repair block is checked.

If Driveway – Enter total number of each type of vehicle trips in the correct field(s). A single vehicle entering and exiting a property is counted as two trips.

Persons with disabilities – Check the appropriate Y/N Block. See PA Vehicle Code, section 3354(d) for laws relating to parking regulations for persons with a disability and disabled veterans. See in particular section 3354(d)(3)(iii), which requires appropriate signs to be posted as a Permit prerequisite.

NOTE: The previous six fields appear under the “Application Identification” section in EPS.

State Route Location – Enter exact SR, Segment, and Offsets.

1. If application is for a utility and opening is (1) less than 36 square feet, (2) crossing the road, or (3) a single pole is being placed, list the centerline offset. If trenching parallel or placing more than one pole, list the beginning and ending Segment(s) and Offsets.
2. If application is for an access, list driveway by centerline offset. If curb and/or a parallel pipe culvert are to be installed, list by beginning and ending Segment(s) and Offsets.

Routes and plans are to be checked for any limited access or Interstate highway involvement and correct S.R(s), Segment(s), and Offset(s) during the application on-site review.

Work Summary (EPS) or Description Of Proposed Work (M-945 A) – Enter a concise and accurate description for each State Route field that is used (four maximum on paper application). Description fields will have a corresponding inspection charge in the fee fields. *PennDOT staff will use the "Department Use Only" fields to enter the correct description codes.*

441/459 Ref. No. – Unit Fee – Number of Units – Item Fee – These items must be consistent with 441.4 and/or 459.4, plans and descriptions of proposed work.

Permit Fee \$ – Must be total of above application and inspection fees.

Account Number – Check or Money Order No. – One of these fields must be completed, unless exempt from Permit fees under 441.4(c) and/or 459.4(c).

Applicant's Status (M-945 A only) – Underline the correct status.

Date Signed (M-945 A only) – Date application was signed.

Name Of Applicant (M-945 A only) – List legal name of Applicant (e.g., corporation name). Proof of ownership shall be provided to the District Permit Office.

Witness Or Attest (M-945 A only) – This signature is required. Any person other than the Applicant may sign this section. Title of individual is to be printed below signature.

By (M-945 A only) – Signature of property owner or designated corporation representative authorized to bind the corporation. Title of individual is to be printed below signature.

In EPS, an authorization confirmation is required just prior to application submission as the electronic equivalent of a signature. By clicking “I Agree,” the user agrees to the terms provided on the confirmation.

Permit applications may be submitted by an agent on behalf of the applicant if accompanied by an M-950 AA (Applicant's Authorization for Agent to Apply for HOP) form.

Name, Phone, E-Mail of Applicant's Consultant(s) and/or Contact Person (M-945 A only) – Must be completed if plan was not developed by Applicant. In EPS, this information is included as part of the “Applicant team.”

The "Department Use Only" fields are to be properly completed by District or County Permit staff before each application is submitted for Permit issuance. The County Permit Supervisor or subordinate performing the on-site field view will sign and date each copy of the application in the "field viewed by" space. Place a date after the "plans are satisfactory?" line each time the plans are reviewed. Additionally, enter each on-site review date on the application. The blank space may be used to place Permit conditions that the District wants to be included on the Permit.

Under Description of Proposed Work, District or County Permit staff will place the correct computer work description codes in the "Department Use Only" fields.

There are general instructions on the reverse side of the application detailing additional information pertaining to submission of an application via paper copy.

Departmental Citation; Form M-945 C

Purpose

This form provides a standard notice that can be utilized statewide to document violations of laws, regulations and Permit conditions; and to identify necessary corrective action by the Permittee or enforcement action by PennDOT. The Citation Form meets the requirements of 441.10(a)(1) and 459.11(a)(1) pertaining to written notices for work stoppages.

Preparation

When preparing this form, all relevant blocks must be properly completed. Since this form may be used for administrative hearings, appeal hearings and court proceedings, sufficient details must be provided in the "Description of Violation" block so that a person not at the site would understand the violation.

Following are instructions for completing this form:

Department Organization – Identify the organization number of the person issuing the Citation, not the organization where violation occurred.

Date – Current month, day and year.

Time – Current hour and minute.

Citation issued by – Person issuing Citation.

Permittee/Owner – Enter the Permittee's name as it appears on the Permit. If a Permit was not issued, enter the property owner's name (e.g., driveway constructed without a Permit) or facility owner's name (e.g., utility opening without a Permit or Emergency Permit Certificate/Card). If neither a Permit nor an owner is involved, identify the person(s) performing the work (e.g., tree trimmers working with improper Work Zone Traffic Control).

Permit # – If permitted work, list Permit number.

EPC # – If work performed under an Emergency Permit Certificate/Card, list Emergency Permit Certificate/Card #.

Contractor – Name of company performing work for Permittee. If work performed by utility employee(s), enter N/A.

Work crew leader – Full name of person in charge of work crew.

Permittee/owner address – List the complete mailing address for person listed in the Permittee/Owner block.

County – List County where violation occurred.

Twp/Boro – List municipality where violation occurred.

SR, Segment, Offset – List exact location where violation occurred. This information can usually be obtained from the Permit plans. If no plans are available, Offset location(s) may have to be measured or otherwise precisely identified.

Description of violation – Provide a detailed description of what violation was observed, including exact section(s) of regulation that were violated (e.g., 459.8(f)(5)). Be sure to describe all violations. Separate Citations may be issued for multiple violations.

Violation – Check off applicable block or blocks. Following are relevant sections of the State Highway Law.

- State Highway Law (36 P.S. Sections 670-411, 417, 420, 421,702).

Section 411. Use this section for violations by public utilities or municipal utilities performing utility work under Chapter 459.

Section 417. Use this section for violations by any person who stops, fills up, or damages a PennDOT drainage facility or who changes the course of flow without first having permission of PennDOT.

Section 420. Use this section for violations involving placement of traffic control devices, curbs, medians, physical barriers, local roads or driveways relating to Chapter 441 or Chapter 459.

Section 421. Use this section for violations involving persons who place a sewer outlet within the limits of a State highway, or who locate such a facility that is directed toward a State highway.

Section 702. Check this block in conjunction with violations of 459.10a, relating to bridge occupancy by a utility owner.

- Utility Occupancy Regulations (67 Pa Code, Chapter 459). Check this block (in conjunction with the State Highway Law block) if there is a violation of the Utility regulations or Permit.
- Highway Access Regulations (67 Pa Code, Chapter 441). Check this block (in conjunction with the State Highway Law block) if there is a violation of the Driveway regulations or Permit.
- Vehicle Code (75 Pa C.S. Section 101). Check this block for vehicle violations (e.g., a vehicle hauling a wide load through a construction area in violation of width restrictions; or a tracked vehicle operating on the pavement or shoulder without adequate protection or an executed Form M-945 U).
- Work Zone Traffic Control (Chapter 212). Check this block (in conjunction with the Vehicle Code block) for Work Zone Traffic Control violations or approved Traffic Control Plan violations.

Check each applicable block in this section (e.g., a person constructing a driveway without a Permit is in violation of both the State Highway Law and the Driveway regulations).

Corrective Action – Check one of the five alternatives in this section, as follows:

1. Use this block only when all violations can be promptly corrected without causing safety problems.
2. Use this block for non-safety violations which can be corrected within one normal workday (e.g., up to 24 hours). This block may not be used to authorize unpermitted work to continue. Do not provide a violator additional time to correct a violation of O.S.H.A. regulations (e.g., no shoring or no back up alarms) or Work Zone Traffic Control regulations.
3. Use this block to stop all permitted work for safety violations that cannot be promptly corrected by using block #1. Also use this block to stop all permitted work if the Permittee or its employees, agents or contractors fail to correct a violation within prescribed time frames. **Do not stop work authorized under any other Permit, unless the violation relates to that Permit as well.**
4. Use this block if the violation cannot be corrected by using any block above, or if the Permittee or its employees, agents or contractors fail to correct a violation or continue performing unpermitted work. The on-site permit inspector must discuss the violation with the District Permit Manager or higher authority before annulling a Permit.
5. Use this block only for miscellaneous violations (e.g., to stop a person from performing unpermitted work or an over width load in a construction area in violation of a Special Hauling Permit).

Receipt of Citation is acknowledged – signature – The work crew leader should be asked to sign the completed Citation. The signature acknowledges receipt only. If he/she refuses, write the statement "work leader refused to sign" in this block.

Copies are to be distributed according to the units noted at the bottom of each sheet. Forward the Permittee's copy to the address printed on the Permit; do not give this copy to the work crew leader. Additional photocopies can be made of the completed form and sent to other interested parties (e.g., Surety, Bank or insurance company, Office of Chief Counsel, O.S.H.A., or police). Retain District copies in Permit files, in an orderly, promptly retrievable manner. Retain County copies in Citation file, once violation is corrected.

Place an entry in the inspector's FID/PSA for each Citation issued. Include Citation number, date issued, violator and how violation was corrected.

Photographs

It is recommended that photographs be taken of violations prior to completing the Citation Form. High quality images should be stored electronically via EPS with the Citation Form. Digital photos provide immediate verification that the subject is as depicted, can be shared electronically, and additional quality copies can be produced for evidence at legal proceedings. Photographs should contain the following notations, as a minimum:

1. Taken by (photographer).
2. Date and time photo taken.
3. Location pictured (SR, Segment, and Offset).
4. Subject (what problem is being identified?).

Citations should not be issued for violations which are under Central Office review without the

concurrence of the Office of Chief Counsel, Permits Section staff. For example, if a Permittee has requested an Administrative Hearing, a subsequent Citation would be inappropriate in most cases.

Additional information is in Chapter 7.

Acknowledgment – Reimbursement Obligation for Utility Application Review; [Form M-945 H](#)

Purpose

This form provides an efficient mechanism for an Applicant to acknowledge, in writing, that it intends to reimburse PennDOT for *additional* application review costs that are expected to exceed the standard fees specified in 459.4 by a significant amount. The assessing of additional fees is discussed in Chapter 2.

Preparation

When it is anticipated that the cost of reviewing the application will exceed the standard fees by a significant amount, the District Permit Manager will prepare a cost estimate. The *additional* costs will be based on the criteria in the “reimbursable costs” section of this form. If the estimated cost is too low, it may eventually be necessary to process a second form with a higher estimate.

The Applicant will complete the FEIN, location information, Application Number (if available), Project Name, Applicant Name and Address and signature section.

Note: If Applicant signature is other than a president, vice president, sole proprietor and owner, or managing partner, a Resolution authorizing the signature must be attached.

When the completed form (and Resolution, if required) is received, the District Permit Office will verify no changes were made to the text and review all entries to verify the form was completed accurately.

The District Permit Manager will then complete the:

1. cost estimate in the “Applicant obligations” section on the form (if not already accurately completed), and
2. effective date (i.e., date the form is determined to be completed accurately, which must be on or after the date received by PennDOT).

The original form (and Resolution, if required) will be placed in the Permit file and a copy will be returned to the Applicant.

Once the signed form is received, cost documentation must be carefully maintained in order to provide the Applicant with an itemized invoice for *additional* fees owed to PennDOT, as required by 459.4(d)(4). Use Form M-371 A to track *additional* costs incurred by the Commonwealth.

Every pay period (i.e., biweekly) and once the Permit is issued (or the application is formally denied), the Application Number will be entered on *each* copy of Form M-371 A which will be included with an invoice generated by the District. See Form M-371 A text in this Chapter.

Indemnification; [Form M-945 I](#) and Covenant; [Form M-950 IC](#)

Purpose

These two forms, when executed together, provide standard, concise, and easy to use documentation when additional indemnification is required under the following regulation sections:

1. 459.3(b)(2)(i)(A), relating to facility owner not in the business of providing utility service.
2. 459.12(b)(1), relating to modification of regulations.

These forms are designed to be used for additional indemnification under these Chapter 459 sections only.

Preparation

These two forms are to be prepared and submitted to PennDOT for approval before the Permit may be issued.

The pending Permittee's name and application no. must be specified in the blank spaces on page 1.

Section 4. Section 4 requires the Permittee to add the Commonwealth as an *additional insured* to its or its contractor's insurance in the amounts specified, unless excused by the District Executive.

Exhibit A. Executed Certificate(s) of Insurance must be submitted to PennDOT with this form, including an acceptable "policy rider" or policy endorsement incorporating the language contained in Exhibit A and properly executed by a representative of the insurance company, with authority to do so. If the rider or endorsement is not executed by an officer of the corporation, evidence of authority to execute should be provided. This endorsement or rider should indicate who is the insured, who is the additional insured and who the insurance company is and should reference a policy number. Insurance is the backbone of the indemnification and must be provided before the Permit is issued, unless excused by the District Executive.

Section 10. Section 10 requires the Applicant to prepare a Covenant (see **Form M-950 IC**) containing the statement that this Indemnification has been executed and that all subsequent purchasers, heirs, assigns or transferees of any legal or beneficial interest in the property take it subject to the obligations imposed herein as *covenants running with the land*. This section also requires the covenant to be recorded in the Recorder of Deeds Office, and that proof of recording shall be presented to PennDOT. This section may be excused by the Office of Chief Counsel if the Applicant can justify why this requirement should not apply.

Signature

The signature page is to be prepared and executed by the Applicant. The Permittee's name must be entered on the Permittee line exactly as it appears on the HOP application.

The Indemnification must be signed by a person or persons with authority with respect to the site for which the Permit is issued. See Appendix C6 (*Signature Authority Guide*) for information on the

appropriate person to execute the documents. This form is to be attested and sealed by a notary public. Additional information pertaining to indemnification is in Chapter 2.

Computation Sheet for Highway Restoration Security; [Form M-945 J](#)

Purpose

This interactive form provides simplified and standard statewide restoration security amounts, which can be used as a guide for establishing a minimum security amount on individual permits, adjusted for inflation, consistent with Section 420 of the State Highway Law.

Preparation

When it is determined that restoration security is required, (see Chapter 2), District staff will complete Form M-945 J as follows:

1. The person preparing the form will complete the information required in the upper right field.
2. From the application and plans, determine the total units of measurement of each of the various items listed on the computation sheet.
3. Place the total units of measurement in each of the applicable interactive lines on the form – under the "number" column.
4. Enter an inflation adjustment factor, if applicable. Several inflation calculators are available on the internet.
5. Multiply the subtotal w/inflation by appropriate adjustment factors for Traffic Control, Mobilization, and Inspection (defaults to 1.15) and Administration Fees (defaults to 1.10); enter that amount on the "grand total" line.
6. Determine the security amount by rounding up the "grand total" line to the next highest five thousand (e.g., if computations total \$147,149 the security amount will be \$150,000). Place this amount on the "security amount" line.

If security is in the form of an escrow account which has an early withdrawal penalty (e.g., certificate of deposit), then increase the security by the amount equal to the early withdrawal penalty.

Notify the Applicant that security is required in the determined amount. This form – if correctly annotated may (upon request) be used to describe the determined security amount to the Applicant. Place the completed form in the Permit file for future reference.

Applicants can use this form directly to estimate project costs, or can prepare a separate cost estimate. For requirements on restoration security and additional restoration information, refer to Chapter 2.

Highway Restoration and Maintenance Bond; [Form M-945 K](#)

Purpose

This form provides one type of security that can be used statewide and be promptly reviewed by District staff, BOMO, and the Office of Chief Counsel. The use of this form is required when the bond option for providing security is selected by the Applicant pursuant to 459.5(b)(1). Substitutes or changes to this form are not permitted.

This security option allows coverage for more than one Permit only when processed by the Central Permit Office as a "blanket" bond.

Preparation

This form is to be prepared by the Permittee and the Permittee's surety. The form must be signed by both parties to be valid.

1. Agreement Number is assigned by the District Permit Office on an individual bond, using the standard 6-digit number D.D.C.Y.N.N. where DD = District, C = County, Y = last number of current year, N.N. = sequential number of security documents in that County for current year (01-99).
2. Enter Application Number on an individual bond.
3. Permittee's Federal Identification Number.
4. The bond number will be assigned by surety.
5. The effective date will be assigned by the surety. The power of attorney must have the same date as the bond (effective or executed date). See footnotes on form.
6. The Permittee's full name as it appears on the application.
7. The contractor's name may also be listed as principal on an individual bond. The contractor's name cannot appear on a "blanket" bond. See footnotes on form. Thus, the Permittee's name is *required* while the contractor's name is *optional*.
8. The Permittee's full address.
9. The surety's complete name and mailing address.
10. Enter the written and numerical bond amount as determined by the District.
11. The effective or executed date assigned by the surety must be the same as the date of the power of attorney. See footnotes on form.
12. The signatures must comply with the *Signature Authority Guide* found in Appendix C6 of this manual.

Districts may submit bonds to the Office of Chief Counsel, Permit Programs Attorney via e-mail or EPS for review as to form and legality. However, such review is not required unless there is a change to the standard language.

District Permit staff will review submitted security for completeness and accuracy before submitting security instrument copies to Office of Chief Counsel.

Allow the Office of Chief Counsel at least ten calendar days for processing security documents. Additional information is in Chapters 2 (Utility Security) and Appendix D6 (Security Collection).

Irrevocable Letter of Credit (LOC); [Form M-945 L](#)

Purpose

This form provides preferable security that can be used statewide and be promptly reviewed by District staff, BOMO and the Office of Chief Counsel. This form is required when the letter of credit security option is selected by the Applicant pursuant to 459.5(b)(2). This form may be retyped on the issuer's (bank's) letterhead if text is not modified.

Preparation

This form is to be prepared by the issuer.

1. Agreement Number is assigned by the District District Office using the standard 6-digit number D.D.C.Y.N.N. where DD = District, C = County, Y = last number of current year, NN = sequential number of security documents in that County for current year (01-99).
2. Federal ID Number: Applicant's Federal Identification Number.
3. Issuing Bank's Name: Name of issuer.
4. Issuing Bank's Address: Issuer's complete mailing address.
5. Applicant's Name: Name of HOP Applicant/Permittee.
6. Applicant's Address: HOP Applicant/ Permittee's complete mailing address.
7. Issue Date: Date LOC is issued by issuer.
8. Irrevocable Letter of Credit No.: Number assigned by the issuer.
9. Expiry Date: Three years after issuance of the HOP if permit has been issued or three years after LOC issuance date unless otherwise directed by PennDOT.
10. Beneficiary: Engineering District organization number (e.g., 7-0) and mailing address
11. Department Permit No.: 8-digit HOP number if HOP is issued; otherwise leave blank.
12. Department Application No.: 6-digit HOP application number.
13. Irrevocable Letter of Credit number (assigned by issuer).
14. Complete address where the demand letter (Exhibit A) may be presented for collection.
15. Numerical amount of security as determined by the District.
16. Written amount of required security.
17. Expiry date which is three years after issuance of the HOP if permit has been issued or three years after LOC issuance date unless otherwise directed by PennDOT.

The signatures must comply with the *Signature Authority Guide* found in Appendix C6 of this manual.

Exhibit A is a part of the letter of credit and must be included with the security document (Exhibit A is used only to demand payment from the issuer).

Districts may submit letters of credit by e-mail or EPS to the Office of Chief Counsel Permit Programs Attorney for review as to form and legality. However, such review is not required unless there is a change to the standard language.

District Permit staff will review submitted security for completeness and accuracy before submission.

Assignment of Cause of Action; Form M-945 M

Purpose

This form provides one type of security that can – in limited situations – be used and reviewed by District staff and the Office of Chief Counsel. The use of this form is required under 459.5(b)(3) when the Assignment of Cause of Action option for providing security is selected by the Applicant. Substitutes or changes to this form are not permitted.

A municipality may propose to utilize this form of security if it has difficulty obtaining a bond or irrevocable letter of credit. An assignment of cause of action may not be used as security unless the contractor's surety bond and the contract between the Permittee/municipality and its contractor have been reviewed by the Office of Chief Counsel, Permits Section staff; thus, these documents must be attached to the assignment form. The assignment will not be approved if the surety bond imposes conditions unacceptable to PennDOT, such as excluding coverage to the Commonwealth or political subdivisions, or limits on the amount of recovery, or the requirement that actions on the bond be litigated in a particular place or jurisdiction. In most cases, the Surety's obligation is only to insure completion of work authorized under the contract; it generally will not cover all of the obligations of the Permittee contained in PennDOT regulations. Likewise, the contract between the municipality/Permittee and its contractor must be reviewed to determine if the contractor's obligations to the municipality are co-extensive with the requirements of PennDOT regulations (often they are not sufficient).

Preparation

Applications should be submitted through EPS via a scanned copy of the completed form with original signature.

1. Agreement Number is assigned by the District Office using the standard 6-digit number D.D.C.Y.N.N. where DD = District, C = County, Y = last number of current year, NN = sequential number of security documents in that County for current year (01-99).
2. Permittee's Federal Identification Number.
3. Enter Permit number, if issued; otherwise enter application number.
4. Permittee's complete name as it appears on the application.
5. Complete name of Permittee's contractor whose security is being assigned to PennDOT.
6. Restoration security amount as determined by the District.
7. Name of Surety that issued the security being assigned to PennDOT.
8. Date assigned by Surety. Power of Attorney must have the same date as the security effective or executed date. See footnote*** on form.
9. Attesting signature is required. Check the title to match signature, or
10. If person attesting is other than secretary, assistant secretary, treasurer or assistant treasurer, their title must be placed on this line. See footnote** on form, regarding Resolution requirement.
11. Permittee must sign on specified line.
12. Check corresponding block to match signature on specified line, or

13. If individual signing for Permittee is other than president or vice president, their title must be placed on specified line. See footnote** on form, regarding Resolution requirement.
14. Contractor's corporate secretary or assistant secretary, or corporate treasurer or assistant treasurer must sign on specified line to attest signature, unless a Resolution authorizing another signature is attached.
15. Check the title to match signature under specified line, or
16. If person attesting under specified line is other than a listed corporate officer, their title must be placed on specified line. See footnote** on form, regarding Resolution requirement.
17. Contractor's corporate president or vice president must sign on specified line, unless a Resolution authorizing another signature is attached.
18. Check the title to match signature under specified line, or
19. If person signing specified line is other than the corporate president or vice president, their title must be placed on specified line. See footnote** on form, regarding Resolution requirement.
20. Person witnessing for Surety must sign on specified line.
21. Title of person signing specified line must be listed.
22. Signature of person binding Surety must sign on specified line.
23. Title of person binding Surety must be listed.
24. Name and signature of Pennsylvania Resident Agent required if Attorney-in-Fact address (appearing on Power of Attorney) is other than PA.
25. Completed by Commonwealth Chief Counsel, upon approval.

District Permit staff will review submitted security for completeness and accuracy before forwarding to Central Office.

Allow Central Office at least 30 calendar days for processing this type of security.

Additional information is in Chapters 2 (Utility Security) and Appendix D6 (Security Collection).

Highway Occupancy Permit; Form M-945 P

Purpose

This form provides PennDOT a standard form which is used statewide to issue a formal HOP, consistent with regulations.

Preparation

This form is generated by District Permit Office staff (via EPS) upon approval of the HOP application that is complete and accurate, consistent with law, Chapters 441 or 459, and this Manual.

Data is captured in EPS to document the issuance of the HOP, to populate pertinent data on this form, to enable the preparation of monthly invoices for Applicants with Account numbers, and to allow for other reports to be generated.

The Permittee is responsible for retaining the HOP as a permanent record.

Highway Occupancy Permit Placard; Form M-945 PL

Purpose

This form provides a mechanism by which both the public and PennDOT staff can verify whether a Driveway Permit has been issued when current or recent driveway construction activity is observed. This form will eventually reduce the number of inquiries concerning permitted driveway activity and increase the number of inquiries concerning unpermitted driveway activity. The use of this form by each Engineering District is optional.

Preparation

Each District Permit Manager will decide if this form will be used within the District. If the form is used, it must be used District-wide on all access permits in order to be effective; inconsistent use of this form would be counterproductive.

If this form is used, it will be completed after an Driveway Permit is issued and forwarded to the Permittee with the Permittee copy of the Driveway Permit and plans. The Placard must then be posted as described on the form.

Resolution; [Form M-945 R](#)

Purpose

This form provides an acceptable format that can be used by *municipalities or municipal authorities statewide* in conjunction with other Permit documents that require a Resolution to be executed as part of the submission. A Resolution verifies that the person signing a document on behalf of the governmental unit does, in fact, have the authority to bind the governmental unit to the terms and conditions of the document being executed. A similar Resolution may also be required for non-governmental entities, as noted on the accompanying document to which the Resolution will be attached.

Preparation

This form is prepared by the Applicant and submitted with each Permit document that requires a Resolution. One copy of the Resolution must be attached to each copy of the required document. One copy must contain original signatures and be attached to the required document that contains original signatures.

1. Name of municipal authority, if established, otherwise, municipality name.
2. Municipality name and County in which municipality is located.
3. Title of person designated to sign the document. This is the only title that will be permitted to sign the accompanying document.
4. Title of person designated to attest the signing of the accompanying document. This is the only title that will be permitted to attest the accompanying document.
5. Name of municipal authority, if established, otherwise, municipality name.
6. Signature and title of municipality or municipal authority member authorized to approve the Resolution. This person may be the person designated to sign the document.
7. Signature and title of person attesting the signing. This person may be the person designated to attest the signing of the accompanying document.
8. Name and title of person certifying that this Resolution is a true and correct copy. This again may be a person that holds one of the titles listed above.
9. Name of governing body adopting the Resolution and municipality. This may be a municipality or municipal authority.
10. Name of governing body.
11. Date of meeting when Resolution was adopted.
12. Signature and title of person certifying as to the correctness of the Resolution and Date signed.

Ensure the titles are affixed, complete name of municipality or municipal authority is given and a copy of the Resolution is attached to each copy of the required document; one copy must contain original signatures. Follow the instructions pertaining to the accompanying document to which the Resolution will be attached.

Recording Copy; [Form M-945 RC](#)

Purpose

This form provides an acceptable format that can be used *statewide* by Applicants in conjunction with other Permit-related documents that must be executed and recorded in the County Courthouse, but which do not have a recording section. Substitutes or changes to this form are not permitted. Forms which have their own recording section should be recorded using that recording section.

Preparation

To record a Permit, the Engineering District Permit staff will:

1. Determine the fees for recording the Permit or other document in the County Recorder of Deeds Office. *Specific fees and recording procedures vary from County to County.*
2. Generate a “Conditionally Approved” Permit under "Building Response" status in EPS and identify the check amount in the response cover letter. Additionally, identify on the Permit where the plans may be found (see HOP Condition Code #386).
3. Send the Recording Notice to the Applicant via EPS. The Form M-945 RC and Conditionally Approved Permit will be attached to the e-mail.
4. When Form M-945 RC (Document Recording Copy) is signed, notarized and returned by the Applicant (with the Recorder of Deeds check), the District Permit staff will enter the date in the appropriate field in the “Permit Information” link in EPS and print the Permit.
5. The Engineering District staff will complete Form M-945 RC as follows:
 - a. Complete the certification block "D";
 - b. Complete block "C" in instances where PennDOT is conveying an interest in land or is binding itself to conditions relative to the Permit. In certain Counties, the Recorder of Deeds may require an authorized representative of PennDOT to complete block "C";
 - c. Sign the Permit (or other document, if required); and
 - d. Forward the Permit or other document, Form M-945 RC, and the Recorder of Deeds check to the Recorder of Deeds in the County in which the work is being performed.
6. The Recorder of Deeds will forward the recorded copy of the Permit or other document and Form M-945 RC to the address entered in block "D". Upload the recorded copy to EPS and if not already completed, proceed with the permit issuance process.

The entire Permit, including supplemental documents such as a condition statement and Form M-945 RC (Document Recording Copy) as well as legal documents (e.g., access covenant, drainage release, indemnification) should be recorded. The plans need not be recorded unless a particular County Courthouse insists that the complete Permit document be recorded. See HOP Condition Code #386.

Note: Generally, HOPs should be recorded in the Grantor-Grantee index. PennDOT is the Grantor, and the Permittee is the Grantee. In this index, any person searching the Permittee’s property title will see that PennDOT has issued the HOP, and is thus on notice of it, and of its requirements. This

includes subsequent purchasers. However, HOPs convey no interest in property, and are indeed a form of agreement between PennDOT and the property owner. As such, some recorders of deeds offices are unwilling to record the HOP in the Grantor-Grantee index, and instead record it in the Miscellaneous Docket.

Supplemental Highway Occupancy Permit; Form M-945 S

Purpose

This form provides PennDOT a standard form used *statewide* to amend, extend time, or include additional information to the HOP, consistent with regulations, or to correct a PennDOT error. A Supplemental HOP may also be issued to change a Permittee's name if the change is made before the expiration date of the HOP. (Note: Form M-948, must be executed to change the Permittee's name).

Preparation

This form is generated by District Permit Office staff (via EPS) upon approval of a Supplemental HOP application that is complete and accurate, consistent with law, Chapters 441 or 459, and this Manual.

Data is captured in EPS to document the issuance of the Supplemental HOP, to populate pertinent data on this form, to enable the preparation of monthly invoices for Applicants with Account numbers, and to allow for other reports to be generated.

The Permittee is responsible for retaining the Supplemental HOP as a permanent record.

Supplement fees must be collected consistent with 441.4 or 459.4. If the Permittee is not exempted under 441.4(c) or 459.4(c), a \$10.00 fee shall be charged for issuing the Supplement; this fee may also include one six-month extension of time. An additional \$10.00 fee will be charged for each additional six-month period (e.g., one year time-extension = \$20.00). If additional work is requested, an additional fee shall also be charged consistent with 441.4 or 459.4.

Additional information on Supplements is in Chapter 4.

Subsequent Inspections after PennDOT’s Acknowledgment of Completion; Form M-945 SI

Purpose

This form is used to document inspections performed on subsurface utility permits with permanent pavement and/or paved shoulder restorations within two (2) years after the acknowledged completion of the permitted work.

Preparation

District Office staff can populate the applicant and location information by conducting an Advanced Search in EPS and exporting the results to the form.

During inspection, complete the appropriate columns with a “yes” or “no” for each location. Return the completed form to the District Permit Manager for further action.

Acknowledgment – Additional Highway Restoration Obligation; [Form M-945 U](#)

Purpose

This form documents a Permittee's acknowledgment of its additional highway restoration obligation, consistent with 459.7(6)(ii) and 459.8(f)(5).

Preparation

When District Office staffs determine this form is necessary, the Applicant/Permittee will be required to complete this form in quadruplicate (4 copies, one with original signatures) and submit it to the District Office before either of the potentially damaging operations are performed by the Permittee or its contractor.

To help eliminate subsequent delays in processing this form, routinely provide a copy of Form M-945 U to Applicants with substantial work projects (as listed in Chapter 5), so they are further aware of their obligation and commitment to restore the pavement or shoulder if damaged from the storage of materials or use of equipment.

Following are instructions for completing this form and reviewing submitted forms:

1. Provide the Permit number, if issued. If Permit has not been issued, enter application number.
2. Enter the Permittee's name as it appears on the application; not its consultant, its contractor nor a person only receiving service.
3. Check one or both of the sections that apply. The first block pertains to equipment damage; the second block pertains to material storage damage.
4. Enter the date that the form is signed by the Applicant/Permittee.
5. Form must be signed by Applicant/Permittee and the title block must be checked. If other is checked, a Resolution authorizing signature must be attached (see footnote* on form). A Permittee's consultant, its contractor or person only receiving service may not sign this form for the Permittee.
6. Attesting signature is also to be by the Applicant/Permittee. Check the title block (see footnote* on form).

Restoration security amounts must be reviewed (if existing) or required (if not already on file) to ensure security is sufficient for potential damage.

After review and acceptance by the District, the executed form will be attached to the Permit file in EPS.

Additional information is in Chapters 4 and 5.

Notice of Dispute; [Form M-945 Y](#)

Purpose

This form initiates an informal process (outside of the administrative hearing process) for resolving disputes that arise between the District and a Permittee over permitted work.

Procedure

Following are instructions for completing this form and reviewing submitted forms:

The front side of the form is to be completed by the Permittee or its consultant or contractor. All questions must be answered completely. Enter “N/A” for any question that does not apply. Use additional sheets of paper if more room is required. Signature by the Permittee is required; the Permittee’s contractor’s signature is optional.

Upon receipt of a completed Notice, the District Permit Office will complete the Organization – Year – Number line (e.g., 053-04-240). This will be the dispute file number.

The District Permit Manager will promptly review the specifics with all PennDOT staff that were involved and complete the back of the form in detail. The District Permit Manager then signs and dates the form.

The form will then be forwarded to the District Executive or Assistant District Executive for concurrence or rejection. After the District Executive or his/her Assistant completes and signs the form, it is returned to the District Permit Manager who will promptly notify the Permittee of the District's decision.

A Dispute Review Panel may be convened to gather additional information regarding the dispute. For detailed instructions on the informal HOP dispute review process, see Chapter 7.

Notice of Dispute – HOP Applicant; [Form M-945 Y2](#)

Purpose

This form initiates an informal process (outside of the administrative hearing process) for resolving disputes that arise between the District and an Applicant during the review of an HOP application.

Procedure

Following are instructions for completing this form and reviewing submitted forms:

The front side of the form is to be completed by the HOP Applicant or its consultant. All questions must be answered completely. Enter N/A for any question that does not apply. Use additional sheets of paper if more space is required. When initiated by the Applicant, signature by the Applicant is required; the Applicant's consultant's signature is optional. When initiated by PennDOT, the District Permit Manager should complete the front side of the form as necessary.

Upon receipt of a completed Notice, the District Permit Office will complete the Organization -- Year -- Number line (e.g., 053-14-240). This will be the dispute file number.

The District Permit Manager will promptly review the specifics with all Department staff that were involved and complete the back of the form in detail. The District Permit Manager then signs and dates the form.

The form will then be forwarded to the District Executive or Assistant District Executive for concurrence or rejection. After the District Executive or his/her Assistant completes and signs the form, it is returned to the District Permit Manager who will promptly notify the Applicant of the District's decision.

A Dispute Review Panel may be convened to gather additional information regarding the dispute. For detailed instructions on the informal HOP Applicant dispute review process, see Chapter 5.

HOP Dispute Review – Final Report; Form M-945 Z

Purpose

This form permits recordation of the outcome of an informal process (outside of the administrative hearing process) for resolving disputes that arise between the District and an Applicant during the review of an HOP application, and between the District and a Permittee during construction.

Procedure

Following are instructions for completing this form and reviewing submitted forms:

This form is to be completed by the Chief of the Highway Safety and Traffic Operations Division acting as the Chairperson of the HOP Dispute Review Panel (Panel), or his/her designee. The completed form constitutes a report of the outcomes of Panel proceedings. All questions must be answered completely. Enter N/A for any question that does not apply. Use additional sheets of paper if more space is required. Signature by the Panel Chairperson is required.

The form will then be forwarded to the Executive or Assistant District Executive for filing and resolution of the dispute.

Persons in attendance include everyone party to the Panel review, including the Panel members, District representatives, Applicant/Permittee, and its representatives such as contractors or consultants.

Two documents should be attached to the form: a copy of the “Notice of Dispute” that initiated the dispute review process; and a copy of the “Chronological Description” that was completed by the District Executive, or his/her designee, that initially informed the Panel. Affirmation of the inclusion of these documents shall be marked on the form.

Summarize the positions of the parties to the dispute as succinctly as possible, as well as special problems that impact the dispute.

Summarize the recommendations of the Panel as succinctly as possible. If the Panel’s decision is not unanimous, give opportunity for the opposing vote to report their perspective on the decision.

Offer suggestions for the District Executive for resolving the dispute.

Access Covenant; [Form M-946](#)

Purpose

This form provides a notice and documentation of an Applicant's commitment to use only currently proposed access to its property, when PennDOT anticipates that a property may be subdivided and that such subdivision will result in an unacceptable number or arrangement of driveways, consistent with 441.6(16).

It would be appropriate to require an Access Covenant on a critical corridor (e.g., a corridor being considered for access management control), a high ADT highway, where there is significant property frontage with satisfactory sight distance, where there is potential for "strip development" or future "out parcels" or similar future access or congestion concerns.

Preparation

Following are instructions for completing this form and reviewing submitted forms:

If the District Permit Manager determines (after application review) that an Access Covenant is necessary, District staff will forward the Access Covenant form to the Applicant for completion.

On page 1, the Applicant must complete the required information in the box in the upper left corner, as well as the date, the owner's name(s) and required deed and deed book information.

On page 2, the Applicant must complete the upper Sections. If the owner is a partnership, all partners are required to sign the form. If the owner is a corporation, association, club, etc., and if other than the president or vice president signs, or if other than the secretary, assistant secretary, treasurer or assistant treasurer attests, then a Resolution authorizing the signatures must be executed and attached.

After the owner has completed its portions of the form, the executed Access Covenant must then be forwarded to the District Permit Office.

District Permit Office staff will review the form to verify that the form is complete and correct. If approved, staff will complete the PennDOT block on page 2, then have both the Access Covenant and the Permit recorded. The Recorder will complete the appropriate block.

Access Covenants and recording of Permits are discussed in Chapter 2 and Chapter 3, respectively.

Drainage Release; [Form M-947](#)

Purpose

This form provides notice and documentation of each affected property owner's concurrence with an Applicant's proposed drainage from its property as a result of action authorized by the permit, when the Applicant or PennDOT determines that a Drainage Release will be required, consistent with 441.3(h). Note: Drainage Releases are not required under Chapter 441 for Minimum Use driveways.

Preparation

Following are instructions for completing this form and reviewing submitted forms:

If the District Permit Manager determines (after application review) that a Drainage Release is necessary but is not included in the application package, District staff will forward the Drainage Release form to the Applicant for completion.

The Applicant must complete the required information in the box in the upper left corner, as well as the other blanks.

The Applicant is responsible for negotiating with each releasor in determining the consideration. The Applicant must enter that amount on the form. Enter the releasor's name and mailing address in the spaces provided.

The releasor will then date and sign the form on the lines provided at the bottom. If there is more than one owner, all owners must sign the form. Each signature is required to be witnessed, but one person may witness all signatures.

The Applicant is then responsible for having the form(s) notarized by having the notary complete block "A".

Then, forward the notarized form(s) to the District Permit Manager, who will complete block "B" and sign the form(s) as the agent for the Commonwealth.

Drainage Release(s) are to be recorded. The County Recorder will complete block "C". If a drainage release is to be recorded, a condition indicating such will be placed on the permit.

Drainage Releases and recording of Permits are discussed in Chapter 2 and Chapter 3, respectively.

Assignment of Permit or License; [Form M-948](#)

Purpose

This form provides the present and new Permittees/Licensees and District staffs with a simple method to transfer ownership of a Permit or License statewide – in order for the HOP or BOL to remain valid. This dual program form is used to assign either the HOP under 441.6(1)(iv) or 459.7(1)(iv), or the BOL under 459.10a(d). This form is also posted on the PennDOT Web Site.

Preparation

Following are instructions for completing this form and reviewing submitted forms:

Section 1 is completed by the present Permittee/Licensee (Assigner). Enter the name of the new owner, new owner's address, the Permit or License number, the issuance date of the Permit/License and a short description of work (e.g., install Minimum Use driveway with drainage). The present owner will also enter the municipality where he/she resides and the current date, then print the name as it appears on the Permit, include a valid e-mail address to receive acknowledgement of assignment, sign and identify the signer's title. The signature shall be attested and the attester's signature shall be titled.

Section 2 is completed by the new Permittee/Licensee (Assignee). Enter the Permit/License number, the municipality where the new owner resides, the current date, the printed name or company of the new owner, a valid e-mail address to receive acknowledgement of assignment, the new owner's signature and signer's title. The signature shall be attested and the attester's signature shall be titled. *Note: It is recommended that proof of ownership be provided (e.g., a recorded deed to the property).*

Section 3 is completed and signed by the District Permit Manager (if an HOP) or the District Bridge Engineer (if a BOL). District Office staff will review the package to verify that it contains original signatures, that the Permittee's copy of the Permit is attached, that the information is correct and that all blanks have been completed. If approved, the District Permit Manager/Bridge Engineer will enter any special conditions and the Organization number and sign the form. Once approved, the District will complete the assignment process via EPS by issuing a Name Change Supplement (for active Permits or Licenses) or by Assignment (for closed Permits) by uploading the form and associated documentation and notifying the Assigner and Assignee.

For additional information on assigning HOPs, see Chapter 4.

Utility Sketch (Single Pole Placement); [Form M-949 A](#)

Purpose

This form provides corporate and municipal utilities with a concise, easy to use statewide form that contains basic utility plan information required by 459.3(d)(3).

The completed form may be used to request placement of a single aboveground facility (e.g., pole, anchor guy, etc.). Up to three sketches may be submitted with each application provided all locations are within the same municipality. If an Applicant proposes to place more than three poles on the same State Route and they are physically connected, Form M-949 B may be used.

Preparation

If the Applicant uses this form as its plan, all information must be completed before it is submitted with the Application.

Following are instructions for completing this form and reviewing submitted forms:

1. The Applicant may use the “Permittee Use Only” section for their information.
2. PennDOT staff may use the “Dept. Use Only” section for on-site review comments.
3. The information section must be complete and accurate.
4. In the plan section, the dimensions from centerline to right-of-way, centerline to front face of pole, and front face of pole to right-of-way line must be entered. Also, show North arrow and pole number.
5. In the cross-section section, darken in the pole and existing type slope that best shows actual field conditions.
6. Check the applicable block for curb and/or guiderail. If guiderail exists, check type (see back of form for spacing and required lateral offset).
7. If either curb or guiderail exists, give dimensions, in feet. Enter N/A on either line that is not applicable.

Under 459.9(b)(1)(i), new facilities shall be installed as near the right-of-way line as practicable. If a pole is not adjacent to the right-of-way line, justification must be included with the plan.

Under 459.9(b)(1)(ii), replacement facilities must be placed consistent with Design Manual, Part 5.

A maximum of three single pole sketches may accompany a single Application (Form M-945 A) provided they are located in the same municipality.

Additional information concerning utility plans is in Chapter 2.

Utility Sketch (Multi-Pole Placement); [Form M-949 B](#)

Purpose

This form provides corporate and municipal utilities a concise, easy to use statewide form that contains basic utility plan information required by 459.3(d)(3).

The completed form may be used if requesting placement of more than three physically connected aboveground facilities (e.g., 10 poles; 4 anchor guys), within the same municipality. If an Applicant proposes to place less than four poles, use Form M-949 A.

Preparation

If the Applicant uses this form as its plan, all information must be completed before it is submitted with the Application.

Following are instructions for completing this form and reviewing submitted forms:

1. The Applicant may use the “Permittee Use Only” section for their information.
2. PennDOT staff may use the “Dept. Use Only” section for on-site review comments.
3. The information section must be complete and accurate.
4. Review Table 1 and also review notes.
5. In the plan section, sketch in the location of the facility, then show the dimensions from centerline to right-of-way line, centerline to front face of pole, and front face of pole to right-of-way line.
6. Enter the Segment and Offset in the space provided.
7. Show breaks in continuous pole placements and/or replacements.
8. Sketch in features (e.g., bridges, intersections) where applicable.
9. In the cross-section section, darken in the pole and existing type slope that best shows actual field conditions.
10. Check the applicable block for curb and/or guiderail. If guiderail exists, check Table 1 for type and required lateral offset.
11. If either curb or guiderail exists, give dimensions, in feet. Enter N/A on either line that is not applicable.
12. A separate cross section must be used for each facility to be placed or replaced.

Under 459.9(b)(1)(i), new facilities shall be installed as near the right-of-way line as practicable. If pole is not adjacent to the right-of-way line, justification must be included with the plan.

Under 459.9(b)(1)(ii), replacement facilities must be placed consistent with Design Manual, Part 5.

More than one form may be used provided all facilities are physically connected (e.g., share a common conductor), and all facilities are in the same municipality. Additional information concerning utility plans is in Chapter 2.

Utility Sketch (Surface Openings Less Than 500 L.F.); [Form M-949 C](#)

Purpose

This form provides corporate and municipal utilities with a concise, easy to use statewide form that contains basic utility plan information required by 459.3(d)(3).

The completed form may be used to request numerous surface openings within a 500 ft. length that are each less than 36 sq. ft., if the openings are in the same county and on the same SR and are physically connected. The form may also be used to request transverse or longitudinal openings within 500 linear feet. The form may also be used to request open cutting in lieu of boring (see Chapter 2).

Preparation

If the Applicant uses this form as its plan, all information must be completed before it is submitted with the Application.

Following are instructions for completing this form and reviewing submitted forms:

1. The Applicant may use the “Permittee Use Only” section for their information.
2. PennDOT staff may use the “Dept. Use Only” section for on-site review comments.
3. All information in the four information sections must be accurate and complete.
4. On the plan view, show all surface openings, dimensions of opening(s), and location (relative to centerline, edges of pavement, shoulder, curb, and right-of-way).
5. The plan view must also show affected highway features (e.g., signs, guiderail, inlets, pipes, laterals).
6. Show other affected utilities (e.g., poles, manholes).
7. Show intersections or bridges, where applicable.
8. If plan views depict boring pits, show the dimensions of the pits, their exact location, and sizes of casing and carrier pipe.
9. If Applicant is requesting open cutting, show depths and locations of other facilities that would preclude boring.
10. On the cross section view, show the location and depth from the lowest point of the surface to the top of the facility, with dimensions.

In certain cases, where a facility is placed in over 100 feet of pavement or shoulder and the topography changes significantly, additional cross sections may be required consistent with 459.3(e)(2).

Additional information concerning utility plans is in Chapter 2.

Application for Minimum Use Driveway; [Form M-950 A](#) (or “Create Minimum Use Driveway Application” in EPS)

Purpose

This form provides any property owner that needs to obtain a Minimum Use driveway permit a combined application and plan that is easy to complete.

When applying for a permit using the “Create Minimum Use Driveway Application” option through EPS, input fields are used to populate an electronic PDF version of Form M-950 A. After submission, the form can then be reviewed by PennDOT staff.

Preparation

PennDOT Publication 312 contains instructions to properly complete this application form. District and County Permit Office staffs will assist such Applicants in completing this form, if necessary or upon request.

If – after review of the application and the on-site review – it is found that errors or omissions exist, the District or County Permit staffs will assist the Applicant by giving detailed instructions on problems which must be addressed.

Applicant/Property Owner – The applicant’s name. For additional information on who can apply for a permit, see Chapter 2.

Address – Applicant's complete current address.

Phone – Telephone number where Applicant can be reached during driveway construction.

Fee – Consistent with Section 441.4 of the regulations.

Check Number – Complete if applicable.

E-Mail – Applicant’s e-mail address. If a valid e-mail address is provided, the driveway permit will be sent via e-mail; otherwise, it will be sent via standard US mail.

Application Is Made To – Place an "X" in correct block (construct a new driveway or alter an existing driveway).

Date Work Scheduled To Begin – Anticipated date of construction.

Date Work Scheduled To Be Completed – Anticipated date work on driveway to be completed.

County – County in which driveway will be constructed.

Municipality – Municipality (i.e., city, township, borough) in which driveway will be constructed.

Route No. – Enter correct SR or Traffic Route.

Name Of Nearest Intersection – Enter name of nearest street identified by a street sign.

Distance To Nearest Intersection In Feet – Enter the distance from the middle of the proposed

driveway to the middle of the intersecting street.

Posted Speed Limit – Enter posted (maximum legal) speed. If highway is not posted, PennDOT staff will determine thru-traffic safe-running speed in the area.

Indicate North – Draw an arrow pointing to the north in relation to the highway at the driveway intersection. In EPS, there is a “clock” type number entry field which will populate an arrow in the direction of the corresponding number.

Roadway Sight Distance (LT) – Standing 10 feet back from edge of existing pavement and with an eye height at 3.50 feet above the proposed driveway grade, measure distance that a vehicle at 3.50 feet above the pavement approaching from the left can be seen.

Roadway Sight Distance (RT) – Perform the same measurement as in "LT", but for a vehicle approaching from the right.

Note: Form M-950 S identifies two additional sight distance measurements required for vehicles proposing to make left turns into a driveway, to facilitate safer movements. All sight distance measurements are optional for the applicant, as they will be verified or completed by Department staff prior to permit issuance.

Driveway Radius (LT) – Identify proposed left radius consistent with Pub. 282, Subchapter 2.4.

Driveway Radius (RT) – Same as in "LT" above, but to the right. Both the left and right radius will normally be the same (i.e., a driveway should be at a right angle to the roadway to facilitate safer movements).

Driveway Width – Identify proposed width of driveway consistent with Subchapter 2.4 of this manual.

Persons with disabilities – Check the appropriate Y/N Block. See PA Vehicle Code, Section 3354(d) for laws relating to parking regulations for persons with a disability and disabled veterans. See Section 3354(d)(3)(iii), which requires appropriate signs to be posted as a Permit prerequisite.

By – Applicant's signature is required.

Date – Enter date application is executed by Applicant. *This date must be on or before the date the application is received by PennDOT.*

The “Department Use Only” block on the right side is to be completed by the County Permit Supervisor or its subordinate during the on-site review. Place comments (e.g., no pipe culvert required, 15" pipe culvert required, maintain shoulder grade) on the comment lines. Enter the Description and the correct SR, Segment, Offset. The person performing the on-site review must sign and date each copy of this application on the line provided.

The “Department Use Only” block on the left side may be used for additional comments and to enter suggested HOP Condition Codes.

Promptly issue a separate Permit for each approved Form M-950 A application.

Applicant's Authorization for Agent to Apply for Highway Occupancy Permit; [Form M-950 AA](#)

Purpose

In some cases, a property owner may prefer that an agent use electronic permitting on their behalf when obtaining the HOP. To facilitate the use of the system in these cases, the Applicant authorizes an agent to prepare and submit the HOP application package with Form M-950 AA. The signed form: authorizes the agent to submit and manage the application; releases PennDOT from claims arising as a result of this authorization; ensures that all correspondence between PennDOT and Applicant's agent is also passed on to the Applicant; and provides Applicants the option to receive e-mail updates on the status of their application as it is processed.

Preparation

The form is to be completed and signed by both the Applicant's authorized representative applying for the HOP, and the agent submitting the application on his or her behalf. It should be uploaded as an attachment and submitted along with the HOP application package through EPS.

For one-time agent authorization, the box at the top of the form for blanket approval should be left unchecked. The remainder of the form is then completed as indicated.

In cases where an Applicant is granting blanket approval for an agent to submit on its behalf; the box indicating so should be checked. When blanket approval is being sought, the PERMIT APPLICATION NO, COUNTY, CITY-BORO-TWP, and SR-SEG-OFF fields can be marked as not applicable. The remainder of the form is then completed as indicated.

District Permit staff will review the submitted form for completeness and accuracy as part of the HOP application review process. The executed form, with signatures, must be attached to the HOP application in EPS, where it will be maintained. When blanket approval for agent authorization is given, the executed form, with signatures, will endure until the authorization is revoked in writing by the Applicant or agent.

Consent of Fee Owner; [Form M-950 CFO](#)

Purpose

This form is to be used when the applicant is not the owner of the property and consent is being sought from the fee owner of the property. The applicant must have an interest in the property such as an agreement of sale, an easement, a license or other property interest. Any agreement or interest shall be attached to the form.

Preparation

This form must be completed and submitted with the application for a driveway or local road permit for each agreement or interest that is required for the driveway's/local road's construction.

The Applicant must complete the required information in the box, as well as the fee owner's deed information and tax parcel ID.

After the fee owner(s) has completed its portions of the form, the executed Consent of Fee Owner must then be forwarded to the District Permit Office. See *Signature Authority Guide* found in Appendix C6 of this manual.

District Permit Office staff will review the form to verify that the form is complete and correct.

Deed, Fee Simple; [Form M-950 D1](#)

Purpose

This interactive form provides standard, concise, and easy to use documentation when additional right-of-way will be required for the construction of a proposed access (e.g., to accommodate auxiliary lane(s) consistent with Chapter 441, including 441.8(j)). This “Fee Simple” deed may be used in conjunction with, and as a condition to, issuance of a permit. See Chapter 3.7, Right-of-Way Procedures, for additional information on acquiring right-of-way for highway purposes.

Preparation

The deed must be from the HOP Applicant to PennDOT. Where the Applicant has negotiated to purchase the necessary right-of-way from another person, the property must first be conveyed to the Applicant and then to PennDOT using this deed form. Conveyance may not be from the third party directly to PennDOT.

No deed will be accepted without documentation and review of the title through a record owner and lien certificate, an abstract of title or title report based on a title search. A bring down/update of the title shall be provided within 15 calendar days of the date the permit is to be issued or, if the District Executive makes an exception, within 15 calendar days of the deed signing.

Deeds and related documentation are to be provided for review as soon as practicable after the right-of-way plan is approved, and well before issuance of the HOP.

Complete the following information on the form:

1. Name and title of individual completing form
2. Name and title of PennDOT District representative to whom the deed should be returned
3. Tax parcel number or street address of acquired parcel
4. County
5. SR, Segment, Offset
6. Municipality
7. Application/Permit Number
8. Applicant/Permittee Name and Address
9. Date (indenture is made)
10. Grantor’s name and address (the address must include, at a minimum, the municipality and county)
11. Select the appropriate word from the drop down menu describing the nature of the Grantor
12. Check the appropriate box which describes Exhibit “A” (typically a plot plan)
13. Conveyance document (deed, will, etc.) by which the Applicant acquired the property (if there was more than one Grantor to the Applicant, steps 13 through 16 must be completed for each conveyance to the Applicant)

14. Name of the Grantor from whom the Applicant acquired the property
15. Date of the conveyance instrument
16. "Deed book____, page number____", or "instrument number____"
17. Description and size of the area(s) being transferred to PennDOT
18. District Office Address

The proper party must execute the deed on behalf of the Applicant. See *Signature Authority Guide* found in Appendix C6 of this manual. The deed must also be properly notarized.

The executed deed and the title information must be reviewed and accepted by the District Right-of-Way Administrator prior to: (1) recording, and (2) issuance of the permit.

Recording

Once the complete application package is approved, the deed conveying the right-of-way to PennDOT must be separately recorded in the County Recorder's Office where other deeds are recorded. The Applicant and PennDOT staff will need to complete their portions of the recording page(s) by following the recording instructions on each Form to be recorded. Then, deliver the document(s) to be recorded to the County Courthouse.

Documentation

Each District is responsible for ensuring acquisition of the new right-of-way is properly documented by PennDOT for future reference and use by the District. Refer to Design Manual Part 3 for additional information.

HIGHWAY OCCUPANCY PERMIT OPERATIONS MANUAL
Chapter 9 – Use of Forms

Prepared By: (1)

Return To: (2)

Site Location: (3)

M-950 D1 (6-11)



COUNTY	(4)
SR – SEGMENT-OFFSET	(5)
MUNICIPALITY	(6)
APPLICATION/PERMIT NO.	(7)
APPLICANT/PERMITTEE	(8)

DEED FEE SIMPLE
 (No Monetary Consideration)

THIS INDENTURE, made this _____ day of _____, 20__, by (10) owner(s) of property affected by the proposed construction or improvement of the above mentioned State Route under the referenced highway occupancy application/permit, (11) heirs, executors, administrators, successors, and/or assigns, hereinafter, whether singular or plural, called the GRANTOR, and the Commonwealth of Pennsylvania, Department of Transportation, hereinafter called the COMMONWEALTH,

WITNESSETH:

WHEREAS the COMMONWEALTH has received an application from the GRANTOR for issuance of a highway occupancy permit for access to the above referenced highway, and

WHEREAS the parties hereto have agreed that, as a condition to issuance of the referenced permit, the GRANTOR will convey in fee simple and such other estate(s) as designated, if any, to the COMMONWEALTH the property or portion thereof required by the COMMONWEALTH,

NOW, THEREFORE, in consideration of the benefits to the property of the GRANTOR, the GRANTOR does hereby grant and convey to the COMMONWEALTH

- (12) {
- In fee simple the premises described by metes and bounds in exhibit "A".
 - In fee simple that portion of the aforesaid premises designated as required right-of-way or as acquired in fee simple for other purposes on the plot plan attached hereto and made a part hereof, and those areas, if any, designated as required for easement purposes as identified by the plot plan and set forth below.

BEING all or a portion of the same property conveyed or devised to the GRANTOR by (13) of (14), dated (15) and recorded in (16), together with the improvements, hereditaments and appurtenances thereto. This conveyance contains (17). And the GRANTOR warrants GENERALLY the property hereby conveyed.

Reserving, however, to the GRANTOR the right to deep mine minerals and remove gas and oil within the areas hereunder acquired from a minimum depth to be determined by the COMMONWEALTH, from mine shafts or by means of wells located off the right-of-way.

The GRANTOR does further indemnify the COMMONWEALTH, its employees or representatives against any claim, demand or judgment of any type made by any lessee or easement holder of the aforesaid property who is not an Applicant/Permitee under the referenced application/permit and who may be adversely affected by the construction of the improvements to the demised premises or in the State highway right of way pursuant to the referenced application/permit.

Certificate of Residence

I hereby certify the Grantee's precise residence to be:

(18)

Witness my hand this _____ day of _____, _____

Agent for the Commonwealth of Pennsylvania
Department of Transportation

[remainder of page intentionally left blank]

HIGHWAY OCCUPANCY PERMIT OPERATIONS MANUAL
Chapter 9 – Use of Forms

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Page 3

The GRANTOR has executed or caused to be executed these presents, intending to be legally bound thereby.

INDIVIDUALS

ENTITIES*

GRANTOR:

 (Name of Entity)

BY: _____

BY: _____

* Use this block for a corporation, partnership, LLC, government entity, school district, church, trust, club, association, POA, attorney-in-fact, executor, administrator or any other entity. See R/W Manual Section 3.06.

INDIVIDUAL

ENTITY

<p>STATE OF PENNSYLVANIA COUNTY OF _____</p> <p>On this ____ day of _____, 20____, before me, _____, the undersigned officer, personally appeared _____</p> <p>_____, known to me (or satisfactorily proven) to be the person(s) whose name(s) _____ subscribed to the within instrument, and acknowledged that _____ executed the instrument for the purposes contained in it.</p> <p>In witness whereof, I hereto set my hand and official seal.</p> <p>_____ [Signature] _____ [Title]</p> <p>[Seal]</p>	<p>STATE OF PENNSYLVANIA COUNTY OF _____</p> <p>On this ____ day of _____, 20____, before me, _____, the undersigned officer, personally appeared _____ _____, who acknowledged _____ self to be the _____ [title] of _____ [name of entity], and that as such _____ _____ [title], being authorized to do so, executed the foregoing instrument for the purposes contained in it by signing on behalf of the entity as _____ [title].</p> <p>In witness whereof, I hereto set my hand and official seal.</p> <p>_____ [Signature] _____ [Title]</p> <p>[Seal]</p>
--	--

Deed of Easement; [Form M-950 D2](#)

Purpose

This interactive form provides standard, concise, and easy to use documentation when additional right-of-way will be required for the construction of a proposed access (e.g., to accommodate auxiliary lane(s) consistent with Chapter 441, including 441.8(j)). This “Deed of Easement” may be used in conjunction with, and as a condition to, issuance of a permit when approved by the District Executive based on special circumstances. See Chapter 3.7, Right-of-Way Procedures, for additional information on acquiring right-of-way for highway purposes.

Preparation

The deed must be from the Applicant to PennDOT. Where the Applicant has negotiated to purchase the necessary right-of-way from another person, the property must first be conveyed to the Applicant and then to PennDOT using this deed form. Conveyance may not be from the third party directly to PennDOT.

No deed will be accepted without documentation and review of the title through a record owner and lien certificate, an abstract of title or title report based on a title search. A bring down/update of the title shall be provided within 15 calendar days of the date the permit is to be issued or, if the District Executive makes an exception, within 15 calendar days of the deed signing.

Deeds and related documentation are to be provided for review as soon as practicable after the right-of-way plan is approved, and well before issuance of the HOP.

Complete the following information on the form:

1. Name and title of individual completing form
2. Name and title of PennDOT District representative to whom the deed should be returned
3. Tax parcel number or street address of acquired parcel
4. County
5. SR, Segment, Offset
6. Municipality
7. Application/Permit Number
8. Applicant/Permittee Name and Address
9. Date (indenture is made)
10. Grantors name and address (the address must include, at a minimum, the municipality and county)
11. Select the appropriate word from the drop down menu describing the nature of the Grantor
12. Select the appropriate easement description from the drop down menu; this should be the largest interest being acquired
13. Conveyance document (deed, will, etc.) by which the Applicant acquired the property (if there was

more than one Grantor to the Applicant, steps 13 through 16 must be completed for each conveyance to the Applicant)

14. Name of the Grantor from whom the Applicant acquired the property
15. Date of the conveyance instrument
16. "Deed book____, page number____", or "instrument number____"
17. Description and size of the area(s) acquired being transferred to PennDOT
18. District Office Address

The proper party must execute the deed on behalf of the Applicant. See *Signature Authority Guide* found in Appendix C6 of this manual. The deed must also be properly notarized.

The executed deed and the title information must be reviewed and accepted by the District Right-of-Way Administrator prior to: (1) recording, and (2) issuance of the permit.

Recording

Once the complete application package is approved, the deed conveying the right-of-way to PennDOT must be separately recorded in the County Recorder's Office where other deeds are recorded. The Applicant and PennDOT staff will need to complete their portions of the recording page(s) by following the recording instructions on each form to be recorded. Then, deliver the document(s) to be recorded to the County Courthouse.

Documentation

Each District is responsible for ensuring acquisition of the new right-of-way is properly documented by PennDOT for future reference and use by the District. Refer to Design Manual Part 3 for additional information.

HIGHWAY OCCUPANCY PERMIT OPERATIONS MANUAL
Chapter 9 – Use of Forms

Prepared By: (1)

Return To: (2)

Site Location: (3)

M-950 D2 (6-11)



COUNTY	(4)
SR – SEGMENT-OFFSET	(5)
MUNICIPALITY	(6)
APPLICATION/PERMIT NO.	(7)
APPLICANT/PERMITTEE	(8)

DEED OF EASEMENT
(No Monetary Consideration)

THIS INDENTURE, made this _____ day of _____, 20____, by (9) owner(s) of property affected by the proposed construction or improvement of the above mentioned State Route under the referenced highway occupancy application/permit (11) heirs, executors, administrators, successors, and/or assigns, hereinafter, whether singular or plural, called the GRANTOR, and the Commonwealth of Pennsylvania, Department of Transportation, hereinafter called the COMMONWEALTH,

WITNESSETH:

WHEREAS the COMMONWEALTH has received an application from the GRANTOR for issuance of a highway occupancy permit for access to the above referenced highway; and

WHEREAS the parties hereto have agreed that, as a condition to issuance of the referenced permit, the GRANTOR will convey to the COMMONWEALTH a (12) and other estate(s) as designated, if any, from the property or portion thereof required by the COMMONWEALTH,

NOW, THEREFORE, in consideration of the benefits to the property of the GRANTOR, the GRANTOR does hereby grant and convey to the COMMONWEALTH a (13) and such other estate(s), if any, as designated on the plot plan attached hereto and made a part hereof and set forth below.

BEING all or a portion of the same property conveyed or devised to the GRANTOR by (14) of (15), dated (16) and recorded in (17), together with the improvements, hereditaments and appurtenances thereto. This conveyance contains (18). And the GRANTOR warrants GENERALLY the property hereby conveyed.

Reserving, however, to the GRANTOR the right to deep mine minerals and remove gas and oil within the areas hereunder acquired from a minimum depth to be determined by the COMMONWEALTH, from mine shafts or by means of wells located off the right-of-way.

The GRANTOR does further indemnify the COMMONWEALTH, its employees or representatives against any claim, demand or judgment of any type made by any lessee or easement holder of the aforesaid property who is not an Applicant/Permittee under the referenced application/permit and who may be adversely affected by the construction of the improvements to the demised premises or in the State highway right of way pursuant to the referenced application/permit.

Certificate of Residence

I hereby certify the Grantee's precise residence to be:

(19)

Witness my hand this _____ day of _____, _____

Agent for the Commonwealth of Pennsylvania
Department of Transportation

[remainder of page intentionally left blank]

HIGHWAY OCCUPANCY PERMIT OPERATIONS MANUAL
Chapter 9 – Use of Forms

M-950 D2 (6-11)

Page 3

The GRANTOR has executed or caused to be executed these presents, intending to be legally bound thereby.

INDIVIDUALS

ENTITIES*

GRANTOR:

 (Name of Entity)

BY: _____

BY: _____

* Use this block for a corporation, partnership, LLC, government entity, school district, church, trust, club, association, POA, attorney-in-fact, executor, administrator or any other entity. See R/W Manual Section 3.06.

INDIVIDUAL

ENTITY

<p>STATE OF PENNSYLVANIA COUNTY OF _____</p> <p>On this ____ day of _____, 20 ____, before me, _____, the undersigned officer, personally appeared _____ _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) _____ subscribed to the within instrument, and acknowledged that _____ executed the instrument for the purposes contained in it.</p> <p>In witness whereof, I hereto set my hand and official seal.</p> <p>_____ [Signature] _____ [Title]</p> <p>[Seal]</p>	<p>STATE OF PENNSYLVANIA COUNTY OF _____</p> <p>On this ____ day of _____, 20 ____, before me, _____, the undersigned officer, personally appeared _____ _____, who acknowledged _____ self to be the _____ [title] of _____ [name of entity], and that as such _____ _____ [title], being authorized to do so, executed the foregoing instrument for the purposes contained in it by signing on behalf of the entity as _____ [title].</p> <p>In witness whereof, I hereto set my hand and official seal.</p> <p>_____ [Signature] _____ [Title]</p> <p>[Seal]</p>
--	---

Indemnifications; [Form M-950 IFO](#); [Form M-950 IDW](#); [Form M-950 ID](#); [Form M-950 IA](#); & Covenant [Form M-950 IC](#)

Purpose

The appropriate indemnification and covenant, when executed together, provide standard, concise, and easy to use documentation when additional indemnification is required under the following regulation sections:

67 PA Code, Section 441.3(e)(7)(ii), relating to applicant other than a fee title holder – use Forms M-950 IFO & M-950 IC.

67 PA Code, Section 441.3(h), relating to drainage - use Forms M-950 ID & M-950 IC.

67 PA Code, Section 441.5(e)(1)(v), relating to waiver - use Forms M-950 IDW & M-950 IC.

67 PA Code, Section 441.8(j)(5), relating to lane in front of another property – use Forms M-950 IA & M-950 IC.

These forms are designed to be used for additional indemnification under these Chapter 441 sections only. (Use Forms M-945 I & M-950 IC for additional indemnification under Chapter 459)

General

Indemnification cannot be accepted by PennDOT unless the required prerequisites are met. See Chapter 2.2 of this manual for driveway applicants other than fee owners and Chapter 2.6 of this manual for design waiver requirements, obtaining approvals from neighboring property owners whose access is impacted by auxiliary lanes and other features of an Applicant's project, and obtaining permission from neighboring property owners impacted by drainage changes.

The Applicant should be made aware of the form of indemnification that will be required while a design waiver or other process is being considered to avoid surprise at the end of the process.

The forms may not be modified except in special circumstances and only with review and approval of the Bureau of Maintenance and Operations (BOMO) and Office of Chief Counsel (OCC). Two situations where modification of the form may be appropriate would be where a housing development is involved and where security for the indemnification is appropriate. In the former situation, it may not be appropriate to require the terms of the indemnification to pass to the purchaser of each lot through the indemnification covenant. Please note that special negotiations on the terms of an indemnification can be time consuming and are strongly discouraged.

Preparation

The appropriate indemnification and covenant are to be submitted to PennDOT for approval before the Permit may be issued.

The pending Permittee's name, address and Application Number must be specified in the blank spaces on Page 1.

Section 1; Liability, Loss or Damage. The four indemnifications are intended to protect PennDOT from liability relating to the specific matter under consideration. That is, M-950 IFO is intended to protect

PennDOT from liability for issuing a permit to a non-fee title holder of the property; M-950 IDW is intended to protect PennDOT from liability arising from the condition(s) for which a design waiver is being granted; M-950 IA is intended to protect PennDOT from liability for access impacts on other properties arising from the permit work; and M-950 ID is intended to protect PennDOT from liability for drainage impacts on other properties arising from the permit work.

When using the design waiver indemnification (M-950 IDW), the formal approval of the design waiver must be attached to the indemnification as Exhibit A. See Chapter 2.6 of this manual relating to the formal approval of design waivers.

When using the access indemnification (M-950 IA), the specific impacted property owners identified for which approval was not obtained must be listed and attached to the indemnification as Exhibit A. In addition to the name of the impacted property owners, the addresses and/or other identifiers (e.g. tax parcel numbers) of the impacted properties should be provided.

When using the drainage indemnification (M-950 ID) the specific impacted property owners identified for which a release was not obtained must be listed and attached to the indemnification as Exhibit A. In addition to the name of the impacted property owners, the addresses and/or other identifiers (e.g. tax parcel number) of the impacted properties should be provided.

Section 3; Duration. The duration of the indemnification is limited under M-950 IFO, M-950 IA and M-950 ID to the six-year statute of limitations period for lawsuits under the Eminent Domain Code. The indemnification provided under M-950 IDW can be released in writing by PennDOT if the subject for which the permit was issued (e.g. a driveway) has been removed, closed or otherwise extinguished, or if the condition for which a design waiver was granted is corrected to meet PennDOT requirements (e.g. a future project corrects the deficiency for which the waiver was granted).

Section 4; Insurance. Section 4 requires the Applicant to obtain liability insurance, and add the Commonwealth as an additional insured to its insurance in the amounts specified. Insurance is the backbone of the indemnification and a certificate of insurance must be provided before the indemnification is accepted. Insurance shall remain in effect for the duration of the indemnification except for impacts to access where the insurance shall remain in effect until the date of final inspection and acknowledgement of completion by the Commonwealth of all work authorized by the Permit has been completed.

In the case of form M-950 IA, PennDOT may require additional security in the form of a Letter of Credit if a loss assessment or appraisal is warranted for impacted properties in which the Permittee did not obtain approval.

Section 9; Covenant Running with the Land. Section 9 requires the Applicant to prepare a Covenant (see Form M-950 IC) containing the statement that the indemnification has been executed and that all subsequent purchasers, heirs, assigns or transferees of any legal or beneficial interest in the property take it subject to the obligations imposed herein as covenants running with the land. This section also requires the covenant to be recorded in the Recorder of Deeds Office. See section on recording below.

This section may be excused by the District Executive if the Applicant can justify why the requirement

should not apply. If the section is excused the indemnification will only be binding on the Permittee and PennDOT will lose the protections provided by it if the Permittee sells the property.

PennDOT should be cautious in excusing this requirement because the failure to have a covenant running with the land would limit the indemnification to the time during which the Permittee owns the land for which the permit was issued. Excusing the requirement may be appropriate if the risk of having to exercise the indemnification is very small and/or the likelihood of the land being sold is low.

If the covenant requirement is excused, the District Executive must sign a memorandum evidencing the excusal. That memorandum is then attached to the indemnification as Exhibit A for Form M-950 IFO and Exhibit B for all three other forms.

As noted, special covenant language may be appropriate when the development for which the permit is being issued consists of residential units that will be resold as lots. The BOMO and OCC must be consulted in preparing alternate language.

Signature

The signature page is to be prepared and executed by the Applicant. The Permittee's name must be entered on the Permittee line exactly as it appears on the HOP application. The indemnification must be signed by a person or persons with authority with respect to the site for which the Permit is issued, for instance:

1. Section 441.1 defines persons that may qualify as owners.
2. See Appendix C6 (*Signature Authority Guide*) for information on the appropriate person to execute the documents.
3. The indemnification covenant is to be attested and sealed by a notary public.

Recording

When the Covenant is required, the Indemnification and Covenant shall be recorded in the appropriate County Recorder of Deeds Office with the permit. See guidance on Form M-945 RC for generic recording procedures in this chapter.

Acknowledgment – Reimbursement Obligation for Access Application Review; [Form M-950 H](#)

Purpose

This form provides an efficient mechanism for an Applicant to acknowledge, in writing, that it intends to reimburse PennDOT for *additional* application review costs that are expected to exceed the standard fees specified in 441.4 by a significant amount. The assessing of additional fees is discussed in Chapter 2.

Preparation

When it is anticipated that the cost of reviewing the application will exceed the standard fees by a significant amount, the District Permit Manager will prepare a cost estimate. The *additional* costs will be based on the criteria in the “reimbursable costs” section of this form. If the estimated cost is too low, it may eventually be necessary to process a second form with a higher estimate.

The Applicant will complete the FEIN, location information, Application Number (if available), Project Name, Applicant Name and Address and signature section.

Note: If Applicant signature is other than a president, vice president, sole proprietor and owner, or managing partner, a Resolution authorizing the signature must be attached.

When the completed form (and Resolution, if required) is received in the District Permit Office, verify no changes were made to the text and review all entries to verify the form was completed accurately. The District Permit Manager will complete the:

1. cost estimate in the “Applicant obligations” section on the form (if not already accurately completed), and
2. effective date (i.e., date the form is determined to be completed accurately, which must be on or after the date received by PennDOT).

The original form (and Resolution, if required) will be placed in the Permit file and the copy is to be returned to the Applicant.

Once the form is executed, cost documentation must be carefully maintained in order to provide the Applicant with an itemized invoice for *additional* fees owed to PennDOT. Use Form M-371 A to track *additional* costs incurred by the Commonwealth.

Every pay period (i.e., biweekly) and once the Permit is issued (or the application is formally denied), the Application Number will be entered on *each* copy of Form M-371 A which will be included with an invoice generated by the District. See Form M-371 A text in this Chapter.

HOP Obligation Bond; [Form M-950 K](#) and HOP “Blanket” Bond; [Form M-950 K1](#)

Purpose

These forms provide one type of security that may be used statewide when justified by compelling reasons. Substitutes or changes to these forms are not permitted without approval from the Office of Chief Counsel.

- [Form M-950 K](#) may provide security on an individual permit and is processed and maintained by the affected Engineering District.
- [Form M-950 K1](#) may provide security on multiple permits statewide, and is processed and retained by the Central Permit Office.

Preparation

Either of these forms is to be prepared by the Permittee and the Permittee’s surety. The form must be signed by both parties to be valid.

1. Agreement Number is assigned by the affected Permit Office on an individual bond, using the standard 6-digit number D.D.C.Y.N.N. where DD = District, C = County, Y = last number of current year, N.N. = sequential number of security documents in that County for current year (01-99).
2. HOP application number (on M-950K).
3. County where access is located (on M-950K).
4. The Permittee’s Federal Identification Number.
5. The Bond number will be assigned by the surety.
6. The effective date will be assigned by the surety. The power of attorney must have the same date as the bond (effective or executed date). See footnotes on form.
7. The Permittee’s full name as it appears on the application.
8. The contractor's name may also be listed as a principal (on Form M-950K). Thus, the Permittee’s name is required while contractor's name is optional (on M-950K).
9. The Permittee’s complete mailing address.
10. The surety's complete name and surety's complete mailing address.
11. Enter the written and numerical *bond amount* as determined by the District.
12. Enter the written and numerical *bond reduction amount*, after acknowledgment of completion of work, as determined by the District (on M-950K).
13. The effective or execution date assigned by the surety must be the same as the date of the power of attorney. See footnotes on form.
14. The signatures must comply with the *Signature Authority Guide* found in Appendix C6 of this manual.

Districts may submit bonds to the Office of Chief Counsel, Permit Programs Attorney for review as to form and legality. However, such review is not required unless there is a change to the standard language.

District Permit staff will review submitted security for completeness and accuracy before forwarding by e-mail or via EPS to the Office of Chief Counsel.

Allow the Office of Chief Counsel at least ten calendar days for processing security documents. Additional information is in Chapters 2 (Access Security) and Appendix D6 (Security Collection).

Irrevocable Letter of Credit (Access); [Form M-950 L](#)

Purpose

This form is the required form of security to be used statewide when security is required pursuant to Chapter 441. This form may be retyped on the issuer's (bank's) letterhead if text is not modified.

Preparation

This form is to be prepared by the issuer.

The Letter of Credit (LOC) should not be issued until PennDOT is in a position to issue the HOP.

1. Agreement Number is assigned by the District Office using the standard 6-digit number D.D.C.Y.N.N. where DD = District, C = County, Y = last number of current year, NN = sequential number of security documents in that County for current year (01-99).
2. Federal ID Number: LOC Applicant's Federal Identification Number.
3. Issuing Bank's Name: Name of issuer.
4. Issuing Bank's Address: Issuer's complete mailing address.
5. Applicant's Name: Name of LOC Applicant.
6. Applicant's Address: LOC Applicant's complete mailing address.
7. Issue Date: Date LOC is issued by issuer.
8. Irrevocable LOC No.: Number assigned by the issuer.
9. Expiry Date: Three years after issuance of the HOP if permit has been issued or three years after LOC issuance date unless otherwise directed by the Department.
10. Beneficiary: Engineering District organization number (e.g., 7-0) and mailing address.
11. Department Permit No.: 8-digit HOP number if HOP is issued; otherwise leave blank.
12. Department Application No.: 6-digit HOP application number.
13. HOP Applicant Name: If the HOP applicant/permittee differs from the LOC applicant, indicate so here. Otherwise, this should be marked "N/A."
14. Irrevocable LOC number (assigned by the issuer).
15. Complete address where the demand letter (Exhibit A) may be presented for collection.
16. Numerical amount of security as determined by the District.
17. Written amount of required security.
18. Expiry date which is three (3) years after issuance of the HOP if permit has been issued or three years after LOC issuance date unless otherwise directed by the Department.
19. Typically 80% reduction unless otherwise directed by the Department.
20. Numerical amount equivalent to the percentage the LOC is being reduced.

21. The signatures must comply with the *Signature Authority Guide* found in Appendix C6 of this manual.

Exhibit A is a part of the LOC and must be included with the security document (Exhibit A is used only to demand payment from the issuer).

Districts may submit letters of credit to the Office of Chief Counsel, Permit Programs Attorney for review as to form and legality. However, such review is not required unless there is a change to the standard language.

District Permit staff will review submitted security for completeness and accuracy before forwarding to the Office of Chief Counsel.

Land Use Questionnaire; [Form M-950 MPC](#)

Purpose

This form allows PennDOT to meet the statutory requirement “*to consider*” land use issues as part of the driveway application review process, where applicable. This form is posted on the PennDOT Web Site and the PennDOT P: drive.

Preparation

This form must be completed and submitted with each application for a Low, Medium or High Volume driveway permit.

District Permit Managers are encouraged to use the MPC authority to approve or deny applications based on zoning considerations. District Permit Managers need to notify the municipality as required when Form M-950 MPC identifies a zoning conflict.

Engineering District Process

If a zoning conflict is identified on Form M-950 MPC, promptly complete the MPC Form (posted on the PennDOT P: drive) and forward it to Central Office (Program Center, with copies to the Office of Chief Counsel, Permits Section staff and Central Permit Office) for evaluation, along with a copy of the Permit application, Form M-945 A (without attachments) and Land Use Questionnaire, Form M-950 MPC (with attachments).

1. Identify known facts on the MPC Form or on attachments thereto.
2. Review the Sound Land Use Folder (Local Zoning Case History Index Folder) on the PennDOT P: drive for similar zoning conflicts.
3. Identify the District’s opinion/recommendation (i.e., approve, return for correction, deny) on what action is appropriate, including reason(s) therefore.

Central Office Process

1. Upon receipt of an MPC Form, promptly review the Form and evaluate the District’s opinion/recommendation.
2. Provide guidance to the District if opinion/recommendation is inconsistent with law or if the District requests an opinion from Central Office.
3. Post the MPC Form in the Sound Land Use Folder (Local Zoning Case History Index Folder) on the PennDOT P: drive.

Access Approval Procedure Worksheet and Sample Letter; [Form M-950 R1](#)

Purpose

This worksheet assists the Applicant in making its way through the access approval procedure steps. It provides a way for the Applicant to track its progress as they identify impacted property owners, attempt to obtain approvals or applications, or begin the indemnification process if necessary. This completed form should be submitted to the District Permit Office for review and approval of the initial determination of impacted properties, and as supporting documentation of Applicant contact with impacted property owners.

Also, part of the form is a sample approval letter template to be used if approval is needed from an impacted property owner. The letter should be modified for the specific application and impact the Applicant is attempting to obtain approval for.

Preparation

Begin by documenting all property owners (and addresses) within the limits of work on the Phase 1 worksheet. Continue to work across the rows and onto the Phase 2 worksheet as necessary until:

1. Property owner will not be impacted by project.
2. Impacted property owner approval is obtained by signed HOP plan or letter.
3. A driveway application (M-950 A or M-945 A) is obtained.
4. Determination is made to begin the indemnification process.

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Driveway Sight Distance Measurements; [Form M-950 S](#)

Purpose

This form provides PennDOT with a uniform method for measuring and documenting actual *driveway* Sight Distance measurements statewide. For *local roads*, use Publication 70M sight distance criteria. Form modifications are not authorized.

Preparation

The form is prepared by the County Permit Supervisor or other person performing the on-site HOP application review, for a proposed *driveway*. The form includes three schematic drawings that illustrate typical vehicles on typical highways preparing to make critical turning movements out of and into a typical driveway. No standard drawing will cover every situation that may occur (e.g., longer combination vehicles, queues), but minimum sight distance measurements will be based on these typical situations.

Complete the general information section during the field view, while on-site. If the highway section has no posted (maximum legal) speed limit, the reviewer will determine the safe-running speed (see Subchapter 3.4) and record the safe-running speed in the space provided on Form M-950 SRS.

Measure the actual grade and distances consistent with established procedures, to ensure accuracy in determining grade. Each employee who performs on-site reviews of driveway applications must use accurate distance and grade measurement instruments. Do not re-measure any sight distance (unless the proposed driveway location or actual highway conditions have changed).

Achieving optimal sight distance along the property frontage must be considered when determining the location of the access. Therefore, safe sight distance values should be used first to determine if optimal intersection sight distance is achievable. If safe sight distance is not achievable, verify that formula sight distance values can be achieved. If all *measured* sight distances exceed their corresponding formula sight distance criteria on the back of the M-950 S, the minimum sight distance requirements are met. Upload the completed form(s) to EPS so the application can be processed accordingly.

If any formula sight distance criteria on the back of Form M-950 S meets or exceeds its corresponding *measured* sight distance, note this finding on this form and promptly upload completed form to EPS so the application can be prepared for denial. Be sure to notify the District Permit Office of any other problems identified during the application on-site review, since all denial reasons must be included in the denial letter.

Safe-Running Speed Determination; Form M-950 SRS

Purpose

This form is used by permit staff to determine the “V” velocity value for the Sight Distance calculation *statewide* if there is no posted (maximum legal) speed to control traffic approaching the proposed driveway site or if other situations, such as roadway geometry, dictate the measurement.

A posted advisory speed or a posted minimum speed will not be used to determine the “V” value below.

Preparation

The safe-running speed is the maximum velocity, in miles per hour, at which drivers may safely operate their vehicles on a section of highway during favorable weather conditions and prevailing traffic conditions, as defined under 67 Pa. Code, Section 212.1.

District Permit staff may determine the sight distance consistent with 441.8(h) by using the safe-running speed in the "formula" for "V", where:

$V = \text{Velocity of vehicle (miles per hour)}$.

Complete the Applicant, application number, highway location, tester and test date blanks at the top of the form.

Make 5 test runs in each direction through the area and record your speeds. Drive at a reasonable, safe, prudent speed considering all factors. Make each test run during favorable weather conditions and prevailing traffic conditions.

After completing the five runs in each direction, determine the *average speed* in each direction. Add all recorded speeds in one direction and divide by the number of speeds recorded. The value will be the average safe-running speed in that direction.

Round this average up to the next highest mph multiple of 5 (e.g., 47 mph would be rounded up to 50 mph).

The reviewer will document the recorded speeds and computations on Form M-950 SRS in the spaces provided and forward the completed form with the application to the District Permit Office.

A copy of Form M-950 SRS can be found on the PennDOT P: drive.

APPENDIX A– POLICIES AND PROCEDURES FOR TRANSPORTATION IMPACT STUDIES RELATED TO HIGHWAY OCCUPANCY PERMITS

The following pages are considered a stand-alone document for the development of Transportation Impact Studies, but are implemented as part of this policy by incorporation into the Appendices.

POLICIES and PROCEDURES For

TRANSPORTATION IMPACT STUDIES

Related to Highway Occupancy Permits

Pennsylvania Department of Transportation
Bureau of Maintenance and Operations

July 2017

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INTRODUCTION

State Highway Law and PennDOT regulations support mobility needs of the traveling public, which are balanced with the needs of property owners accessing the State highway right-of-way.

PennDOT regulation governing access to and occupancy of State highway, Title 67 PA Code Chapter 441, Access to and Occupancy of Highways by Driveways and Local Roads, provide the Department with regulatory authority to ensure the location and design of driveways and local roads within State highway right-of-way preserve safe and reasonable access.

PennDOT has established a Highway Occupancy Permit (HOP) Process to assist the Department in regulating design construction, location, maintenance and drainage of driveways for the safety and welfare of the traveling public.¹ The Department has regulatory authority to make such investigations and require such additional information as it deems necessary from property owners requesting access to the state highway system.²

As part of the HOP process, applicants may be tasked with identifying impacts of the proposed access on the transportation system in the surrounding area, and identifying mitigations to offset that impact through development of a Transportation Impact Study (TIS) or a Transportation Impact Assessment (TIA).

Once a TIS or TIA is determined to be necessary in the HOP process, PennDOT will review it in accordance with these guidelines, PennDOT regulations governing access to and occupancy of highways by driveways and local roads, and the requirements of the Municipalities Planning Code (MPC). The MPC requires the Department to approve, reject or return the study submitted by the applicant as part of the permit application, for additional information in accordance with the established time period.³ The regulations allow the Department to reject any study submitted for review if it is not satisfied with its genuineness, regularity or legality.⁴

The Department reviews the TIS or TIA to assure safe and reasonable access as well as safe and convenient passage of traffic on the State highway and to ensure that driveways safely and efficiently function as an integral component of the highway system based on the amount and type of traffic expected to be served and the type and character of roadway being accessed.⁵ The Department will use the TIS or TIA to provide direction to the applicant on needed improvements.

¹ 67 Pa. Code§441.2(a) and Wolf vs. Department of Highways 422 Pa 34.22 A 2d 868 (Pa Supreme Ct. 1966).

² 67 Pa. Code§441.3(k)

³ 53 P.S. §10508

⁴ 67 Pa. Code§441.3(k)

⁵ 67 Pa. Code§441.2(a) & 67 Pa. Code 441.8(a)(1)

The purpose of these Guidelines is to provide direction to the applicant on the requirements of the TIS or TIA, and how it will be used by the Department and other levels of government involved in the development review process. The ultimate goal of the process is a safe and efficient transportation system.

Approval Process

The TIS or TIA is an integral element of the HOP process and the procedures are typically as follows:

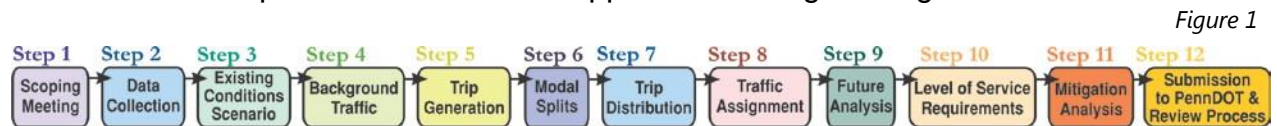
Phase 1: The Applicant prepares a Scoping Meeting Application and attends a TIS Scoping Meeting if warranted.

Phase 2: The Applicant prepares and submits to the Department the TIS or TIA and HOP application.

Phase 3: The Department reviews the TIS or TIA. The Department agrees on the Mitigation Improvements and approves the TIS or TIA.

Phase 4: The Applicant prepares the Engineering Plans.

Phase 5: The Department reviews and approves the Engineering Plans.



This publication covers Phases 1 through 3 of this process.

Figure 1 illustrates the detailed elements in scheduling the scoping meeting and preparing the TIS or TIA which has been divided into 12 Steps.

Roles and Authority

The roles of the participants in the HOP Process are described below:

The Department

The Department is the approving agency for all permits to access the state highway system or occupy state-controlled highway right-of-way.

The Department is divided into [11 Engineering Districts](#), which manages the HOP process in their respective regions. The [District Permit Office](#) manages the HOP application submission and issuance of the HOP.

The Department makes the final determination on design parameters for the TIS or TIA and concept plans. The Department will coordinate and copy the municipalities on all correspondence from the Department.

The Department coordinates communications and reviews with Federal Highway Administration (FHWA) if HOP applications involve interstate highway access.

The District HOP Manager will be the sole point of contact for applicants and can provide assistance as needed. The District HOP Manager will be responsible for providing Department and FHWA review and comment coordination.

FHWA

FHWA has approval authority on permanent occupancy and access HOP applications that involve interstate highway access. All correspondence and communication shall be coordinated through the Department. Individual applicants shall not contact FHWA directly.

Metropolitan and Rural Planning Organizations

Metropolitan Planning Organizations (MPO) and Rural Planning Organizations (RPO) have a role in providing information to the applicant and Department regarding planned projects, visioning, and future growth. MPO's will typically be involved in projects that have multi-municipal impacts.

Municipalities

Municipalities control the land development approval and zoning process. As described in these guidelines, municipalities are invited and encouraged to participate in the review of HOP applications within their jurisdictions.

Municipalities will have opportunity to provide input on mitigation strategies as well as concurrence on Alternative Transportation Plans through the HOP process.

Municipalities are asked to coordinate subdivision and land development approvals with the District Permit Office.

Public Transit Authorities

Local transit authorities operate public transportation systems across the Commonwealth. They will be involved in the review process should the Department, municipality or MPO/RPO determine that the applicant's project impacts the operation of the transit system; that applicant's project could be designed to accommodate public transit; or the mitigation of site impacts involves the improvement to the public transit system.

Applicants

The applicant is responsible for preparing an HOP application and TIS or TIA consistent with these guidelines. Changes to the proposed use, site layout or other planned

elements of the project should be communicated to the Department and updates to the HOP application or TIS/TIA will be required when necessary.

The applicant is responsible for all data collection efforts, and assessing the overall impact that the development will have on the transportation system and developing realistic improvements that mitigate impacts.

The TIS or TIA must be conducted under the supervision of a person who possesses a current Professional Engineer's (PE) license issued by the Pennsylvania Department of State and preferably possessing a Professional Traffic Operations Engineer (PTOE) certificate. The TIS must be signed and sealed by a PE licensed in Pennsylvania.

Applicants are requested to design their site plan so impacts are consistent with local and regional transportation planning efforts, through sound land use and congestion management practices. Applicants are responsible for notifying the municipality, local transit authorities, and MPO or RPO of the status of the HOP application as well as inviting them to Department meetings and ensuring they are copied on any correspondence to the Department. The Department may request evidence that the location and type of highway access has been reviewed by the municipality as outlined in 67 Pa Code Section 441.7.

The applicant should be prepared to explain how the project advances the municipality's comprehensive plan land use and transportation goals.

Beyond the technical requirements, applicants should be mindful of smart transportation methodologies that can be found in [PennDOT Design Manual, Part 1](#) and [PennDOT Design Manual, Part 2](#). The principles are reflected in the TIS Guidelines.

Transportation Impact Study Warrants

The Department requires a TIS for all HOP applications meeting any one of the following characteristics:

- The site is expected to generate 3,000 or more average daily trips or 1,500 vehicles per day.
- During any one hour time period of any day of the week, the development is expected to generate 100 or more vehicle trips entering the development or 100 or more vehicle trips exiting the development.
- For existing sites being redeveloped the site is expected to generate 100 or more additional trips entering or exiting the development during any one hour time period of any day of the week.
- In the opinion of the Department, the development or redevelopment is expected to have a significant impact on highway safety or traffic flow, even if Study Warrants 1, 2, or 3 above are not met.

In determining the need for a TIS, the applicant is to assume only one access point. If the development has multiple stages or phases, the warrant for a TIS shall be based on new trips generated at full build out of the development.

Transportation Impact Assessment Warrants

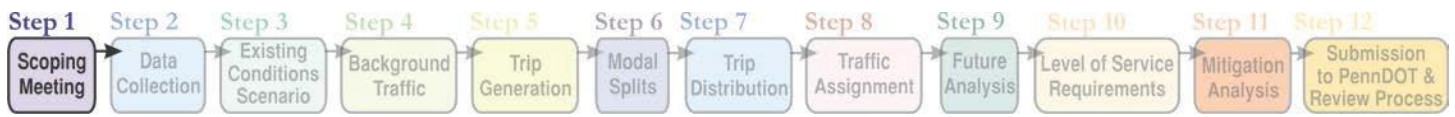
If the warrants for a TIS are not met, the District Permits Manager or Traffic Engineer may require the preparation of a Transportation Impact Assessment (TIA).

Factors in determining if a TIA is necessary include but are not limited to, location of proposed access and site configuration, congestion and delay of surrounding roadway network, and/or safety concerns.

The TIA must be conducted under the supervision of a person who possesses a current Professional Engineer's (PE) license issued by the Pennsylvania Department of State and preferably possessing a Professional Traffic Operations Engineer (PTOE) certificate. The TIA must be signed and sealed by PE licensed in Pennsylvania.

The purpose of a TIA is to assess the impact of the application on specific intersections or elements of the state transportation system.

As such, the scope of a TIA will be limited and targeted to the concern of the Department or the municipality; it would generally be limited to an opening year analysis. An example of a TIA would be to determine the best access plan for a corner property that would not generate traffic sufficient to warrant a TIS, but could impact queuing patterns at the intersection. A TIA should be prepared at the same point in the application process as a TIS and in the same manner as a TIS, as applicable.



STEP 1: PREPARE AND ATTEND A TIS SCOPING MEETING

Purpose

The purpose of the Scoping Meeting is for the applicant to receive direction from the Department and municipality regarding the elements that should be included in the Transportation Impact Study (TIS), and guidance for the applicant's engineer to perform the analysis and complete the study. The study area shall be identified, including all intersections and roadways to be evaluated.

At the meeting, concurrence should be reached on the scope of the study, trip generation, methodology for trip distribution, analysis years, and growth factors. The applicant will also receive information from the Department regarding any known and/or foreseeable issues associated with the project location or proposed improvements. It is expected that the applicant will submit a TIS to the Department within a reasonable time after the Scoping Meeting is held.

Applicants may request to submit to the Department a Preliminary TIS for larger projects in which the project's data collection and trip forecasting elements are provided prior to addressing operations and mitigation options.

Land Development Process Status

A scoping meeting for the TIS should be held with the Department early in the land development process. Ideally, a scoping meeting should be held during the sketch plan phase of the land development process if one exists for the municipality involved. It is noted that not all municipalities require a sketch plan phase. Therefore the scoping meeting should be held as early as possible, typically in advance of the preliminary land development submission to the municipality.

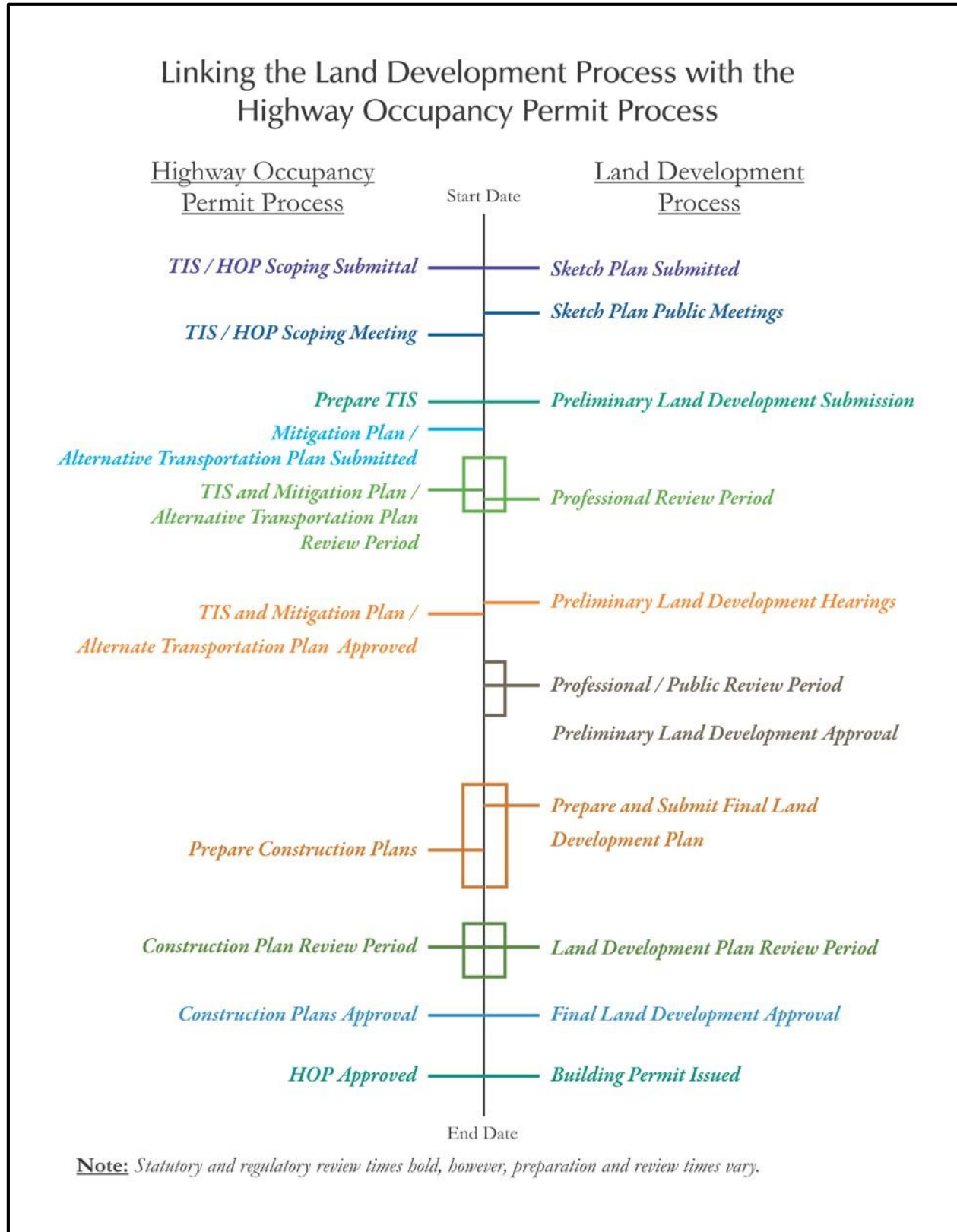
Figure 2 illustrates the relationship between the HOP process and the land development process.

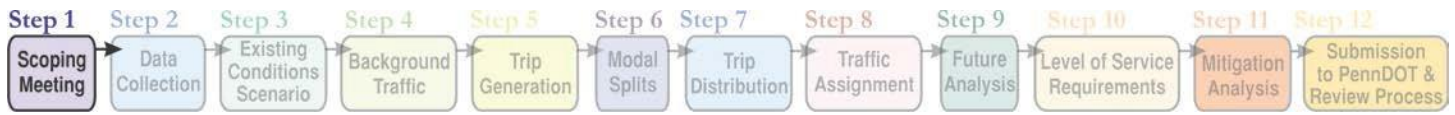
The goal is to insure that the land development approval and HOP approval are timely and consistent with the development review times specified in the [Municipalities Planning Code](#).

In addition, the Department recommends that applicants submit a TIS to the Department simultaneous with the submission of the same TIS to the municipality.



Figure 2: HOP & Land Development Process





Scoping Meeting

All applicants are required to initiate the process of scheduling a scoping meeting through the District Permit Manager with the appropriate District Office. To determine if a meeting is appropriate, the applicant must submit a completed Scoping Meeting Application (see Attachment B) to the Department and copy the municipality on the correspondence. After review of the scoping meeting application, the Department will promptly notify the applicant if a scoping meeting is required.

It is the applicant's responsibility to invite the developer, its engineer, municipal representatives, as well as other agencies such as local transit authorities, MPOs or RPOs within the proposed study area limits to the scoping meeting, and obtain all information required at the meeting.

The applicant is required to notify the Department if it intends to bring legal counsel to the scoping meeting so that the Department may have appropriate legal representation. If the applicant has legal counsel in attendance at the meeting and has not provided the Department advance notification, the meeting may be rescheduled or cancelled.

The applicant is responsible for developing meeting minutes and distributing them to attendees within 7 business days of the meeting.

The District HOP Manager will be responsible for inviting the appropriate District personnel (i.e. Traffic Unit, Design Unit, Bridge Unit, Right-of-Way Unit, etc.) as well as Office of Chief Counsel (OCC), and/or FHWA or other agencies depending on the scope of the project.

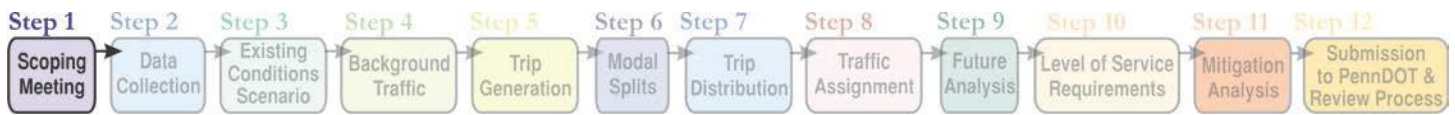
Preparation for the Scoping Meeting

Preparation should involve discussion with municipal officials as well as public transit providers regarding multi-modal transportation issues and the need to enhance the transportation network for the community. Permits for driveways will be evaluated on their ability to safely and efficiently function as an integral part of the highway system.

The ability of a driveway to safely and efficiently function as an integral component of a highway system requires that its design and construction be based on the amount and type of traffic that it is expected to serve and the type and character of roadway which it accesses.

The evaluation of the driveway will consider these elements.

Elements of the Scoping Meeting Agenda (see Attachment B) should be prepared in a concise format for meeting review purposes and all elements should be discussed at the meeting, as applicable.



Most items in the scoping meeting agenda should be familiar to transportation professionals or can be found in the ITE Recommended Practice for Traffic Access and Impact Studies for Site Development.

A five-mile radius map for regional overview and a local area map shall be prepared as well as preliminary trip generation/distribution information. The purpose of the five-mile radius map is to provide an overall regional perspective of the area. Within a one mile radius of the study area, any readily available information such as volumes, intersection controls, or planned developments should be indicated on the map to assist in providing an overview of the roadway network of the area.

Study Area

Determining the extent of the study area is a critical task. It requires a working knowledge of the area of the development; the type and intensity of the development; an understanding of the current transportation conditions and functionality of the existing roadways in the vicinity of the development.

The limits of the site property under control of the developer and proposed site access locations shall be indicated on the map as well as the applicant’s proposed study intersections and roadways. This map shall be used to reach concurrence on the proposed study area scope. Guidance is provided in [ITE, Transportation Impact Analyses for Site Development, Chapter 2](#) on the selection of study intersections. The applicant shall prepare a list of intersections proposed for study prior to the meeting.

Approval of Analysis Years/Growth Rates

Analysis years for the TIS shall be agreed upon at the scoping meeting. Based on ITE Recommended Practice for Traffic Access and Impact Studies for Site Development, the Department will require three analysis years in the TIS:

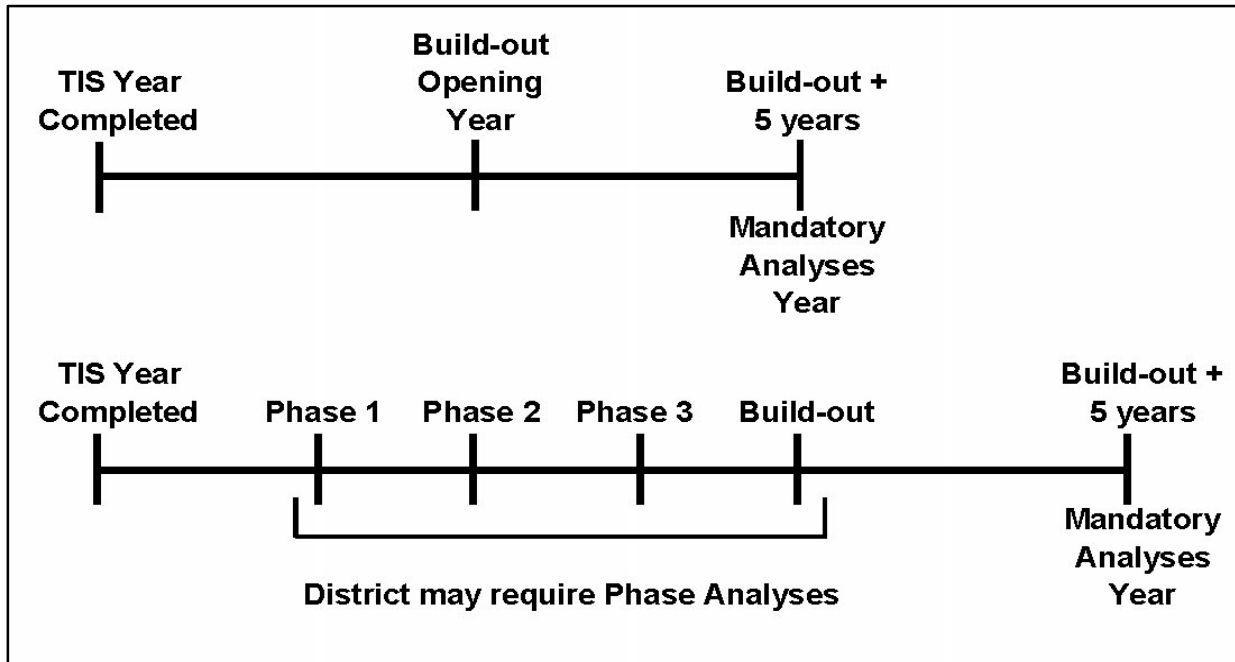
1. Existing Analysis for baseline perspective.
2. Opening Year Analysis. Opening year should be assumed to be the last phase of construction (build-out).
3. Design Horizon Year Analysis. The Design Horizon Year shall be assumed to be 5 years after the Opening Year.

For projects involving FHWA review (i.e. projects involving the interstate), a determination of the design horizon year shall be based on input from FHWA and will generally be longer than 5 years.

Projects involving multi-phased development may require additional analysis, and the analysis of opening years after each major phase should be considered (Figure 3).



Figure 3: Mandatory Analysis Diagram



The objective for additional analysis is to provide a clear view of transportation system operations, given the characteristics of the future development of the site and study area.

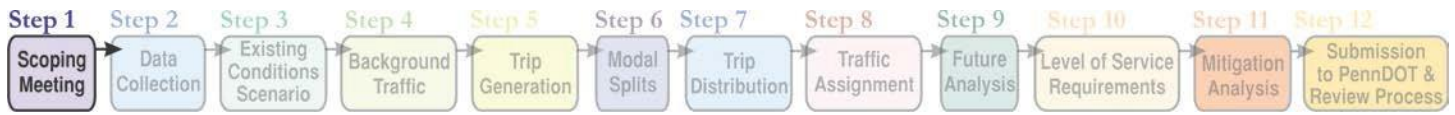
Growth factor assumptions shall be agreed upon at the scoping meeting. The background growth factor should be obtained from any of the following three sources:

1. The Department District Permit Office (to be generated from the Department’s Bureau of Planning and Research).
2. The Metropolitan Planning Organization (MPO) or the Rural Planning Organization (RPO) covering the study area, or
3. Other Department approved method.

Growth factors obtained from the Department shall be applied as an annually compounded growth rate to reflect the proposed traffic conditions at Opening Year and the Design Horizon Year. Growth factors obtained from MPO or RPO’s shall be applied in a compounded or linear fashion as directed by the MPO or RPO and concurred by the Department.

Land Use Context

The applicant must evaluate the existing “land use context(s)” of the study area surrounding the subject property, and whether the proposed land use will alter the land use context. The Department will approve the land use context at the Scoping Meeting.



Land use context is important in determining the ideal roadway design. It provides guidance on aspects such as roadway design, travel lane width, on-street parking, and on the types of landscaping and lighting provided. It also plays a role in suggesting the desired operating speed.

Land use context, roadway classification and desired operating speed shall be evaluated by the applicant. However, the Department, with input from the municipality, shall make the final determination of land use context, roadway classification and desired operating speed.

Land use context is a unique combination of different land uses, building density, and other features. There are seven different land use contexts, in order of intensity: rural, suburban neighborhood, suburban corridor, suburban center, town/village neighborhood, town center, and urban core. For more information on land use context, see [PennDOT Design Manual, Part 1X](#), Appendix B.

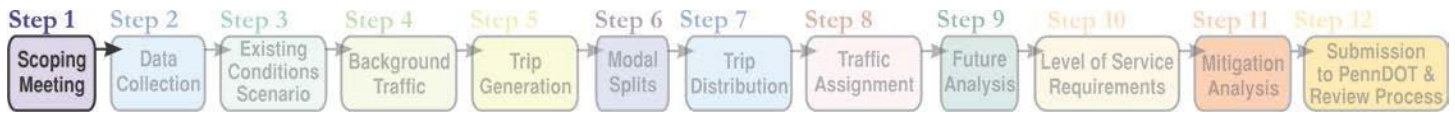
Roadway Classification

The applicant must document and provide data for determination of the “functional classification” and “type” of all roadways adjacent to the subject property in the TIS. The Department will approve this information at the Scoping Meeting.

The functional classification – principal arterial, minor arterial, major collector, minor collector, local - can typically be determined by checking the [Department’s Functional Class Maps](#). These maps identify the functional classification for all state roadways and occasionally important local or county owned roadways.

As defined by [PennDOT Design Manual, Part 2](#), Table 1.2, the “roadway type” is an overlay on the conventional functional classification system, which describes the role played by the roadway within the larger community. In the case of an arterial, is the roadway more important in accommodating regional traffic movements, or in accommodating motorists on trips to businesses, schools or other destinations in the area? If the former, the roadway type might be a “regional arterial”; if the latter, it might be a “community arterial.” Typical running speed on the roadway, intensity of access points, and knowledge of travel patterns on the roadway (use of the roadway by motorists conducting regional trips) should all be evaluated when determining the roadway type.

After documenting the existing roadway type, the applicant should evaluate whether any planned transportation projects, or major land use developments, have the potential to change the roadway type in the future.



Desired Operating Speed

[PennDOT Design Manual, Part 2](#) formally defines desired operating speed as the speed at which drivers are observed operating their vehicles during free-flow conditions. The 85th percentile of the distribution of observed speeds is the most frequently used measure of the operating speed associated with a particular location or geometric feature. The Department will evaluate the desired operating speed on state roadways adjacent to the development if requested by municipal officials. All such requests should indicate the proposed desired operating speed, refer to the existing operating speeds and crash history, and describe the benefits to existing and projected roadway users from the proposed desired operating speed. The applicant may be requested by the Department to provide data for this evaluation and the municipality may be required to address any changes to the regulatory posted speed. The Department will make the final determination on desired operating speed and posted speed for all state roadways.

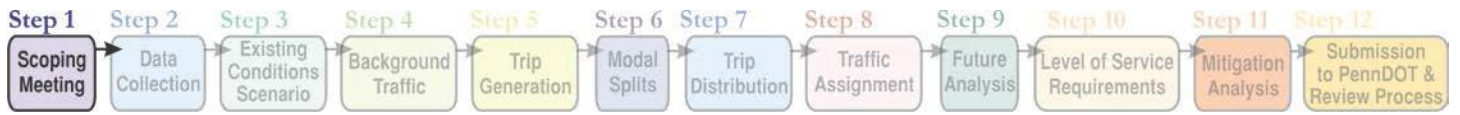
It should be noted that for purposes of determining sight distance at proposed driveways, existing roadway conditions/speeds should be utilized in accordance with [67 PA Code Subsection 441.8\(h\)](#).

ADA Compliance

The applicant must comply with all pertinent federal and state legislation and regulations on accommodating pedestrians with disabilities. These laws and regulations are summarized in [Chapter 6 of Design Manual Part 2 \(Publication 13M\)](#), and include the Americans with Disabilities Act of 1990; the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG); and the [Draft Public Right of Way Accessibility Guidelines \(PROWAG\)](#).

Applicants must adhere to a core principle of ADA; if pedestrian facilities are provided, these must be accessible to persons with disabilities.

ADAAG focuses on facilities at sites, but its guidance is also applicable to public right-of-way. Although PROWAG is a draft, the Department uses these Guidelines as a best practice for public right-of-way where ADAAG is silent or inapplicable.



Sidewalks are the most visible pedestrian facilities, and curb ramps are regarded as an integral part of the sidewalk system.

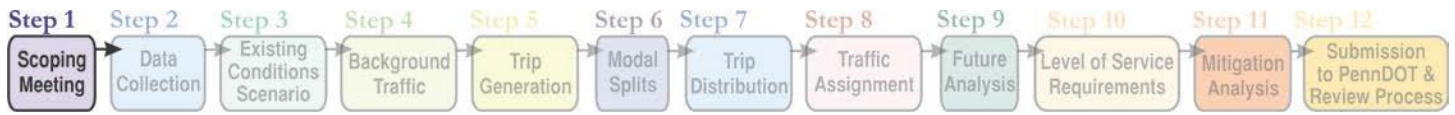
New construction projects with pedestrian needs will routinely accommodate persons with disabilities. When applicants alter existing transportation facilities as part of mitigation, the facilities must accommodate persons with disabilities if it is feasible.

Both DM-2 and PROWAG offer examples of common questions and answers on when ADA-compatible facilities must be provided as part of alteration projects, and applicants are encouraged to review these sections prior to submitting the Scoping Meeting application and preparing the TIS.



Photo 1: ADA Ramp

For additional information related to ADA requirements, refer to [Publication 72M, Roadway Construction Standards](#) and [Publication 149, Traffic Signal Design Handbook](#).



STEP 2: DATA COLLECTION

Preparation of the Transportation Impact Study (TIS) will involve data collection, which is the sole responsibility of the applicant. Review of previous studies and inclusion of data gathered for other studies may be acceptable to the Department provided:

- The data is not greater than 3 years old when the TIS is submitted to the Department and
- Traffic volumes or patterns have not significantly changed.

Volume Counts/Data

Traffic volumes shall be obtained through data collection efforts at locations and times agreed upon during the scoping meeting.

It is required that new data obtained from 24-hour automatic traffic recorder counts include classification and speed data unless modified at the scoping meeting.

New data obtained from turning movement counts shall incorporate heavy vehicles, pedestrian and bicycle data. Transit vehicles shall also be reflected in traffic counts if present. Walking school children and school bus stops shall also be noted.

For information related to peak hour factors and multi-period analyses, applicants should refer to [Publication 46, Chapter 10](#). As directed by the District at the scoping meeting, traffic volumes along corridors should be balanced between intersections when appropriate.

At intersections, pedestrian activity as well as pedestrian accommodations should be recorded and reflected in the TIS. If regular pedestrian activity surpassing 15 pedestrians per hour is observed at midblock crossings in the study area these locations should be counted as well.

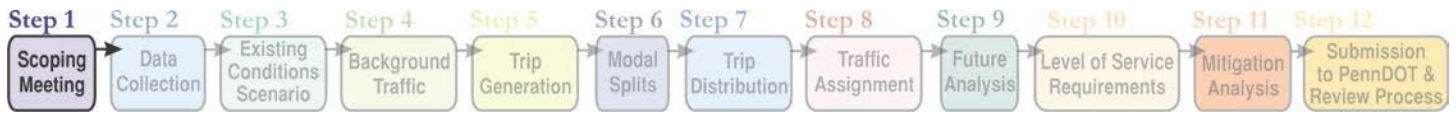
A high number of bicyclists riding on the sidewalk should be documented, as this may indicate the need for additional facilities.

Roadway data shall be collected including speed limits, grades by approach, lane geometry (widths/shoulders). Information should be included in the TIS in the form of field sketches, existing signal permit plans, or tabular format.

The method of data collection as well as seasonal adjustments if required and balancing shall be summarized in the TIS report.



Photo 2: Pedestrian Activity



Land Use Context

As discussed in Step 1, Scoping Meeting, the applicant must document the land use context of the subject property, and along key area roadways.

Using the written description of land use contexts in [PennDOT Design Manual, Part 2](#),

Certain areas may have characteristics common to more than one land use context, and other areas will be hard to identify. The applicant should identify the land use context that seems most representative of a roadway segment as whole. Land use contexts should not be defined in too fine a manner; avoid segments of less than 600-feet in length.

the applicant should first conduct a “windshield screen” field view along roadways in the study area, and identify the different land use contexts present prior to the Scoping Meeting. If the land use context is not obvious from initial field views, the applicant can use aerial photographs and municipal zoning ordinances.

Sight Distance and Site Access

Adequate sight distance at existing and proposed intersections and driveways is critical to safe traffic operations within the study area. The applicant shall conduct sight distance measurements at locations agreed upon during the Scoping Meeting.

Intersection sight distance, stopping sight distance, and existing/measured sight distance at the access locations shall be provided in the TIS. Sight distance shall be obtained and measured in accordance with Chapter 2 of this publication (Publication 282).

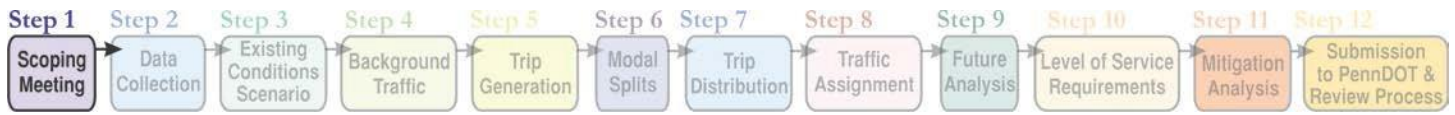
Applicants should utilize form [M-950 S](#) which provide uniform methods for measuring and documenting actual driveway sight distance measurements.

Photographs

Photographs should be obtained at all study intersections and proposed access driveways and labeled appropriately. It is recommended that two views be taken of each approach for intersections:

1. Approximately 200-feet from the intersection to provide an overview of the approach including pavement markings, shoulders, trees, and overall study area context and
2. Approximately 50-feet from the intersection and show the opposite approach.

Photographs should take into consideration elements such as horizontal/vertical alignment of roadways, trees, buildings or other roadside objects, pavement markings, drainage, signal heads & placement. Color photos reproduced at a 4”x6” size are recommended.



Crash Data

Crash data for the study area shall be obtained as agreed upon at the scoping meeting. The most recent five years of crash data for each approach route should be obtained.

The applicant shall analyze the crash data to determine if there are any crash patterns within the study area. The applicant should also contact the municipality for input regarding non-reportable crashes. Analysis of the crash data should include review of causation factors and patterns. The Department will provide:

- a Crash Summary Report,
- a Crash Resume Report,
- a Crash grouped by Segment Report, and
- the current Statewide Homogeneous Report.

To request this information, contact the District Safety Engineer within the appropriate District Traffic Unit. Include the analysis of the crash data in an Appendix that is to be submitted under separate cover and sealed. Crash data is not for public consumption and is exempt from the Right to Know Law requests.

Additional information on the analysis of crash rates can be found in the [Appendix of Publication 212, Item 2\(1\)](#) and [Publication 46, Chapters 11.1 and 11.3](#).

Pedestrian/ Bike/ Transit Facilities

Utilizing the checklist located in [Publication 10X, Design Manual Part 1X](#), the applicant shall identify any existing or proposed pedestrian or bicycle facility that would be affected by the proposed development.

Pedestrian facilities include sidewalks, intersection treatments, and off-road paths or trails. Bicycle facilities include on-street bike lanes, paved shoulders, and off-road paths or trails.

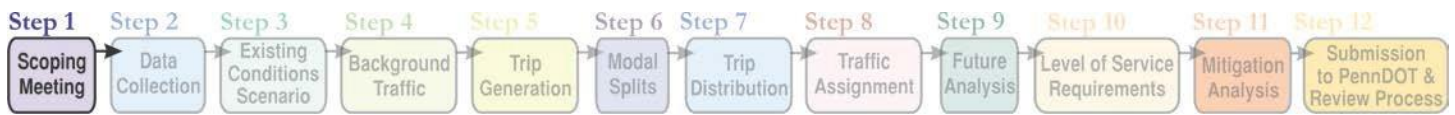
The applicant shall note any impact on pedestrian and bicycle facilities, and shall also note any impact on the ability of pedestrians to cross roadways within the study area, both at intersections and at identified common mid-block crossings.





The applicant shall identify any existing transit facility that could be affected by the proposed development. At a minimum, this shall include any bus routes within ¼ mile of the development, and any rail centers within ½ mile of the development.

The Applicant shall also describe how the proposed development was designed to accommodate pedestrians, bicycles, and transit operations.



STEP 3: EXISTING CONDITIONS SCENARIO

The applicant shall document existing transportation conditions within the study area, including, but not limited to volumes, capacity and level of service analysis, and crash analysis. In addition, the existing conditions shall discuss multimodal transportation such as bicycles, pedestrians and transit and describe existing facilities or lack thereof.

If pedestrian facilities are provided, a discussion of ADA compliance is appropriate.

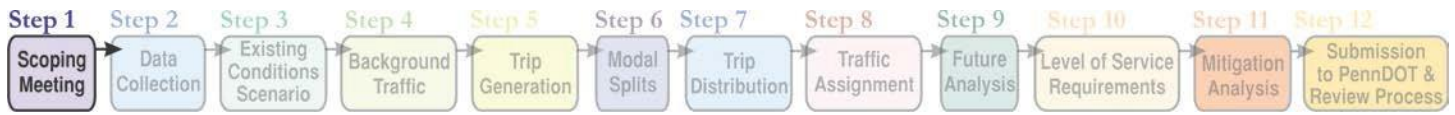
Level of Service data shall be presented in the format as shown in Table 1. Some TIS may require gap studies, queue analysis and/or travel time studies which are further detailed in Attachment D.

Copies of existing permit plans for signals, flashing warning devices, or in-road warning lights within the study area shall be obtained and included in the report as outlined in Attachment C.

Capacity analysis shall be conducted utilizing appropriate traffic engineering software approved by the Department’s Traffic Resources Education and Computing Support Group, as identified in [Publication 46, Chapter 12.2](#) and agreed to at the scoping meeting.

Table 1: Levels of Service Table sample

SAMPLE TABLE: LEVEL OF SERVICE										
AM/PM PEAK		AM PEAK								
INTERSECTION		NORTH ROAD & EAST STREET								
EAST STREET										
Direction	Approach / Movement	Existing	Opening Year - With Out Development	Opening Year - With Development	Opening Year - With Development with Mitigation	Design Year - With Out Development	Design Year - With Development	Design Year - With Development with Mitigation		
Eastbound	Left Turn	C(29.6)	D(35.5)	E(66.6)	B(16.5)	F(94.2)	F(148.5)	D(49.1)		
	Through				B(18.9)			D(38.3)		
	Right Turn									
	Approach	C(29.6)	D(35.5)	E(66.6)	B(18.7)	F(94.2)	F(148.5)	D(39.2)		
Westbound	Left Turn	C(23.0)	C(26.6)	C(31.8)	C(25.4)	E(78.7)	F(93.1)	C(34.2)		
	Through				B(14.2)			C(21.5)		
	Right Turn									
	Approach	C(23.0)	C(26.6)	C(31.8)	B(15.1)	E(78.7)	F(93.1)	C(22.5)		
NORTH ROAD										
Northbound	Left Turn	C(22.3)	C(22.5)	C(24.2)	C(24.2)	C(24.6)	C(26.7)	C(26.7)		
	Through									
	Right Turn									
	Approach	C(22.3)	C(22.5)	C(24.2)	C(24.2)	C(24.6)	C(26.7)	C(26.7)		
Southbound	Left Turn	B(18.3)	B(18.3)	B(18.9)	B(18.9)	B(18.7)	B(19.4)	B(19.4)		
	Through									
	Right Turn									
	Approach	B(18.3)	B(18.3)	B(18.9)	B(18.9)	B(18.7)	B(19.4)	B(19.4)		
	OVERALL	C(25.6)	C(29.7)	D(45.8)	B(17.8)	E(77.2)	F(106.8)	C(30.2)		



STEP 4: BACKGROUND TRAFFIC

Growth Factor Traffic

Analysis years for the TIS shall be as agreed upon at the scoping meeting. As discussed in Step 1: Scoping Meeting, three analysis years will be required for the TIS: Existing, Opening Year and the Design Horizon Year. Any additional analyses as requested at the scoping meeting shall be included.

Future traffic volumes at Opening Year and the Design Horizon Year shall be projected by applying growth factors as determined in the scoping meeting to existing base traffic volumes.

Planned and Permitted Development

In addition to background growth, planned and permitted developments in the area that will impact the transportation study area should be evaluated, and appropriate traffic added to the future analysis scenarios.

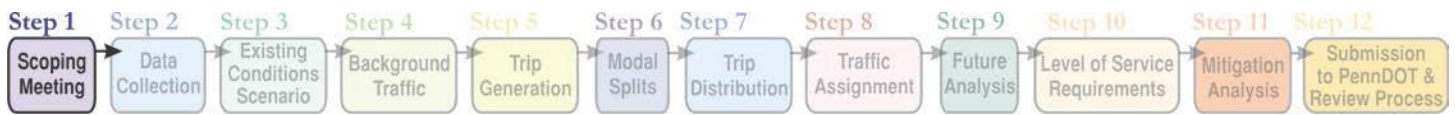
Projects that shall be considered include permitted developments for which HOPs have been issued.

The applicant, with input from the municipal officials, should identify any planned developments in the region that have potential to impact conditions within the study area. The applicant and municipality may recommend the TIS include planned development projects which have been reviewed by the Department, even if an HOP has not yet been issued.

The study should indicate if the planned development(s) is consistent with any formal land use plans such as comprehensive plans, congestion management plans, or Act 209 Traffic Impact Fee/Capital Improvement plans.

The Department will approve the planned developments to be included in the TIS at the scoping meeting. Traffic from these developments may also be requested to be added to future analysis scenarios.

Background traffic growth shall be documented and presented in the TIS Appendix as noted in Attachment C.



STEP 5: TRIP GENERATION

Trip Generation

Trip generation is defined as the total number of trips going to and from a particular land use on a specific site during a specific time period. For sites in suburban and rural contexts, and for many sites in urban contexts, vehicular trips will typically account for the large majority of trips. Trips by public transit, bicycles, or by foot may be important components of trip generation in urban contexts, sites that have regular access to transit routes or other multi-modal facilities, or for special traffic generators.

The traffic characteristics of a proposed development are estimates of the following transportation attributes:

- *Trip Generation: How much traffic the site will add to the surrounding transportation network.*
- *Trip Distribution: Where the trips arriving at the site originate from.*
- *Modal Split: What mode(s) of transportation is used to reach/depart the site.*
- *Trip Assignment: What route(s) are used to reach/depart the site?*

The Department has accepted the most current [ITE Trip Generation Manual](#) and its updates for the development of trip generation. Applicants are cautioned to review Volume 1 of 3 of the publication for instructions on the use of the data. Step by step methodologies for estimating vehicular trips are described in the publication, [Trip Generation Handbook, Third Edition: An ITE Recommended Practice](#). The *Handbook* also provides guidance for the conversion of vehicular trips to person trips so that internal capture, walking trips, bicycle trips, and transit trips can all be accounted for before reaching a vehicular trip generation if the situation dictates.

As part of the scoping meeting, applicants are required to receive Department concurrence and approval on the land use codes and trip generation methodology used for the proposed site. Applicants should be prepared to describe the site's characteristics (urban, infill, etc.), identify transit and multi-modal accommodations or deficiencies, and justify the reason for selection of the analysis approach.

Convenience Markets with Gasoline Pumps, applicants should refer to Attachment G for additional guidance.

Figure 3.1 from ITE's *Trip Generation Handbook* is recreated on the next page for reference. This analysis approach determines if traditional trip generation methodology simply using ITE's generation rates or equations is acceptable, or if the more in-depth methodology converting to person trips is required. The following items may trigger the need for the enhanced methodology:

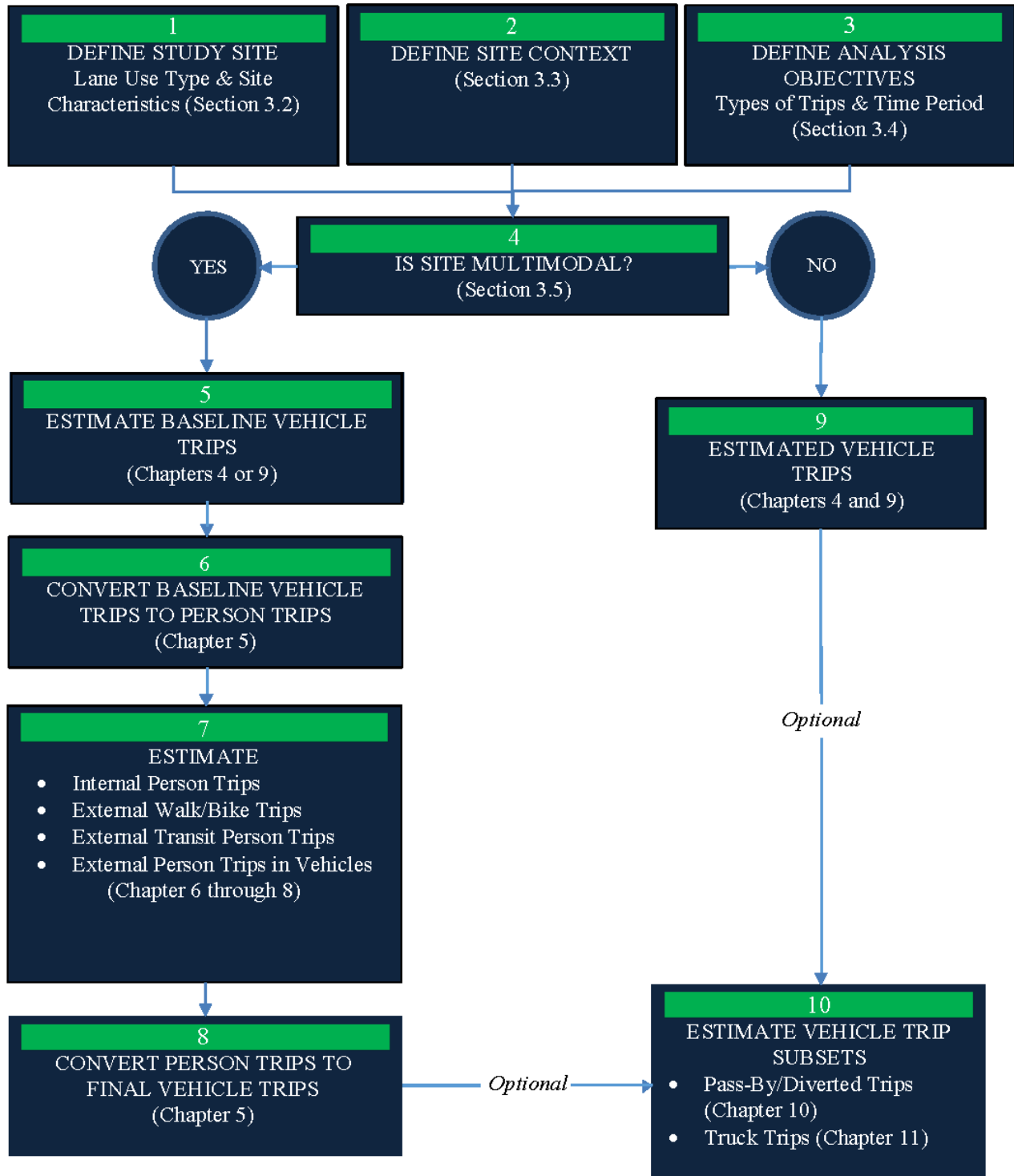
- The site is located in an urban area or classified as infill

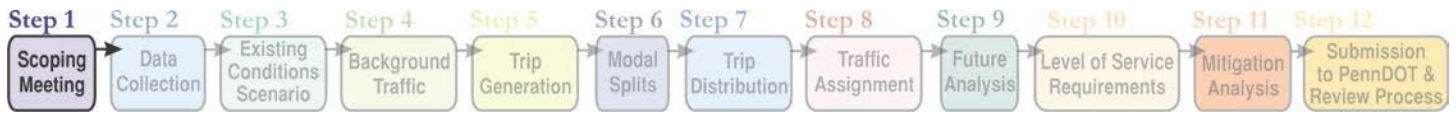


- The site has access to frequently used and regularly arriving/departing transit
- Multi-modal paths or accommodations are present in the area
- Significant pedestrian activity is present
- The site has multiple uses that will require the evaluation of internal capture



Analysis Approach for Estimating Site Trip Generation (Figure 3.1 - Trip Generation Handbook)
 All Chapter and Section references are intended for ITE's Trip Generation Handbook





Local Trip Generation Study

Before using local data or a source for trip generation data other than contained in Trip Generation, concurrence of the District Traffic Engineer and approval of the Central Permit Office Manager are required.

Localized trip generation may be requested by the applicant, municipality, or Department.

In general, local data should be collected in the following circumstances:

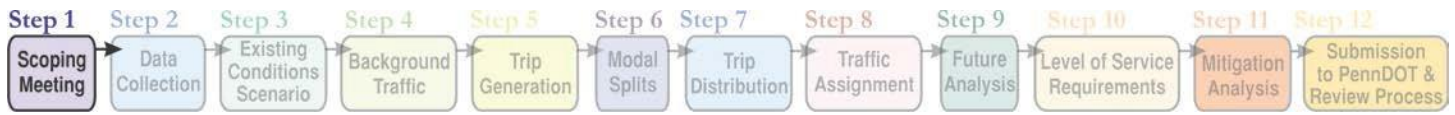
- The study site is not compatible with or does not relate to an ITE land use code definition.
- Local data must be collected when five or fewer data points are contained in the plot.
- The independent variable does not fall within the range of data in *Trip Generation*.
- Neither the weighted average rate line nor the fitted curve fall within the data cluster for the size of the development.

If local data is to be used, the applicant should submit a Trip Generation Study request, documenting the reason that local data is needed and a plan of study developed in accordance with the ITE *Trip Generation Handbook*.

The following guidelines, as applicable, should be followed when seeking approval to conduct a Trip Generation Study:

- Trip Generation Study requests shall be made directly to the District Permit Office.
- The District Office will review and forward the request with recommendation to the Central Permit Office for consideration.
- Trip Generation Study requests must be made prior to conducting the actual study.
- The request should be made by the industry representing the land use type, (i.e. if the trip generation study is being requested for a bank, a representative from a bank or banking group shall apply for the study request).
- If determined necessary, the requesting party will meet with the Central Permit Office (CPO), the District Permit Office, and District Traffic Engineer to discuss the following:
 - Selection of land use to study
 - Scope of the study
 - Site selection
 - Sample size determination

It is recommended that the applicant submit Trip Generation Study Approval requests in advance of the TIS scoping meeting. If a plan of study has not been established at that time, the applicant may make the request at the scoping meeting or as part of the formal TIS.



- Independent variable selection
 - Development data requirements
 - Survey periods
- The study must be conducted and documented as per the methodology outlined in the ITE *Trip Generation Handbook*.
 - The applicant understands that the Department may forward the study data to ITE.
 - Statewide approval, if granted, will be limited in duration, generally until a new edition to the ITE *Trip Generation Manual* is published.
 - The requesting entity/analyst understands that the approved trip rates may be made available for use to other interested parties for a similar land use development.

Although a proposed development might correspond to an ITE land use code with adequate data points in the ITE *Trip Generation Manual*, if the Department has reason to believe that site trip generation will vary from ITE rates, it may allow the applicant to collect data at comparable sites.

Internally Captured Trips at Multi-Use Developments

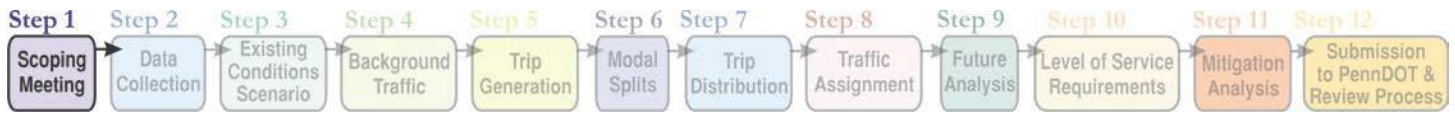
A multi-use development is a single development project that consists of two or more land use classifications and contains an internal roadway network such that trips can be made between the different land uses without leaving the site. Trips between land uses within the development are considered internally captured trips.

For multi-use developments, the Department requires use of the methodology contained in the *Trip Generation Handbook* and using the NCHRP 684 Internal Trip Capture Estimation Tool spreadsheet as provided by ITE ([link to spreadsheet](#)). The ITE data set is not sufficiently large, and the Department may therefore request the applicant to conduct observations at a similar site in the region, in accordance with the cautions contained in the Handbook. The applicant must submit all worksheets used to calculate internally captured trips.

It is important to note that any site that will have internal capture characteristics must use the left side of Figure 3.1 from the *Trip Generation Handbook* (Steps 5-8). This requires the conversion of baseline vehicular trips to person trips before removing the internally captured trips and converting back to vehicle trips.

Pass-by Trips

Pass-by trips include vehicles already on the roadway that pass by the commercial site as an intermediate stop on a primary trip. They exit the site and continue travel in the same direction from which they entered. As such, they are driveway trips but not new trips



generated by the proposed development. Pass-by trips are estimated using the methodology in the ITE *Trip Generation Handbook*, and are applied in Step 10 of Figure 3.1.

Diverted Link Trips

Diverted Link Trips are trips already on the larger roadway network that are diverted from their primary route to the proposed development via other roadways leading to the site. They are considered new trips on the roadways immediately adjacent to the site. Diverted Link Trips are estimated using the methodology in the ITE *Trip Generation Handbook*, and are applied in Step 10 of Figure 3.1.

Existing Sites Being Redeveloped

The Department encourages redevelopment of existing sites in order to discourage sprawl. In cases in which an existing site is being redeveloped, the Department may consider permitting trips being generated by the existing development be applied to the proposed redeveloped site as a “trip credit”.

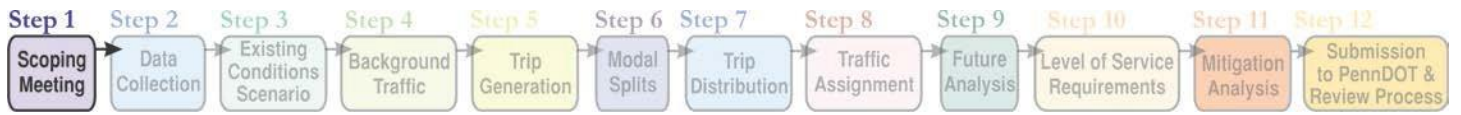
The number of “trip credits” to be applied will be determined on a case-by-case basis as part of the scoping meeting. The Department waives none of its powers or rights to require the future change in operation, removal, relocation or proper maintenance of any access within the State highway right-of-way.

Business Transportation Demand Management

Vehicular trips may be reduced for businesses up to 2% of trips if they have committed to a Transportation Demand Management (TDM) program, provided that the business enters into a legally enforceable agreement, such as a developers’ agreement with the local municipality, with a guarantee that the mitigation measures will be implemented. The credit for the TDM program depends upon the number of TDM strategies that the business is willing to implement. This trip reduction, if used, should be applied in either Step 5 or Step 9 of Figure 3.1 from the *Trip Generation Handbook*.

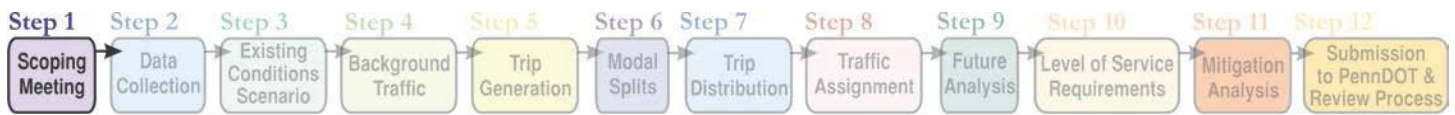
The options are:

- Parking pricing (employees must pay share of parking expense)
- Telecommuting
- Compressed/ Flexible Work Schedule
- Guaranteed Ride Home
- Locker and showers, and place to store bikes



- Car-sharing or car-matching services
- Free transit pass

The business may reduce trips by 2.0% if at least four of the elements listed above are part of the TDM program, and may reduce trips by 1.0% if three elements are part of the TDM program.



STEP 6: MODAL SPLITS

Standard Assumptions for Alternative Trips

This section recognizes the potential for non-vehicular trips and offers “standard assumptions” for the modal split of alternative trips provided that pedestrian, bike, and transit-friendly characteristics are present.

Factors that lend themselves to a greater number of non-vehicular trips include presence

If applicants can provide documentation indicating that the percentage of trips conducted via alternative modes will be even greater than shown below, such documentation may be considered by Department. Cities such as Pittsburgh and Philadelphia have transit studies that may be used and considered by the Department.

Applicants shall discuss the use of modal splits during the Scoping Meeting and obtain concurrence from the Department.

of pedestrian, bike, and transit facilities; high density; mix of land uses in close proximity; good roadway connectivity; promotion of alternative trips (through work trip demand management programs); price of parking; and other factors.

The methodology presented in ITE’s *Trip Generation Handbook* should be utilized for modal splits. This process utilizes the left side of Figure 3.1 of the *Handbook* and converts vehicular trips to person trips before applying reductions for walking,

biking, or transit riding. Sites that are located in urban areas, are infill developments, or some suburban corridors may require the analysis of modal splits.

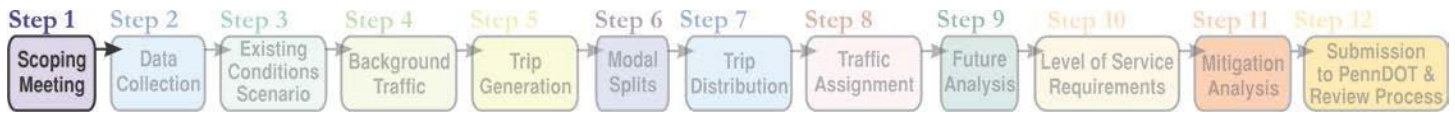
Baseline Mode Share Assumptions

In Section 5.5.2 of the ITE *Trip Generation Handbook*, it states that most situations have at most 5% of person trips accessing a site doing so by walking, biking, or transit. This percentage is the maximum that can be used for most of the state. Locations in Pittsburgh and Philadelphia may be an exception to this allowance and exceed this mode share percentage.

All mode share reductions, even if less than or equal to the 5% allowance in the *Handbook*, should be documented and justified in the TIS. Refer to Section 5.5.2 of the *Handbook* for more guidance with mode sharing.

Photo 4: Roadway Connectivity





STEP 7: TRIP DISTRIBUTION

Estimating the arrival and departure pattern of traffic to a site requires knowledge of:

- Transportation system (e.g., location of the major roadways, parking facilities and the traffic patterns of those roadways);
- Turning movement data at adjacent driveways or streets with similar traffic characteristics to the proposed site (e.g., if analyzing a proposed residential development, study the driveway of an adjacent residential development);
- Travel times in and around the proposed development; and
- Availability of public transportation and pedestrian accommodations.

The Department typically prefers the following distribution models to be used with these certain land uses:

- *Residential – gravity model based upon place of employment (US Census data);*
- *Commercial – gravity model based upon a market sector study prepared by a professional marketing firm retained by the developer;*
- *Employment center – gravity model based upon place of residence (US Census data); and,*
- *Existing institution (hospital, school) to be relocated or expanded – use existing employee zip code data for employees, and use US Census place of residence data for clients or students.*
- *MPO/RPO or local municipal model*

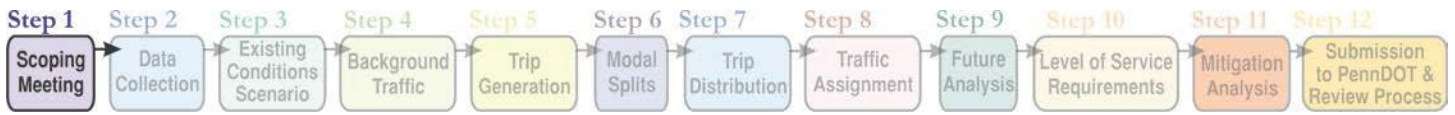
For business land uses, applicants should analyze the place of residence for employees using employee zip code data.

For retail goods and services, applicants should consider the prospective market area (e.g. where the anticipated customers live).

Once the available data has been collected, the applicant should select the appropriate trip distribution model.

Justification for use of the trip distribution model should be provided in the TIS. In addition, all supporting assumptions and calculations shall be included in the TIS to ensure that the trip distribution calculations can be verified by the Department.

Figures for trip distribution shall be provided as outlined in the Attachment C.

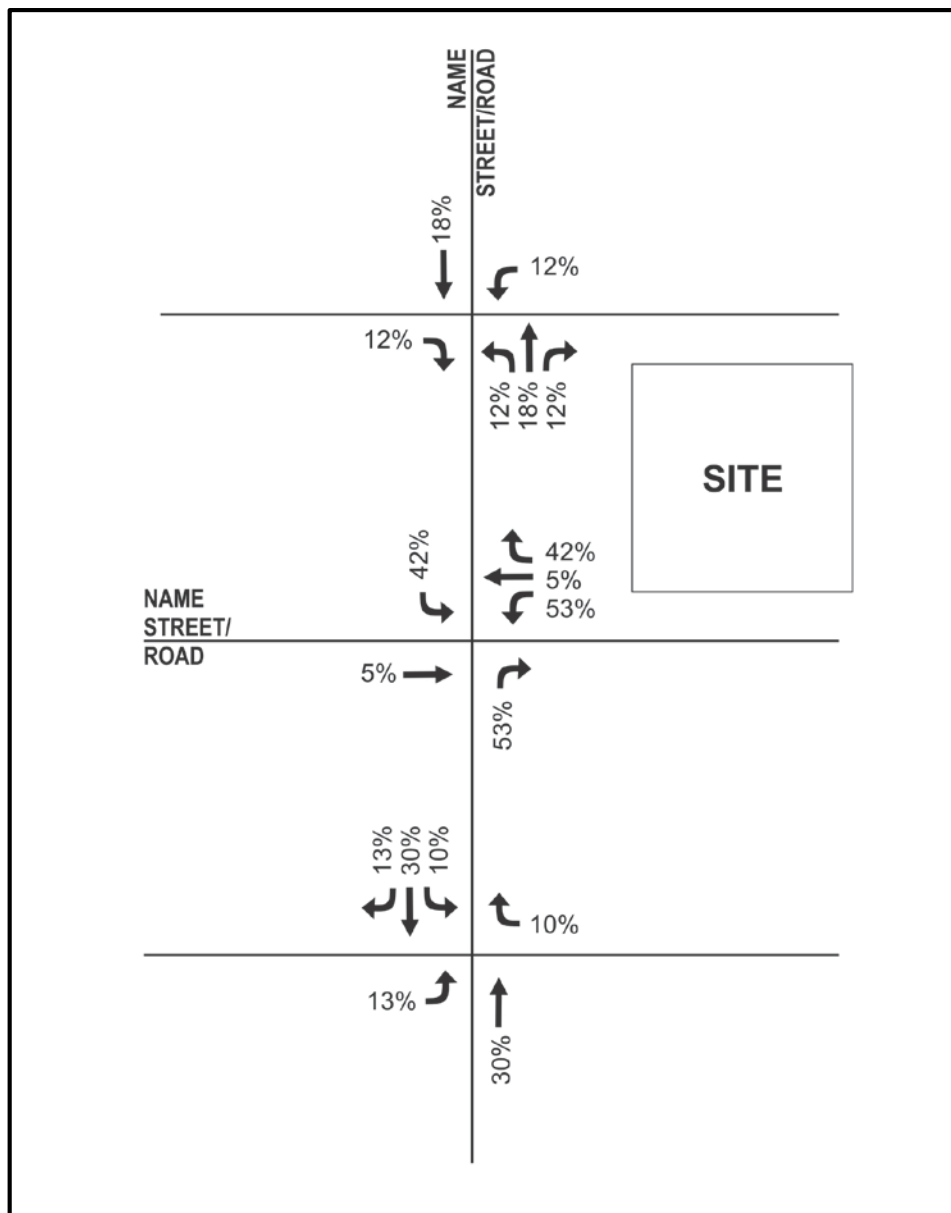


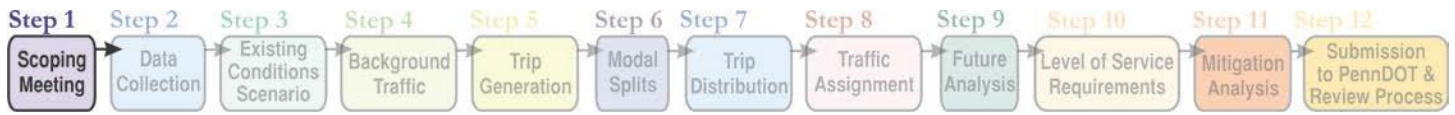
STEP 8: TRAFFIC ASSIGNMENT

The applicant must provide a brief description of the proposed project including access with proposed permissible movements, and distance to nearby intersections. This information, combined with the site related trips, is used to assign and distribute trips onto the roadway, pedestrian and transit networks as well as driveway access point(s). The Department requires the assignment of vehicular traffic to be based upon travel time (quickest route), reflecting left turn and signal delays.

Trip assignment diagrams indicating the trip assignment percentages and volumes are required to be included in the TIS (Figure 4).

Figure 4: Trip Assignment Percentage Example





STEP 9: FUTURE ANALYSIS

Future Year traffic volumes shall be generated for the study area, along with a spreadsheet clearly indicating the baseline traffic growth volumes and traffic generated by planned or approved projects in the study area. A traffic volume figure depicting the Future Year Volumes and roadway conditions shall be provided as indicated in the Attachment C.

Without Development Future Year

The applicant shall conduct an analysis of the Without Development Future Year scenarios. Without Development Future Year analyses shall be calculated using the same methodology as the Existing Conditions Scenario.

Analysis of the Without Development Future Year shall be conducted for two future time frames as agreed upon during the Scoping Meeting:

- Opening Year
- Design Horizon Year

Analysis of traffic signals should assume optimized signal timing for the without development and with development conditions. In the event that existing uncoordinated signals are recommended for coordination that involves signals outside the study area, the external signals may need to be analyzed to ensure efficient operation of the entire system. This should be discussed with the District Traffic Engineer as appropriate.

Capacity and delay for the intersections in the study area shall be presented in the LOS Table format as indicated in Attachment C. Queue and turn lane analysis shall be conducted and provided as appropriate (Refer to [Publication 46, Chapter 11.16](#)).

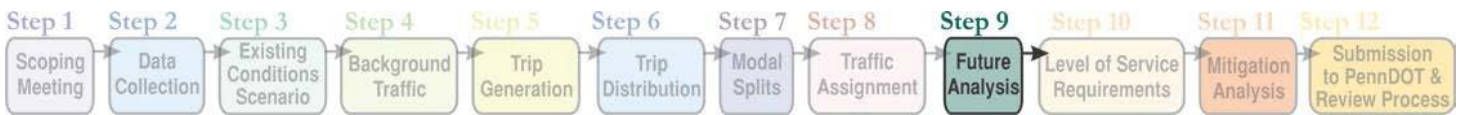
With Development Future Year

Analysis of the With Development Future Year shall be conducted for two future time frames as agreed upon during the Scoping Meeting:

- Opening Year
- Design Horizon Year

With Development Future Year analyses are required for peak travel periods for study area intersections and for a corridor or roadway analysis. Queue and turn lane analysis should also be conducted as required.

1. No Improvement Scenario analysis shall be conducted to determine the impacts of the proposed development. The capacity and delay results shall be included in the LOS Table indicated in Attachment C.

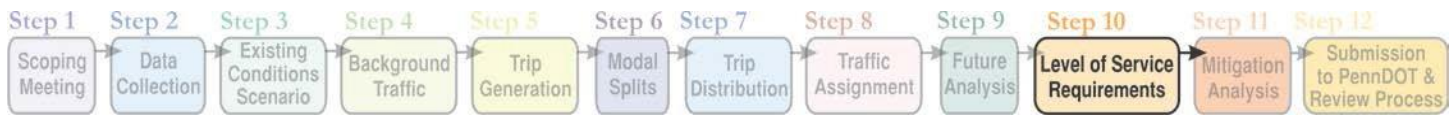


2. With Improvement Scenario analysis shall be conducted to indicate the improvements that are required to mitigate any LOS drops. This information will allow the municipality and the Department to understand the level of improvements that would be required to fully mitigate the LOS drops and provide a comparison basis for alternative mitigation measures. Cost estimates and concept plans are required for the With Improvement Scenario in the TIS.

Concept plans of full mitigation shall be prepared with sufficient detail to describe their feasibility.

Development of construction cost estimates is required along with noting any proposed design exception(s). The plans must also show right-of-way lines. Acceptable base plans are aerial photographs or as-built plans. The applicant may provide a plan on a new survey base if the applicant believes it is needed at this stage. The plan scale should be in 50-scale unless otherwise agreed to at the scoping meeting.

Construction cost estimates shall be provided for the full mitigation scenario.



STEP 10: LEVEL OF SERVICE (LOS) REQUIREMENTS

The TIS shall compare the operating LOS and delay for the design horizon year both with and without the development. Evaluation of the Without Development and With Development Design Horizon Year scenarios determine the impacts the proposed development has on the study area transportation system.

Mitigation Analysis must be conducted to determine the level of improvements necessary to address LOS drops and safety concerns. It should be noted that the analysis of critical lane movements and approaches shall also evaluate available storage lengths and queues. If typical intersection improvements are not an option to address LOS drops, Step 11 describes alternative mitigation strategies available for consideration.

Additional Requirements:

The Department may request the applicant to mitigate critical movements or approaches and perform additional analysis. This may include queue length analysis, auxiliary lane analysis or gap study analysis as outlined in Attachment D. Turn lane guidelines can be found in Publication 46, Chapter 11.16 as discussed as in Step 9.

Application of 10-Second Variance

The intent of the application of a 10-second delay variance is to provide the option to apply a reasonable capacity and delay contingency to overall LOS drops for both signalized and unsignalized intersections.

If evaluation of the With Development Horizon Year Scenario to the Without Development Horizon Year Scenario indicates that the overall intersection LOS has dropped, the applicant will be required to mitigate the LOS if the increase in overall intersection delay is greater than 10-seconds. If the overall intersection delay increase is less than or equal to 10-seconds, mitigation of the intersection will not be required. If the intersection LOS meets the level of service requirements, applicants may still be required to provide mitigation to address critical lanes or approaches. For locations where the level of service of the design horizon year without the development is LOS F and with development, the delay increases more than 10 seconds, the remedies shall provide an estimated delay which will be no worse than the delay for the design year without the development.

Table 3 provides examples of the application of the 10-second variance at various intersections.

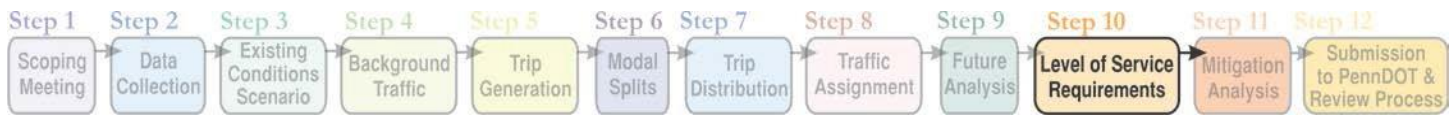


Table 3: 10-Second Variance Example

Intersection Number	Intersection	2015 Horizon Without Development	2015 Horizon With Development	10 Second Variance Calculation	Meets LOS Requirements
1	East St/Tally Ho Dr	C(21)	C(34)	N/A	Yes
2	East St/King Dr	D(40)	E(56)	D(46) 56-40= 16 Sec	No
3	East St/Seabiscuit Ln	D(47)	E(56)	D(46) 56-47= 9 Sec	Yes
4	East St/Queen Dr	F(82)	F(92)	F(82) 92-82= 10Sec	Yes
5	East St/Main St	F(82)	F(100)	F(90) 100-82= 18 Sec	No

As shown in Table 3, Intersection 1 indicates no LOS drop, therefore it meets the LOS Requirements.

Intersection 2 shows an overall intersection drop, but the delay difference is 16-seconds, which is greater than the 10-second variance. Therefore, Intersection 2 does not meet the overall intersection LOS requirements and mitigation is needed.

Intersection 3 indicates that the LOS has dropped, however the delay difference is 9-seconds which is less than the 10-second variance. Therefore, Intersection 3 meets the overall intersection LOS requirements.

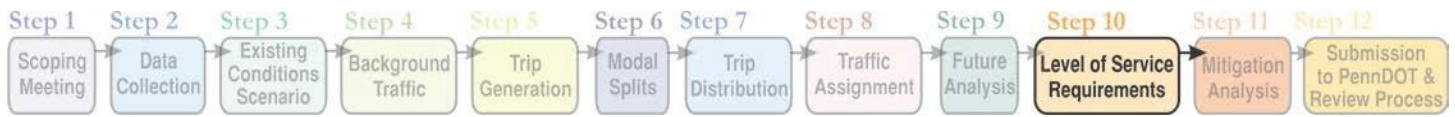
Intersection 4 is already operating at LOS F, but the increase in delay is only 10-seconds in comparing the With Development Horizon Year to the Without Development scenario. Therefore, Intersection 4 meets the overall intersection LOS requirements.

Intersection 5 is also already operating at LOS F, but the increase in delay is 18-seconds in comparing the With Development Horizon Year to the Without Development scenario. Therefore, Intersection 5 does not meet the overall intersection LOS requirements because the delay exceeds the 10-second variance.

For mitigation scenarios, applicants are expected to mitigate the overall intersection LOS to the original Without Development LOS; the 10-second delay variance is not applied to mitigation scenarios. Applicants may be required to address available storage and queue lengths at critical movements or approaches even if the overall LOS requirements are met.

Queue analysis should consider the following:

- Are existing or projected turn lane lengths exceeded?
- Is queue spillback between adjacent intersections expected?
- Are proposed site driveways blocked by projected queues on highway network?



- Will queues into the site interfere with site circulation or result in spillback onto the public street network?

Following are LOS Requirements for the TIS:

Existing Signalized Intersections

With Development Horizon Year overall intersection LOS should be no worse than Without Development Horizon Year overall intersection LOS, except as noted previously.

Critical movements and approaches shall be evaluated and queues shall be evaluated to ensure that available storage exists for critical movements.

Existing Unsignalized Intersections

The evaluation of the performance of unsignalized/stop controlled intersections should include more than just the LOS and delay. Measures of effectiveness such as v/c ratios for individual movements and queue length shall be considered by applicants and presented in the TIS regardless of whether the following LOS requirements are met.

Intersection analysis software does not provide overall LOS for 2-way stop controlled unsignalized intersections, but provides LOS for approaches. The applicant should develop an overall LOS for unsignalized intersections by using a weighted average of approach delays to calculate the overall intersection delay as shown in Figure 5 on the following page.

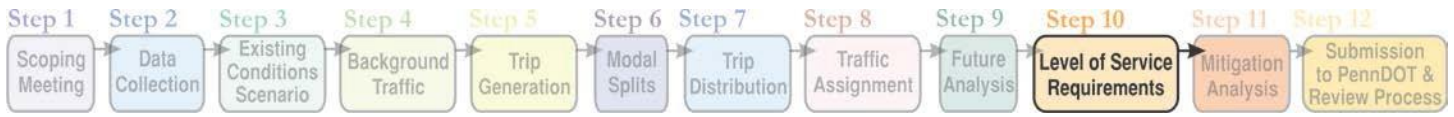
Safety issues should be identified and, sight distance studies and gaps should be evaluated as well. Focusing on a single measure of effectiveness may result in making a less effective traffic control decision.

Following are LOS requirements for unsignalized intersections:

- Overall intersection LOS for With Development Horizon Year scenarios should be no worse than Without Development Horizon Year scenarios. If lane movement LOS drops occur, the toolbox for unsignalized evaluation should be considered.
- If signalization is the preferred alternative for mitigation, overall intersection LOS C in rural areas and LOS D in urban areas is acceptable.

Toolbox for Unsignalized Intersection Evaluation

- Alternative Routes and Connectivity
- Queuing, Gap Evaluation
- Turn Restriction Evaluation
- Median Barrier Evaluation
- Roundabout Evaluation
- Traffic Signal Evaluation in accordance with [Publication 212](#)



- If a drop in LOS occurs but the intersection does NOT meet warrants for a traffic signal or roundabout, other options should be explored to mitigate as discussed in Step 11, Mitigation Analysis.
- If other mitigation measures are not applicable, municipal input is required to seek Department approval for an unsignalized intersection Design (LOS) Waiver.

New Intersections / Driveways

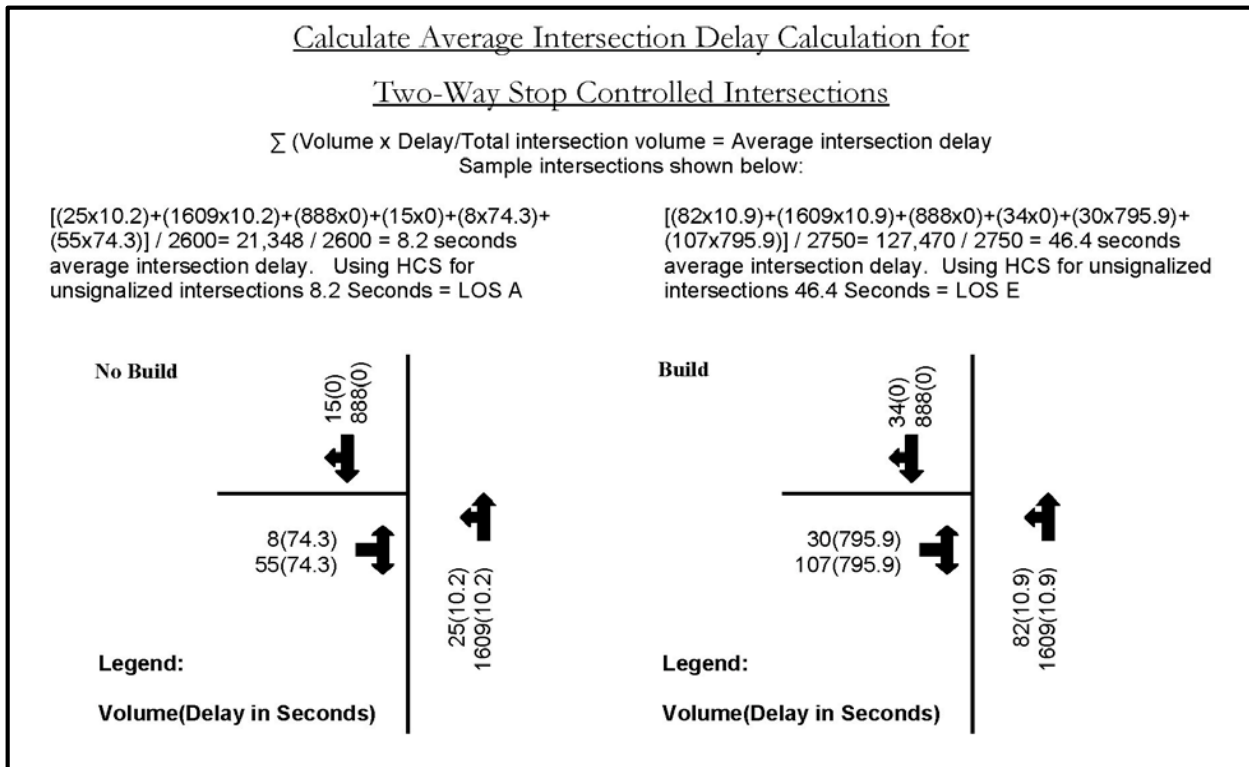
New signalized or unsignalized intersection established to serve as access to the development shall be designed to operate at minimum LOS C for rural areas, and minimum LOS D for urban areas.

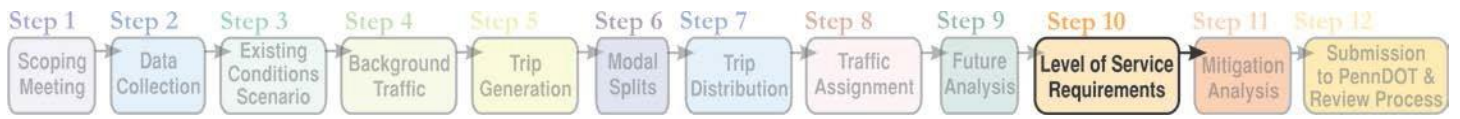
The applicant shall identify and confirm that the proposed driveways/intersections are the best access plan. Plans should be evaluated based on operations of each driveway, impact on adjacent roadways, safety, and acceptability to the community. The applicant shall identify the different access options available to the subject property.

Gap studies, sight distance studies and queue length/auxiliary lane analysis should be conducted as part of the new intersection or driveway analysis.

The Department, on a case by case basis, will consider evaluation of new intersections to be designed to an overall intersection LOS E, with input from the municipality. An

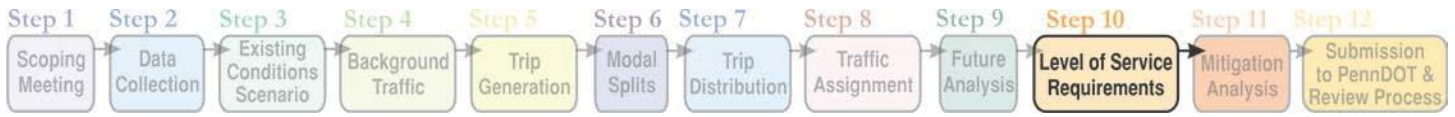
Figure 5: Sample Calculation





example would be designing an intersection to LOS E to maintain context with other intersections in the area, and to encourage pedestrian mobility through smaller intersection design.

In all cases, the applicant must coordinate with the District to determine the applicable land use context and acceptable levels of service for the site location, as outlined in Step 1: Scoping Meeting.



STEP 11: MITIGATION ANALYSIS

If the LOS requirements are not met, the Applicant is responsible to construct improvements that will mitigate the LOS drop.

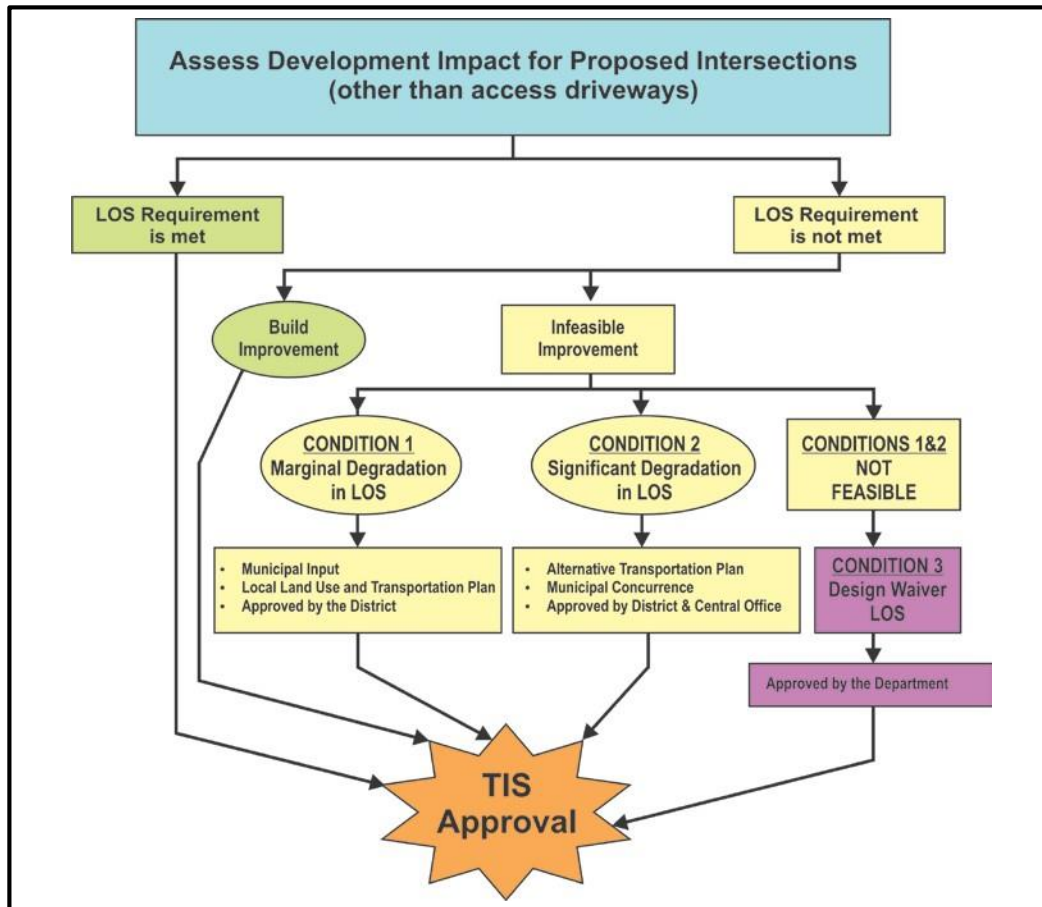
If the LOS requirements are not met, and the improvements are determined to be impractical or infeasible, there are three opportunities available for the applicant to pursue.

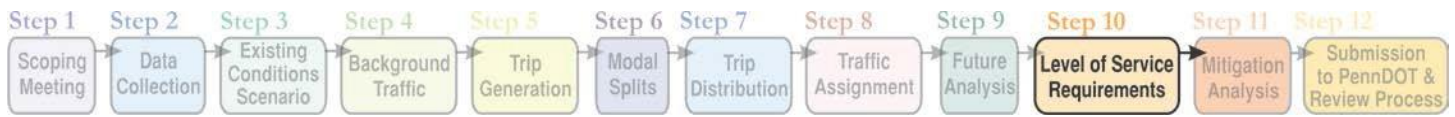
1. Local Land Use Transportation Plan with Marginal LOS Degradation
2. Alternative Transportation Plan with Significant LOS Degradation
3. Design Waiver - LOS

If the applicant documents that construction of improvements to mitigate the LOS drops is impractical or infeasible, the applicant may evaluate Conditions 1 and 2 as mitigation scenarios as shown in Figure 6.

If after evaluation of Conditions 1 and 2 it is determined that mitigation is not feasible, a LOS Waiver can be requested as the third and final option.

Figure 6: Mitigation Procedure





Condition 1: Marginal LOS Degradation, Local Land Use and Transportation Plan

If the LOS requirements are not met and improvements required to mitigate the impacts are impractical or infeasible, the applicant may evaluate the use of the Marginal LOS Degradation condition. Marginal Degradation is defined as a drop in the overall intersection LOS within LOS range of LOS B to LOS C for rural areas, and LOS B to LOS D for urban areas.

The Department will consider accepting the Marginal LOS Degradation based on municipal input and review of the Municipal Land Use and Transportation Plan to ensure congestion and delay are managed in the study area. The Municipal Land Use and Transportation Plan and correspondence from the municipality should be provided as part of the TIS submission.

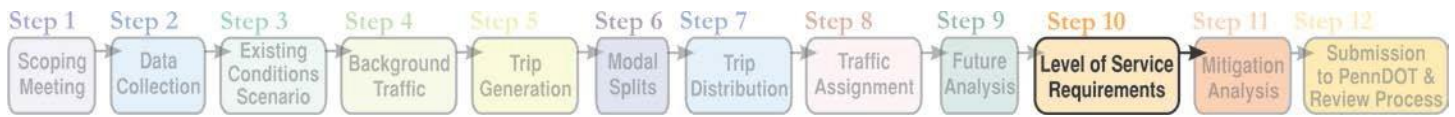
Condition 2: Significant LOS Degradation, Alternative Transportation Plan

If the LOS requirements are not met and improvements required to mitigate the impacts are impractical or infeasible, the applicant may evaluate the use of the Significant LOS Degradation condition. Significant Degradation is defined as a drop in the overall intersection LOS below LOS range of C in rural areas and D in urban areas. A significant degradation may be acceptable if:

1. The Department concurs that improvements are demonstrated to be infeasible AND
2. The Department concurs that foregoing the improvements will jeopardize neither public safety nor the highway/bridge infrastructure; AND
3. The degradation to overall intersection is acceptable to the municipality; AND
4. The Applicant prepares an Alternative Transportation Plan to address improvements to the transportation network which are accepted by the municipality and Department. The implementation of the Alternative Transportation Plan may not always completely mitigate LOS drops, as its purpose is to improve congestion and delay in the transportation network by promoting other transportation strategies.

Alternative Transportation Plan

An Alternative Transportation Plan (ATP) should encompass a wide range of strategies that will enable the future improvement of conditions for motorists, pedestrians, bicyclists, and transit users within the study area. It extends beyond mitigation strategies that can be implemented by the applicant directly, to encompass strategies that should be implemented by public agencies.



Once approved by the host municipality(ies), the Department will review the ATP and evaluate the feasibility of implementation of strategies. The Department may request input from the County planning office, MPO/ RPO, and local transit authorities as well. The Department and applicant must agree upon the role of the applicant in implementing the strategies.

Attachment E contains a variety of strategies that may be used for the ATP.

- ATP Mitigation Strategy Toolbox (See Attachment E)*
- *Alternative Routes*
 - *Access Management Plans*
 - *Traffic Signal Asset Management Plan*
 - *Multi-modal Plans*
 - *Pedestrian Facilities*
 - *Transit Facilities*
 - *Bicycle Facilities*
 - *Park and Ride Facilities*
 - *Intelligent Transportation Systems*
 - *Act 209 Plan*

To be accepted as fulfilling part of the development’s mitigation obligations, the ATP must be legally binding and have received approval of the municipality’s (ies’) governing body. As a condition of approval, The Department will review the plan for certainty of funding and implementation schedule such that the public benefits of the ATP beginning at opening of the development.

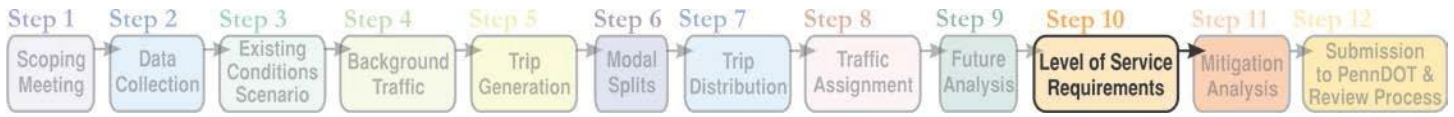
An Act 209 Plan prepared by a municipality may also qualify as an ATP, but the Plan should also include a Traffic Signal Assets Management Plan, and a summary of projects on the MPO’s TIP and Long Range Plan that have the potential to address congestion in the study area.

Another plan that may qualify as an ATP is a Transportation Improvement Plan arising from a Land Use and Transportation Study for a municipality, a group of municipalities, or for a corridor in which the Department is part of the Steering Committee. Municipalities that have Official Maps indicating areas for improvements may also qualify as an ATP. To qualify as an ATP, the plan must be funded and have a feasible implementation schedule. Also, the costs associated with the implementation of the ATP should be comparable to the costs associated with the impractical or infeasible improvements the applicant is requesting to forego.

The Applicant may fully or partially fund the ATP in order to guarantee implementation and schedule. The Department will make the ATP a condition of the HOP. It is recommended that the municipality make the ATP a condition of the municipal land use approval.

Condition 3: Design Waiver – LOS

In the event that Conditions 1 or 2 are unachievable, a Design Waiver - LOS may be applied for as outlined in Chapter 2 of this publication (Pub 282). Due to the variety of



alternative mitigation options available to applicants, a very small percentage of waivers are anticipated to be granted by the Department.

Mitigation Strategies

Common strategies of traffic impact mitigation, may involve changes to physical geometry, striping, and traffic controls. Traffic signalization is a common alternative; however, the Department also encourages the innovative transportation solutions and consideration of unconventional intersection treatments such as but not limited to roundabouts.

In the event that a traffic signal is required as part of mitigation, the applicant/permittee for the signal will be the municipality. It is recommended that the municipality execute an agreement with the HOP applicant that requires the HOP applicant be responsible for the costs associated with the signal installation as well as maintenance of the signal for up to at least one year after initial operation.

Due to the complexity and evolving criteria associated with roundabouts, all roundabout alternatives will require coordination with the Bureau of Project Delivery Highway Quality Assurance Division. The District HOP Manager shall remain the point of contact for the Applicant and will coordinate with the District Roundabout Coordinator and Bureau of Project Delivery Highway Quality Assurance Division as required. Following is additional information for consideration of signals and roundabouts as mitigation measures:

Traffic Signals

Signal Warrant analysis should be performed for unsignalized intersections that operate at poor levels of service in accordance with the [Publication 212](#).

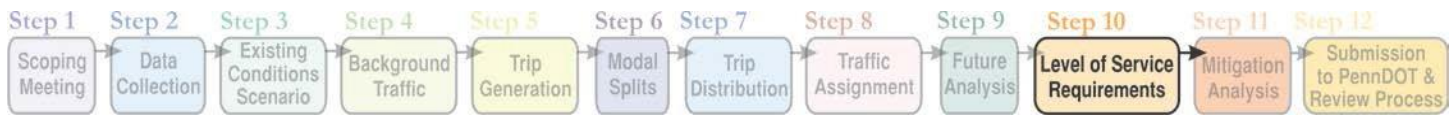
If the impact analysis indicates a need for reconstructing existing intersections, or for constructing new intersections, roundabouts shall be evaluated by the applicant along with other unsignalized or signalized traffic controls.

Note that the Department expects applicants to evaluate all signal warrants. The peak hour warrant shall only be applied in unusual cases, including but not limited to, office complexes, manufacturing plants, industrial complexes, or high-occupancy vehicle facilities that attract or discharge large numbers of vehicles over a short time.

In the event that a signal is warranted in the Horizon Year, but not in the Opening Year analysis, a separate analysis shall be provided to project when the warrant is met.

As soon as the Applicant determines that a traffic signal is a mitigation option, coordination should be initiated with the municipality and Department. The scope of the coordination shall include:

1. Evaluation of the use of a roundabout in lieu of a signal



2. The limits of the traffic signal system to be analyzed
3. Performance requirements
4. The method of analysis
5. Technology and maintenance issues
6. Installation and maintenance agreement with municipality and the Department

Method of Analysis

It should be noted that roundabouts shall be considered at all locations under signalization consideration and applicants shall refer to [Department Publication 13M, Chapter 3](#), [Department Publication 10X, Design Manual Part 1X](#), and [NCHRP Report 672 – Roundabouts: An Informational Guide Second Edition](#) for more information.

Based on roadway type and land use context established at the TIS Scoping Meeting, the applicant shall ascertain if either minimizing stops (such as along a major corridor) or minimizing delay (such as in a grid network) is the primary purpose of the traffic signal system. Based upon this, the applicant shall prepare an analysis using an acceptable software package to develop appropriate signal timing plans. Time space diagrams documenting the results shall be submitted.

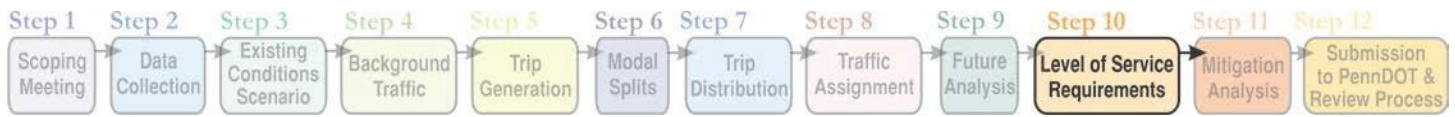
The Department may require the applicant’s engineer to prepare a micro-simulation of the traffic signal system. In requesting the micro-simulation, the Department may specify the software package to be used.

Technology and Maintenance Issues

A traffic signal system shall be sufficient to mitigate the impact of the applicant’s development, but capable of being operated and maintained by the municipality. The applicant may be required to participate in and/or fund a portion of a Traffic Signal Assets Management Plan. Municipal concurrence is required for operating and maintaining the traffic signal system in accordance with the Traffic Signal Assets Management Plan. The municipality may require that the applicant retain the services of a traffic engineer to address and respond to complaints regarding signals for up to 1-year after the development opens.

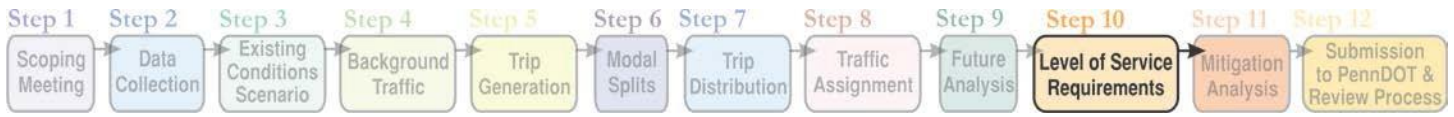
Roundabouts

A roundabout is a circular intersection consisting of a central island, a circulatory roadway, and splitter islands on each approach. Studies have shown that relative to other traffic controls at intersections, roundabouts are often better able to reduce conflict points; reduce crash incidence and the severity of crashes; and reduce delay. Roundabouts shall receive particular consideration for existing study area intersections with high crash histories.



The feasibility of installing a roundabout shall include consideration of site constraints such as available ROW, environmental factors, and other design factors. Roundabouts may not be suitable when the intersection is within a well-coordinated signal system with acceptable crash histories; where a signal exists to serve emergency vehicle pre-emption; or where the intersection has functioned well for all users under existing traffic controls. If a roundabout is determined to be feasible, and is anticipated to be superior to other traffic controls in addressing the needs of all users at an intersection, it should be considered the preferred alternative.

Applicants are encouraged to refer to [Department Publication 13M, Chapter 3](#), [Department Publication 10X, Design Manual Part 1X](#), and [NCHRP Report 672 – Roundabouts: An Informational Guide Second Edition](#) for more information.



STEP 12: SUBMISSION TO THE DEPARTMENT AND REVIEW PROCESS

General Formatting

To facilitate Department review, the TIS report shall contain a cover page, table of contents, body of report, and appendices containing data collection and analyses. As mentioned in Step 2, a sample TIS format is contained in Attachment C (Figure 7).

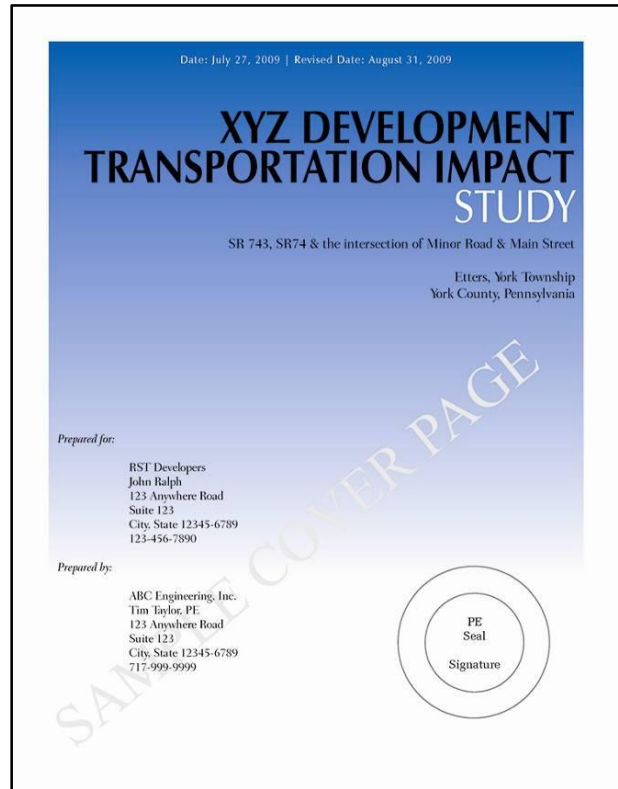
Figure 7: Sample Cover Page

The Department may reject the TIS if it does not conform to the format provided in Attachment C.

To help ensure that the TIS is in conformance with these policies and procedures, applicants are encouraged to complete the review checklist provided in Attachment F and submit it with the TIS.

Special Review

Median break studies or Point of Access Studies required or requested as part of the TIS shall not be approved prior to obtaining all necessary Department and/or FHWA approvals.

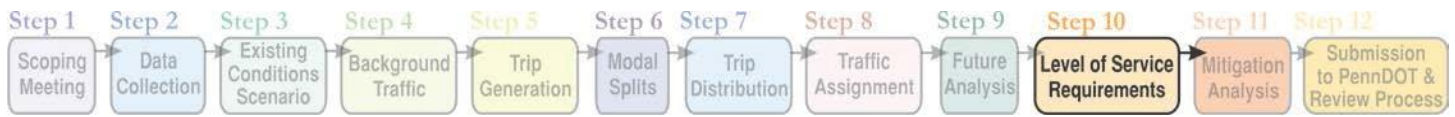


TIS reports that utilize Alternative Transportation Plans as a mitigation strategy shall not be approved by the District Permit Office prior to obtaining review and approval by the Central Permit Office.

As mentioned in Step 2, applicants may request to submit to the Department a Preliminary TIS for larger projects in which the project’s data collection and trip forecasting elements are provided prior to addressing operations and mitigation options.

The Department Review Process

The District HOP Manager will be the point of contact for the entire permit process and related submissions. Upon receipt of a TIS, the Department will review the applicant’s assessment of the need for capacity, safety or other enhancements to mitigate transportation impacts.



TIS and TIA documents prepared in accordance with these guidelines shall be submitted to the Department with an appropriate HOP application (M-945 A). The Department will review and return comments, if necessary, pertaining to the TIS within 45-60 calendar days of the submission. The District Office will issue an approval letter for the TIS when all Department concerns are addressed.

If the applicant pursues Condition 1 or Condition 2 under Step 11: Mitigation Analysis, the documentation from the municipality(ies) with respect to Marginal and Significant Degradation as well as the proposed ATP shall be submitted separate from the TIS.

If the Department approves the Marginal or Significant Degradation, related correspondence and the ATP shall be included in the appendix of the final TIS document. If the applicant pursues a Design (LOS) Waiver, the waiver request shall also be submitted as a standalone document.

If approved by the Department, the Design Waiver - LOS request as well as the approval shall be included in the appendix of the final TIS along with all documentation of applicant's attempts to comply with Condition 1 or 2.

The TIS and associated mitigation(s), if any, must be identified and agreed to by the Department before the applicant submits final HOP engineering plans for review.

REFERENCES

[*A Policy on Geometric Design of Highways and Streets*](#), Sixth Edition, 2011, AASHTO. Also known as the “Green Book.”

[*Access to and Occupancy of Highway by Driveways and Local Roads*](#) (67 Pa. Code, Chapter 441)

[*Design Manual Part 1*](#) Department Publication 10

[*Design Manual, Part 2*](#), Department Publication 13M

[*Guidelines for the Design of Local Roads and Streets*](#), Department Publication 70M

[*Roadway Construction Standards*](#), Department Publication 72M

[*Traffic Engineering Manual*](#), Department Publication 46

[*Traffic Signal Design Handbook*](#), Department Publication 149

[*Traffic Signal Standards*](#), Department Publication 148

[*Transportation Impact Analyses for Site Development: An ITE Proposed Recommended Practice*](#), ITE (2010)

[*HCM 2010*](#)

[*Roundabouts: An Informational Guide*](#), NCHRP Report 672

ATTACHMENT A: GLOSSARY

AVERAGE TRIP RATE – is the weighted average of the number of vehicle trip or trip ends per unit of independent variable.

ACCESS – is the ability to enter or leave a public street or highway from an abutting private property or other public street.

ACCESS MANAGEMENT – is the control and regulation of the spacing and design of driveways, ramps, medians, median openings, traffic signals, and intersections on arterial roads to improve safe and efficient traffic flow on the road system.

AVERAGE DAILY TRAFFIC – is the average number of vehicles crossing a specific point on a roadway on any given day.

AVERAGE TRAVEL SPEED – means the average speed of a traffic stream computed as the length of a highway segment divided by the average travel time of vehicles traversing the segment, in miles per hour.

ALTERNATIVE TRANSPORTATION PLAN – is a plan prepared by the applicant to address significant degradation of LOS. It encompasses a variety of multi-modal and congestion management strategies for improving the study area and transportation network.

BACKGROUND TRAFFIC – refers to an estimate of future traffic within the vicinity of the proposed development, without the site development traffic, but with existing traffic adjusted for expected growth, and addition of traffic from major vested projects.

CAPACITY – means the maximum rate of flow at which persons or vehicles can be reasonably expected to traverse a point or uniform segment of a lane or roadway during a specific time period under prevailing roadway, traffic, and control conditions; usually expressed as vehicles per hour (VPH) or persons per hours.

CRASH RATE – number of crashes per million vehicle miles traveled in a given segment of roadway.

DEPARTMENT – The Pennsylvania Department of Transportation.

DESIRED OPERATING SPEED - the speed of traffic that best reflects the function of the roadway and surrounding land use context.

DESIGN SPEED – is the speed used to determine the design features of the roadway.

DESIGN HORIZON YEAR – is the year for which the roadway is designed.

FHWA – The Federal Highway Administration is the division of the United States Department of Transportation that administers the federally funded transportation program and is responsible for disbursing federal highway funds to the states.

GRAVITY MODEL – is a mathematical model used to estimate the number of trips that will be drawn to a development based on population and travel time. In the case of a proposed retail development project, it is the attraction of the population of a segment of market to the site. In the case of a residential project, it is the attraction of the location of employment opportunities and in the case of an employment center; it is the residential locations of potential employees. Typically, a gravity model is represented by the following equation:

$$\frac{\text{Segment Population}}{(\text{Travel Time to Site})^2}$$

HOMOGENEOUS CRASH RATES – The Department monitors crash rates for different types and classes of highways across Pennsylvania. These rates form the base for comparison against the actual rates for the roadway segments within the TIS study areas.

INFILL DEVELOPMENT – a development site located in a fully developed urbanized area, often with different interactive land uses and with good pedestrian and vehicular connectivity, and served by convenient/frequent transit and/or designated bicycle facilities.

INTERNAL CAPTURE RATE – is the percentage of the total number of trips from a site that are contained within on-site circulation systems only.

ITE TRIP GENERATION – is the most widely used reference source, published by the Institute of Transportation Engineers (ITE) since 1976, for trip generation data, by traffic engineers and transportation planners for site level planning and analysis.

LAND DEVELOPMENT PROCESS – the process by which municipalities review, approve, or reject land development proposals. The land development process is governed by the Municipalities Planning Code.

LAND USE CONTEXT – a land area comprising a unique combination of different land uses, architectural types, urban form, building density, roadways and topography and other natural features. See PennDOT *Design Manual, Part IX, Appendix B* for the seven (7) contexts. One is rural and the remaining six (6) are considered urban in this document.

LEVEL OF SERVICE – a qualitative measure describing the operational conditions within a section of roadway or at an intersection that includes factors such as speed, travel time, ability to maneuver, traffic interruptions, delay and driver comfort. Level of service is described as a letter grade system (similar to a school grading system) where delay (in seconds) is equivalent to a certain letter grade from A through F.

LIMITED-ACCESS FACILITY – means a street or highway especially designed for through traffic that owners or occupants of abutting land or other persons have no right or easement of access.

LOS DROP – represents a change in letter grade. Generally, all LOS drops must be mitigated to the no-development scenario LOS.

MARGINAL DEGRADATION – is a degradation in level of service that is within the ranges of LOS A to LOS C in rural areas and LOS A to LOS D in urban areas.

MITIGATION – is that collective process whereby a developer of land makes adequate provisions for the public transportation facilities needed to accommodate the impacts of the proposed development.

MULTI-USE DEVELOPMENT – (as defined by the Urban Land Institute) means land development that includes two or more different types of land uses; for example residential, commercial and industrial.

MUTCD – (Manual on Uniform Traffic Control Devices) This federal publication established the methodology to study, design install and operate signs, signals and pavement markings on a uniform basis across the United States. While PennDOT regulations follow the MUTCD, there are differences and the traffic engineering community is cautioned to refer to PennDOT Publications. PennDOT publications take precedence where there are differences.

NEW DEVELOPMENT – any commercial, industrial, residential, or other project which involves new construction, enlargement, reconstruction, redevelopment, relocation, or structural alteration and which is expected to generate additional vehicular traffic.

OFF-SITE IMPROVEMENTS – those capital improvements which are not on-site improvements.

ON-SITE IMPROVEMENTS – all improvements constructed on the applicant's property, or the improvements constructed on the property abutting the applicant's property necessary for the ingress or egress to the applicant's property, and required to be constructed by the applicant pursuant to any municipal ordinance, including, but not limited to, the municipal building code, subdivision and land development ordinance, Planned Residential Development (PRD) regulations, and zoning ordinance.

PASS-BY TRIPS – trips that are attracted to a site from existing traffic passing the site on the adjacent street or roadway that provides direct access to the site.

PEAK-HOUR FACTOR (PHF) – is the ratio of the hourly volume to four times the peak 15-minutes volume.

RIGHT-OF-WAY (ROW) – an area of land that is used by the public for travel and for the location of utilities.

RURAL AREAS – are areas not included in an urbanized area, a transitioning urbanized area, an urban area or a community.

SIGNIFICANT DEGRADATION – is a degradation in level of service below LOS C in rural areas and LOS D in urban areas.

SUBURBAN AREAS – areas of low density and almost fully residential except for commercial that usually occurs at major intersections, schools, and other occasional isolated uses.

TRAFFIC VOLUME – is the number of vehicles passing a point on a highway during a specific time period.

TRANSPORTATION IMPACT ASSESSMENT – a limited analysis and evaluation of the impact of development of sites not warranting a Transportation Impact Study conducted under the supervision of a Pennsylvania Registered Professional Engineer. The purpose of the Transportation Impact Assessment is to conduct a limited evaluation to determine the key development impacts at a specific intersection(s) location.

TRANSPORTATION IMPACT STUDY – analyses of the impact of development conducted under the supervision of a Pennsylvania registered Professional Engineer to determine the full impact of proposed development on the transportation system.

TRIP – is a single or one way directional movement. Transportation engineers & planners refer to trips as “internal,” “external,” or “through.” Internal trips have both origin and destination within a particular projects area. External trips have only one end within the project area. Through trips neither originate or end within the analysis area, but pass through it.

TRIP DISTRIBUTION – is the arrival and departure patterns for trips to and from the site by geographic area.

TRIP END – is a term denoting the origin or the destination end of the trip in question.

TRIP GENERATION RATE – are average rates of vehicular travel to and from a development, usually cited per square foot, per housing units or per acre.

TRIP GENERATION – is the total number of vehicular trips going to and from a particular land use on a specific site during a specific time period.

URBAN AREAS – areas just outside of a Central Business District as indicated on PennDOT’s Type 10 maps.

ATTACHMENT B: SCOPING MEETING APPLICATION & AGENDA

Scoping Meeting Agenda

- 1) Background of Proposed Project
 - a) Location and Type of Project
 - b) Status in Land Development Process
 - c) Site Plan Discussion
 - i) Proposed site access
 - ii) Proposed land uses
 - iii) Community linkages (*access to neighboring properties, cross easements, pedestrian accommodations (sidewalks, crosswalks, etc.), bicycle and transit accommodations*)
 - iv) Adjacent properties
- 2) Review of Study Area (5-Mile Radius Map)
 - a) Land Use Context (Refer to PennDOT Design Manual, Part 2)
 - b) Known Congestion Areas and Safety Concerns
 - c) Known Historical or Environmental Constraints
 - d) Pedestrian/Bike Review: Community Centers, Parks, Schools, etc.
 - e) Transit Review (current routes/stops)
 - f) 102" wide combinations (w/ trailer lengths greater than 28') permitted on SR (Refer to 75 PA. C.S. §4908)
- 3) Existing Planning Information
 - a) Comprehensive Plans
 - b) Act 209 Plans
 - c) Access Management Ordinances/Plans
 - d) Zoning/Land Use in the Study Area
 - e) Known projects/developments with HOP approval or approved TIS
- 4) Study Area
 - a) Proposed Project Location/Best Access Plan
 - b) Proposed Study Roadways
 - i) Roadway Type (Present/Future)
 - ii) Location of Structures
 - iii) Current Speed, Desired Operating Speed
 - iv) Existing Right-Of-Way
 - c) Proposed Study Intersections
 - i) Type of Control (Stop/Signals)
 - ii) Coordinated Signals; Is expansion of study area required/needed?
- 5) Trip Generation
 - a) Methodology Used
 - b) Anticipated number of trips
 - c) Modal Split Reductions
- 6) Approval of Data Collection Elements and Methodologies to be used for evaluation
 - a) Turning Movement and 24-Hour Count Parameters
 - b) Balancing of Traffic Volumes / Seasonal Adjustment Factors
 - c) Gap, Queue Length, Turn Lane and Sight Distance Studies
 - d) Analysis Software
- 7) Approval of Analysis Years, Growth Rates
 - a) Opening Year and Design Horizon Year
- 8) Design Criteria
 - a) Lane/Roadway Widths, Design Speeds and LOS Criteria
- 9) Miscellaneous Department Discussions
 - a) Funding/Funded Projects
 - b) Right-of-Way, Utility and Drainage Impacts
 - c) Impacts to Access of Neighboring Owners
 - d) Recording of Permit
 - e) Condition Statements
 - f) Critical Milestones

**TRANSPORTATION IMPACT STUDY (TIS)
SCOPING MEETING APPLICATION**

Scoping Meeting Date: _____

Applicant: _____

Business Partner ID: _____

Applicant's Consultant: _____

Applicant's Primary Contact: _____

(Attach a list of meeting attendees along with phone numbers and email addresses)

(1) LOCATION OF PROPOSED DEVELOPMENT: (Attach location map if available)

PennDOT Engineering Dist.: _____ - _____ County: _____

Municipality: _____

State Route(s) (SR): _____

Segment(s): _____ Offset(s): _____

Are 102" wide combinations (w/ trailer lengths greater than 28') allowed access to SR

in accordance with 75 PA. C.S. §4908: _____

(2) DESCRIPTION OF PROPOSED DEVELOPMENT: (Attach site plan if available)

Proposed site access: _____

Proposed land uses: _____

Community linkages (*access to neighboring properties, cross easements, pedestrian and transit accommodations*): _____

(3) DEVELOPMENT SCHEDULE AND STAGING:

Anticipated Opening Date: _____

Full Buildout Date: _____

Describe Proposed Development Schedule/Staging:

- (4) TRIP GENERATION: (Use the most recent edition of "Institute of Transportation Engineers (ITE) *Trip Generation*," unless the Department approves another source. Non-ITE methods must be fully justified based on surveys of multiple sites of the same land use type and size.)

Trip generation for the proposed development will be based on:

___ ITE *Trip Generation Manual*.
(List proposed development land uses and associated ITE Land Use Codes)

___ Other independent surveys.
(Attach justification for non-ITE methods)

List land development and trip generation information, as appropriate. If necessary, attach additional sheets to indicate additional land uses or development phases.

Land Use	Size	Daily Trips	Peak Hour Trips	
			Inbound	Outbound
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				
Totals		0	0	0

(5) ESTIMATED DAILY TRIP GENERATION/DRIVEWAY CLASSIFICATION:

(a) Estimated Daily Trip Generation of Proposed Development -- Assuming One Access Point and Full Build out/Occupancy of Entire Tract: trips/day

(b) Driveway Classification Based on Trip Generation and One Access Point:

Medium Volume: _____

High Volume: _____

(6) TRANSPORTATION IMPACT STUDY REQUIRED?

___ No

___ Yes, based on: ___ 3,000 or more vehicle trips/day generated

___ During any one-hour time period, 100 or more new (added) vehicle trips generated entering or 100 or more new (added) vehicle trips generated exiting development

___ Other considerations as described below:

(7) TRANSPORTATION IMPACT ASSESSMENT REQUIRED? ___ No ___ Yes

(If a TIS is required, the following sections of this checklist will be discussed at the TIS Scoping Meeting. The applicant may provide preliminary information.)

(8) STUDY AREA: (Describe; attach map and/or diagram)

Roadway and Study Intersections

Land use context (Refer to PennDOT Design Manual, Part 1X, Appendix B)

Known Congestion Areas

Known Safety Concerns

Known Environmental Constraints

Pedestrian/Bike Review (Community Centers, Parks, Schools, etc.)

Transit Review (Current routes/stops)

(9) STUDY AREA TYPE: Urban _____ Rural _____

(10) TIS ANALYSIS PERIODS AND TIMES:

(List periods and times. Normal analysis periods are existing conditions, 5 years in the future without development, and 5 years in the future with development. Normal analysis times for each period are the AM peak hour, the PM peak hour, and the peak hour of site-generated traffic.)

(11) TRAFFIC ADJUSTMENT FACTORS:

(a) Seasonal Adjustment: (Identify counts requiring adjustment and methodology)

(b) Annual Base Traffic Growth: _____%/yr. Source: _____

(c) Pass-By Trips: (Attach justification where required)

<u>Land Use</u>	<u>%</u>	<u>Source</u>
-----------------	----------	---------------

(d) Captured Trips for Multi-Use Sites:

(List % and manner of application. Attach justification where required.)

(e) Modal Split Reductions

(f) Other Reductions

(12) OTHER PROJECTS WITHIN STUDY AREA TO BE ADDED TO BASE TRAFFIC:
(Identify proposed developments with issued permits that need to be included.)

(13) TRIP DISTRIBUTION AND ASSIGNMENT:
(Describe; explain/justify; attach diagram and related information.)

(14) Approval of Data Collection Elements and Methodologies :

<u>Location</u>	<u>Period</u>	<u>Type</u>
-----------------	---------------	-------------

(15) CAPACITY/LOS ANALYSIS:

<u>Location</u>	<u>Period</u>	<u>Type</u>
-----------------	---------------	-------------

(16) ROADWAY IMPROVEMENTS/MODIFICATIONS BY OTHERS TO BE INCLUDED:
(Projects programmed for construction or other developments with issued permits.)

(17) OTHER NEEDED ANALYSES:

- (a) Sight Distance Analysis:
(Required for all site access driveways; identify other locations)

- (b) Signal Warrant Analysis:
(Identify locations)

- (c) Required Signal Phasing/Timing Modifications:
(Determine for all signalized intersections; specify methodology.)

- (d) Traffic Signal Corridor/Network Analysis:
(Identify locations/methodology)

- (e) Analysis of the Need for Turning Lanes:
(Identify locations/methodology)

- (f) Turning Lane Lengths:
(Identify methodology to be used)

(g) Left Turn Signal Phasing Analysis:
(Identify locations/methodology)

(h) Queuing Analysis:
(Identify locations/methodology)

(i) Gap Studies:
(Identify locations/methodology)

(j) Crash Analysis:
(Identify locations)

(k) Weaving Analysis:
(Identify locations)

(l) Other Required Studies:
(Specify locations/methodology)

(18) ADDITIONAL COMMENTS OR RECOMMENDATIONS RELATIVE TO THE SCOPE OF THE TIS:

_____ Date: _____
Signature of Applicant's Engineer

_____ Date: _____
Signature of District Traffic PennDOT Representative

_____ Date: _____
Signature of District Permit PennDOT Representative (if present)

_____ Date: _____
Signature of Municipal Traffic Representative

ATTACHMENT C: SAMPLE TIS

Date: July 27, 2009 | Revised Date: August 31, 2009

XYZ DEVELOPMENT TRANSPORTATION IMPACT STUDY

SR 743, SR74 & the intersection of Minor Road & Main Street

Etters, York Township
York County, Pennsylvania

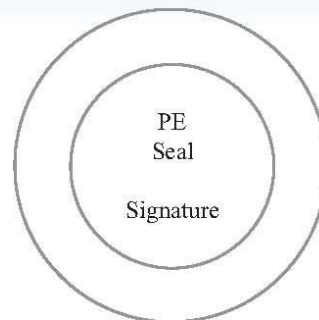


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Transportation Impact Study (TIS) Format Guidelines

The purpose of the TIS will be to demonstrate the overall impact of traffic generated by the proposed development on the transportation study area. The report structure should follow the Table of Contents provided in the Attachment. Following are elements that need to be addressed in each section of the report. These elements should be presented as discussed and agreed upon during the Scoping Meeting.

It should be noted that all Figures, concept plans, calculations, etc. are to be contained in the Appendix of the report, but should be discussed and referenced in the appropriate sections as shown.

Executive Summary

The executive summary should be 2 or 3 pages long and concisely cover the project description, impact of the proposed development, proposed methods of mitigation, design waivers requested, and financial responsibilities.

A final executive summary can be greater than 3 pages and include any and all memorandum of understandings, agreements including obligation dates, major milestones, and approved or denied design waivers. The final summary should list any and all traffic impacts identified and mitigation options.

Introduction/Project Summary

A brief, descriptive summary of the analysis undertaken in the study must be included; any assumptions used in the traffic analysis must be identified. The following items should also be addressed:

- Land Use Context (Existing/Proposed)
- Study Area, Transportation Facilities
- Figure 1: Study Area Map included in Appendix, and description of the study area and boundaries defined verbally.
- Figure 2: A site plan (1:50 scale minimum). Lot size, building size(s) and types (retail etc) and location shall be clearly defined on the map/plans.
- Discussion and/or illustration of the site layout identifying the internal traffic circulation patterns, location of existing and proposed access points. Pedestrian crossings or paths should be identified, as well as locations for drive thru facilities and fuel pumps. Project phasing (if applicable) and schedules should be provided identifying the anticipated opening date, anticipated completion years for each phase of development and the anticipated full build out completion date.

Data Collection

Raw data collected as part of the study in accordance with the scoping meeting shall be contained in Appendix, however a brief summary of the data collected as well as methodology used to obtain the data must be included in this section.

Existing Study Area Conditions

This section of the report should cover the existing traffic conditions, land use context, roadway type, traffic controls in the study area. The study area should also be described including the roadway network. Figures for existing traffic volumes (AM, PM, Site Peak/Saturday) as well as existing level of service (LOS) shall be referenced in this section and contained in the appendix.

Turning lane and queue analysis, crash analysis, gap analysis, and travel time studies should be included for discussion in this section as applicable.

Discussion of the need for sidewalks and crosswalk, and other pedestrian facilities shall be evaluated as part of the project. Evaluation of transit facilities, bus routes/service should also be included in this section.

Opening Year Traffic Conditions without Development

This section shall contain the traffic count data that has been projected to the opening year utilizing background growth factors, as well as appropriate background traffic from permitted developments.

Capacity analysis shall be conducted. Signalized intersections shall be optimized for corridor prioritization if signals are coordinated. Single intersections shall be optimized for the best overall intersection LOS.

Figures shall be included in the Appendix.

Design Horizon Year Traffic Conditions without Development

This section shall contain the traffic count data that has been projected to the design horizon year utilizing background growth factors, as well as appropriate background traffic from permitted developments.

Capacity analysis shall be conducted. Signalized intersections shall be optimized for either corridor prioritization if signals are coordinated. Single intersections shall be optimized for the best overall intersection LOS.

Committed transportation improvements in place prior to the opening year shall be described and included in the analysis.

Development Description

The description of the proposed development should be presented in this section. Information that should be discussed and included in the appendix should include but not be limited to:

-
- Proposed site access including distance from adjacent intersections and proposed control/movements. Discussion should be provided regarding how access relates to internal circulation and design.
 - Sight Distance Analysis (Intersection, Stopping Sight Distance and Existing/Measured Sight Distance)
 - Trip Generation (include any modal reductions)
 - Internal Capture Trips
 - Pass-By and Diverted Link Trips
 - Trip Distribution/Assignment. Methods of assumption shall be provided in this section, as well as back up information for verification of calculations.
 - If a post development study is necessary, it should be discussed here, including what financial security will be provided in the form and amount for the study and required mitigation.

Opening Year Traffic Conditions with Development

This section shall contain the opening year traffic volumes and capacity analysis discussion referring to the Figures contained in the Appendix.

As with the No Development Opening Year analysis, optimized signal timings should be utilized. Turning lane and queue analysis, gap analysis, travel time studies should be included in this section as applicable.

Signal warrant analysis, left turn signal phasing analysis, crash analysis, weaving analysis, or other applicable analyses should also be included in this section as applicable.

Design Horizon Year Traffic Conditions with Development

Design horizon year traffic volumes and capacity analysis shall be discussed in this section. Figures and worksheets shall be included in the Appendix as noted.

As with previous analyses, analyses should be performed assuming optimized signal timings. Turning lane and queue analysis should be discussed in this section. Auxiliary lanes and proposed lengths should be presented as appropriate. Alternative access locations should be discussed as appropriate.

Signal warrant analysis should be discussed in this section and included in the Appendix as noted.

Mitigation Identification and Recommendations

This section of the report should identify what mitigation measures are needed to meet LOS requirements and to address the traffic impacts of the project. A cost estimate and concept plan of the improvements necessary to mitigate the LOS drops is required to serve as baseline information. Final access design shall address both traffic flow and highway safety considerations, which should be discussed succinctly in this section.

A description of the proposed mitigations, arranged by location and type of mitigation should be included in this section. A cost estimate and concept plans of proposed mitigations shall be prepared and included in the Appendix. The proposed mitigations must be constructible improvements; if right-of-way is a concern, the ability to obtain the necessary right-of-way must be specifically identified. Analysis of Proposed Mitigations shall be discussed and capacity analyses included in the Appendix as noted.

If post development condition monitoring is requested by the Department it should be discussed in this section. Elements to include in the discussion include what analysis will be provided to substantiate recommended improvements, optimize signal timings, or to determine if a traffic signal is warranted. If improvements are necessary as a result of the intersection monitoring, the applicant, or his/her successor, shall be responsible for the full expense of designing and constructing the necessary improvements. The Department may require financial security, a condition statement with these terms specifying the duration of the monitoring, as well as the reason for or extent of the monitoring.

If an Alternative Transportation Plan (ATP) is proposed as mitigation, it should be provided as a separate document and referred to in this section. The Department will require concurrence from the municipality regarding the ATP which should be included in the final TIS correspondence section of the Appendix as well as the ATP, if approved by the Department.

If a Design (LOS) Waiver is pursued, it shall be submitted separate from the TIS and referred to in this section. If approved by the Department, the Design (LOS) Waiver request and approval shall be incorporated into the appendix of the final TIS document.

Conclusions

This section shall be a brief, concise description of the study findings, acceptable to the Department, and consistent with Publication 282. Proposed development plans shall include the recommended mitigation improvements to address future design year LOS and transportation network needs.

Appendices:

The appendices shall be clearly marked and tabbed appropriately.

Traffic Count Data:

Table 1: Levels of Service Summary

Table 2: Queue Length Summary

Existing Conditions:

Figure 1: Study Area

Figure 2: Site Plan

Figure 3: Existing Volume/LOS

Figure 3a: Existing Signal Plan (if applicable)

Figure 4: Trip Distribution Percentage and Volumes

Opening Year Conditions:

- Figure 5a: Opening Year Traffic Volumes without Development (AM, PM, Site Peak)
- Figure 5b: Opening Year Traffic Volume without Development & with Committed Development
- Figure 5c: Opening Year Traffic Volumes with Development
- Figure 5d: Opening Year Traffic Volumes with Development & Committed Development
- Figure 5e: Opening Year Levels of Service without Development
- Figure 5f: Opening Year Levels of Service without Development & with Committed Development
- Figure 5g: Opening Year Levels of Service with Development
- Figure 5h: Opening Year Levels of Service with Development & Committed Development
- Figure 5i: Opening Year Levels of Service with Development & Recommended Mitigation
- Figure 5j: Opening Year Levels of Service with Development, Committed Development, & Recommended Mitigation

Design Horizon Year Conditions:

- Figure 6a: Design Horizon Year Traffic Volumes without Development (AM, PM, Site Peak)
- Figure 6b: Design Horizon Year Traffic Volumes without Development & with Committed Development
- Figure 6c: Design Horizon Year Traffic Volumes with Development
- Figure 6d: Design Horizon Year Traffic Volumes with Development & Committed Development
- Figure 6e: Design Horizon Year Levels of Service without Development
- Figure 6f: Design Horizon Year Levels of Service without Development & with Committed Development
- Figure 6g: Design Horizon Year Levels of Service with Development
- Figure 6h: Design Horizon Year Levels of Service with Development & Committed Development
- Figure 6i: Design Horizon Year Levels of Service with Development & Recommended Mitigation
- Figure 6j: Design Horizon Year Levels of Service with Development, Committed Development & Recommended Mitigation

List of Committed Developments

Site Photographs

Existing Conditions (Sketches, Transit Data etc.)

Turning Movement Counts/24-Hour Volumes

Growth Rate Information

Seasonal Adjustment and Balancing Calculations

Intersection/Roadway Traffic Volume

Spreadsheets Trip Generation Worksheets

Capacity and Queue Analysis Worksheets

Crash Analysis

Gap Study

Traffic Signal Warrant Analysis

Turn Lane Analysis

Correspondence

Transportation Impact Study Scoping Meeting Application

Roadway Characteristics Checklist

Concept Plans and Cost Estimates

Alternative Transportation Plan (if applicable), bound separately

Approved Alternative Transportation Plan (If applicable)

Design (LOS) Waiver Request/Approval (if applicable)

ATTACHMENT D: GAP, QUEUE AND TRAVEL TIME STUDIES

Travel Time Studies

The Department may ask the applicant to conduct travel time and delay studies to determine the efficiency of travel along major corridors in the study area, and to identify problem locations. These studies should be discussed at the scoping meeting. If they are not initially warranted, they may be requested by the Department after review of the traffic analysis and proposed recommendations.

Queue Studies

At the scoping meeting, it is anticipated that those intersections requiring queue analysis will be identified. Queue Analysis shall be performed for each approach at each intersection and the information shall be provided in a tabular format.

The applicant shall refer to the Department's policy on queue length located in Publication 46, Chapter 11 – Turn Lane Guidelines. Use the 95th percentile queue when estimating required storage length from traffic engineering software packages, unless otherwise directed by the Department.

QUEUE LENGTH (ft) Road & Street

			2010 Signalized		2010 Signalized Improved		2030 Signalized		2030 Signalized Improved		Available Storage (ft)	Adequate Storage?
			AM	PM	AM	PM	AM	PM	AM	PM		
Road & Street	EB	L	261	477	261	556	477	970	318	873	N/A	Y
		T										
		R										
	WB	L	205	344	39	50	376	701	48	77	100	Y
		T			166	353			203	554	N/A	Y
		R										
	NB	T	27	42	27	50	50	85	33	77	N/A	Y
		R										
	SB	L	14	0	14	0	24	0	16	0	N/A	Y
		T										
		R										

Gap Studies (Critical Headway Studies)

Gap studies are useful in evaluating the capacity and level of service of unsignalized intersections, driveways, and unprotected left turns. Gap studies should be discussed at the scoping meeting. If not initially warranted, a gap study may be requested by the Department after review of the traffic analysis and proposed recommendations.

With the publication of HCM 2010, TRB has ceased the use of the term critical gap and instead is providing an equation for critical headway. Refer to HCM 2010 Equation 19-30 and Exhibit 19-10: Base Critical Headways and Follow-up Times for TWSC Intersections for more information.

Following is an example of a table that documents the number of available gaps during the AM peak hour:

Available Gaps				
	Existing Available Gaps During AM Peak Hour	Existing AM Peak Hour Volumes	2030 Estimated AM Peak Hour Volumes	Acceptable *
SR 56	628	140	203	Y
Margaret/Cherry Run Road	594	87	126	Y
Blanket Hill Road	486	21	30	Y
	Existing Available Gaps During PM Peak Hour	Existing PM Peak Hour Volumes	2030 Estimated PM Peak Hour Volumes	Acceptable *
SR 56	694	150	217	Y
Margaret/Cherry Run Road	764	62	90	Y
Blanket Hill Road	719	34	49	Y

* Per Highway Capacity Manual 2000

ATTACHMENT E: ALTERNATIVE TRANSPORTATION PLAN STRATEGIES

Alternative Transportation Plan Mitigation Strategies

As indicated in Step 11, Mitigation Analysis, it will not always be feasible or desirable to modify intersections to mitigate LOS drops. Such modifications could have excessive community or environmental impacts, or they might be less valuable to the community than other strategies which abet more comprehensive transportation improvements.

A variety of mitigation strategies are available for consideration in the development of an Alternative Transportation Plan, while some of the strategies may not mitigate LOS drops, they may still have significant value as congestion management strategies. Developer costs for funding these strategies should be similar to costs that would be assumed by the developer if they had funded physical improvements to roadways and intersections proximate to the development in order to achieve an acceptable LOS. All of the mitigation strategies should involve coordination with local officials, and receive approval by the municipal governing body. Following are examples of elements that can be incorporated in the alternative transportation plan.

Alternate Routes

As an alternative to adding capacity to existing intersections on major roads adjacent to the development, or as a supplement to such measures, the applicant should consider the option of improving the connectivity of the area roadway network. A well-connected roadway network can better serve the needs of area motorists, since it provides a greater choice of routes; and better serve pedestrians and bicyclists, by allowing them to travel on streets with lower traffic volumes.

Typically, this strategy would consist of altering the network such that area residents and workers can make better use of other arterial and collector roadways parallel to the major roadways. The Department will consider this mitigation strategy even if it is physically feasible to add capacity on the state highways adjacent to the development. One consideration will be whether the proposed improvement on the state highway would result in a roadway design out of character with other intersections or segments along the roadway.

It should be possible in many cases to estimate the traffic volumes that will be diverted to other intersections, thus reducing volumes at intersections on the major roadway. An analysis will reveal whether this strategy would permit the study area intersections to achieve desirable levels of service; even if these levels are not achieved, because of the benefits of a well-connected network, the Department will still consider this as a possible strategy.

In some cases, installation of a signal at existing unsignalized intersections proximate to the subject property, and providing access to the development, will permit the applicant to avoid constructing a new signalized driveway.

Coordination with local officials will be particularly important for this mitigation strategy. Any proposal for improving the roadway network should avoid significant diversion of traffic to

local roads. The municipal transportation plan or official map should be consulted to determine if desired new roadway links in the area of the development are identified.

Access Management Plans

An Access Management Plan will recommend comprehensive strategies for controlling access points along arterial roadways within the study area, by identifying opportunities for closing, combining or moving existing driveways, and by identifying optimal locations for future driveways and opportunities for frontage and mutual access roads on undeveloped properties.

Access management is a tool to improve vehicular flow and safety for motorist, pedestrians and bicycles through improved control of the location, spacing, design and operation of driveways along a roadway. Preparing and implementing recommendations for improving access management along arterial roadways in the study area, along and proximate to the subject property, is thus a possible mitigation strategy. This strategy should be primarily considered for existing or planned commercial corridors. As part of this strategy, the applicant should coordinate with adjacent landowners and identify the potential for eliminating and/or combining access points, thus reducing the overall number of driveways along the major roadways, and removing them from the influence area of roadway intersections. Ideally, the municipality would pass an ordinance incorporating access management strategies such as minimum driveway spacing, and investigation of shared driveways.

Applicants are encouraged to refer to information from the Department on [Access Management Ordinances](#).

Multi-Modal Plan

A Multi-modal Plan will recommend new facilities, programs, and other strategies for accommodating and encouraging pedestrians, bicyclists and transit users. This should not be limited to the study area, but should prioritize facilities wherever needed in the municipality, and comprehensive strategies for alternative modes.

Pedestrian Facilities

The need for sidewalks and crosswalks, pedestrian signs and signals, and other pedestrian facilities shall be evaluated as part of all development projects. The need for sidewalks is assumed for all projects within urban contexts; the need for sidewalks is assumed as part of any projects within suburban or rural contexts that would generate regular pedestrian activity. In very low-density areas, where the number of existing pedestrians, and pedestrians projected based upon planned development is less than five per day, pedestrians can be accommodated through other means, such as shoulders.

As a mitigation strategy, in addition to installing sidewalks on the subject property, consideration can be given to the installation of sidewalks along other roadway segments in the study area. The applicant should identify key “missing links” along the roadways adjacent to the development, and along other arterial and collector roadways. Provision of

an easement to permit installation of a sidewalk not along a public roadway, enabling pedestrian access between key roads, should also be considered. The focus should be on improving the connections between medium- to high-pedestrian generators, thus enhancing pedestrian mobility throughout the larger area. The municipal transportation plan or other pedestrian plans should also be consulted.

The applicant should evaluate the need for other pedestrian facilities at intersections and mid-block crossings in the study area, including pedestrian signals, signs and crosswalks. As mentioned in Step 1, applicants must adhere to a core principle of ADA: If pedestrian facilities are provided, they must be accessible to persons with disabilities.

Transit Facilities

The applicant shall evaluate and discuss the potential for increased demand for bus use due to the proposal, addressing whether such increases will increase the number of stops, dwell time, or the frequency of service for existing bus routes in the study area. The applicant shall also evaluate the need for new bus routes. As a mitigation strategy, the applicant could provide funding for planning new transit routes or modification to existing routes, and for the operating costs of such service for the first one to two years of operation.

Improvements to the safety and security of transit stops and low cost design elements, such as transit shelters and sidewalks in proximity to transit stops, should also be considered.

There are a number of transit agencies in Pennsylvania, and initiatives exist to encourage transit oriented development. Applicants are encouraged to visit the [Pennsylvania Public Transit Association](#) website and the [Department page](#) on public transit by county.

Bicycle Facilities

The applicant should evaluate the need for bicycle facilities on the subject property, whether a bike lane, bicycle-compatible shoulder, or multi-use path. On-road bicycle facilities are of greater priority on arterial and collector roadways. Off-road paths provide the greatest benefit in fairly limited situations – for example, as part of linear recreational or natural areas. This evaluation should consider the opportunity to connect to other bicycle facilities in the study area, and whether there is a comprehensive plan prepared for the municipality, county or regional planning office identifying desirable bicycle facilities within the region. Installed in isolation, bicycle facilities may have minimal value, and the benefit of this mitigation strategy should be viewed accordingly. The applicant may also agree to install bike racks or other bike parking facilities at high bicycle generators in the community, such as parks, schools, and retail centers.

Park and Ride

Park-and-ride lots have great value in reducing the number of vehicular trips on roadways heading into a regional employment destination. For this mitigation strategy, the applicant may provide park-and-ride parking spaces on the subject property, such as by designating such spaces in a retail center parking lot; provide these parking spaces on other properties controlled by the applicant in the region; or rent spaces on other properties within the region.

The park-and-ride lot provided by the applicant does not need to be in the study area, but should be positioned convenient to regional arterial roadways or transit lines, and be located between the study area and regional employment destination, to better capture motorists from this commuter shed.

Intelligent Transportation Systems

A number of ITS strategies may be funded by the applicant to help offset the traffic impacts of the subject property. Along higher order roadways on which closely spaced traffic signals are not coordinated, the applicant could fund the physical interconnection of signals in order to create a coordinated traffic signal system. The applicant should evaluate different signal phasing plans, and recommend the most efficient plan for the study area corridor. Another option would be the installation of Variable Message Signs (VMS) along regional arterial roadways within five miles of the development, focusing on roadways leading to regional employment centers, in order to better inform motorists of travel conditions on those roadways. In conjunction with VMS, or as a separate strategy, the applicant may fund the installation of traffic cameras along regional arterial roadways, in order to monitor traffic flow and incidents on these roadways.

Traffic Signal Assets Management Plan

A Traffic Signal Assets Management Plan will provide recommendations on signal timing for all intersections within an agreed upon area in order to optimize traffic flow, and detail a strategy for periodic re-evaluation and re-timing of signals in the future. It will also offer recommendations on a preventive maintenance program that can be adopted by the host municipality and set the funding responsibility by the Applicant.

Sample Alternative Transportation Plan

The alternative transportation plan shall be a bound document submitted to the Department separate of the TIS document. If approved by the Department, the ATP shall be included in the final TIS submitted to the Department. The ATP shall contain the following information:

- 1) Proposed project overview
 - a. Provide a map that encompasses the proposed development site as well as the impacted area.
 - b. Provide the development description.
 - i. Type of Land use, Size, Trip Generation.
 - ii. Trip assignment figure.
 - iii. Total traffic volume assignment figure.
 - iv. Additional information as needed to describe the extent of the development.

- 2) LOS Table highlighting the specific impacts.

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- 3) Picture(s) of intersection(s) impacted.
 - 4) Construction cost estimate for highway improvements, including, but not limited to, R/W and utility costs, which will fully mitigate impacts.
 - 5) Conceptual plans at a reasonable scale that depicts the highway improvements which will fully mitigate impacts.
 - 6) Conceptual plans at a reasonable scale that depicts highway improvements the applicant intends to implement which will partially but not completely mitigate impacts (as applicable).
 - 7) Detailed justification as to why all or a portion of the highway improvements are not feasible.
 - 8) Detailed justifications as to why foregoing the particular highway improvements will jeopardize neither public safety nor the highway/bridge infrastructure.
 - 9) Proposed ATP
 - a. Description of the ATP.
 - b. Description how the ATP addresses mitigation (Is it reasonable?).
 - c. Explanation/documentation of how the ATP will be legally enforced.
 - d. Cost estimate to implement the ATP.
 - e. ATP implementation schedule.
 - f. Evidence that all key stakeholders concur.
 - 10) Signature Lines for District Executive and Central Permit Office Approval

**ATTACHMENT F: TRANSPORTATION IMPACT STUDY (TIS) / TRANSPORTATION
IMPACT ASSESSMENT (TIA) REVIEW CHECKLIST**

TIS / TIA Review Checklist

General

- Study signed and sealed by PA P.E.
- Scoping meeting application completed, signed, and attached
- Meeting minutes for all previous correspondence with the Department
- Municipal review/approval of TIS/TIS
- Review/approval of TIS/TIA from adjacent municipality required/provided
- FHWA review required/provided for interstate projects
- Report contains a cover page, table of contents, and body
- Report contains all applicable sections
- Report appendices marked and tabbed
- Central Office and/or FHWA approval required/provided for median break/POA studies
- Municipal and Central Office approval of ATP
- Municipal Waste Facilities adhere to Pub. 46, Ch. 11 guidance and criteria

Executive Summary/Recommendations

- Project description
- Impacts of proposed development
- Proposed methods of mitigation
- Design waivers requested
- Parties responsible for improvements identified
- Details on the location, nature and extent of the proposed improvements
- Turn lane storage lengths, shifting taper lengths, and bay taper lengths identified
- All improvements to be ADA-compliant noted
- Driveway classification identified for each driveway serving the development
- Studies / construction projects which may affect the design are identified, if applicable

Introduction/Project Summary

- Description of analysis and assumptions
- Legible study area map
- Description of study area (indicate roadway intersections) and boundaries
- Legible site plan (1:50 scale min.) with lot size, building size(s) and types provided
- Discussion and/or illustration of the site layout
- Site plan reflects all the latest findings of the study
- Description of project phasing

Data Collection

- Data collection methodology described
- Data collection consistent with Pub. 46, Ch. 10 parameters
- Raw count data provided in Appendix
- Count data less than 3 years old
- Recent construction project that may have impacted count data
- Counts conducted on an avg. weekday, on a non-holiday week, while school was in session
- RTOR volumes included in right-turn volumes
- Additional peak hour counts (AM, Midday, PM, Sat, Sun) required
- 24-hour ATR counts include volume, class, and speed
- Counts include heavy vehicles, pedestrians, bicycles and transit vehicles (if present)

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- Counts include walking school children and school bus stops where applicable
 - Peak hour factors calculated consistent with Pub. 46, Ch. 10
 - Volume balancing necessary
 - Pedestrian activity/accommodations recorded and reflected in the study
 - Midblock pedestrian crossing data required/provided
 - Bicyclists riding on sidewalk documented/addressed
 - Inventory of roadway data (signal permits, sketches, or table)
 - Land use contexts documented
 - Sight distance – calculations / tabular summary / narrative
 - Sight distance – Safe sight distance criteria met
 - Sight distance – For safe sight distance, posted speeds used unless operating speeds vary by > 10 MPH
 - Sight distance – PennDOT Form M-950 S
 - Sight distance – Improvements necessary to achieve acceptable sight distance
 - Photos – at all study intersections (including proposed driveways)
 - Photos – include 2 views of each approach (50-foot and 200-foot)
 - Crash data – extracts provided separately for most recent 5 years / excluded from report
 - Crash data – analysis provided in separately bound Appendix / excluded from report
 - Crash data – proper confidentiality statement included on crash data
 - Crash data – non-reportable data required/provided per scoping meeting
 - Crash data – crash trend mitigation needed/provided
 - Bicycle and Pedestrian Checklist (Publication 10X, Design Manual Part 1X) provided
 - Impacts to ped/bike facilities noted
 - Existing transit facilities identified (bus routes within 1/4 mile and rail centers within 1/2 mile)
 - Description of proposed pedestrian, bicycle, and transit accommodations

Existing Conditions Scenario

- Study area/roadway network described
- Functional classifications/roadway types documented
- Rural/urban setting justified
- 102" wide combinations (w/trailer lengths greater than 28') restrictions identified (refer to Title 75 PA. C.S. §4908)
- Existing conditions documented
- Multimodal transportation discussion
- ADA compliance discussion
- Permits plans included in Appendix
- Capacity analyses software/version indicated
- Latest version of capacity analyses software used
- HCM reports provided
- Synchro Lane, Volume, and Timings reports provided
- Multi-period analysis used at signalized intersections in accordance with Pub. 46, Ch. 10 and HCM 2010 where high v/c ratio exists
- If simulation software is used, 10 min. seeding and 60 min. durations are used / results based on 5-10 runs
- Traffic volumes consistent between the count data, tables, figures, spreadsheets, and analyses
- System peak hour required per scoping meeting
- Peak hour factors used in analyses match count data

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- HV percentages used in analyses match count data
 - Lane configurations, widths and grades match field data/signal permit
 - Capacity analyses inputs match signal permits
 - C-Max recall mode used for coordinated phases unless noted otherwise on signal permit
 - Calibration parameters consistent with Pub 46, Ch. 10
 - Base saturation flow rate consistent with Pub 46, Ch. 10
 - Travel time study needed
 - Gap study needed

Background Traffic

- Correct growth factor used and compounded correctly
- Planned and permitted development traffic included
- Study indicates if planned developments are consistent with formal land use plans
- Improvements proposed as part of planned/permitted development documented
- Background traffic growth documented in Appendix

Trip Generation

- Approval of land use codes and methodology obtained
- Latest edition of ITE *Trip Generation Manual* used
- Regression equation or average rate used correctly
- More conservative methodology used, where appropriate and in conjunction with engineering judgment
- Land use consistent with land use code
- Local rate needed
- Local trip generation data approved by District and Central Office
- Pass-by / diverted link trips estimated according to ITE *Trip Generation Handbook*
- Internal trips estimated according to ITE *Trip Generation Handbook*
- Internal capture rates other than ITE rates justified
- Trip credits consistent with scoping meeting documentation
- For trip credits, documentation shows existing land use was open during counts

Modal Splits

- Modal split reductions are in accordance with Step 6 of *Policies and Procedures for TIS's* and ITE's *Trip Generation Handbook*

Trip Distribution

- Based on gravity model / existing volume distributions
- Engineering justification provided
- Supporting assumptions and calculations provided
- Figures provided

Traffic Assignment

- Brief description of the proposed project / permissible movements / distance to int.
- Based on travel time (quickest route)
- For multiple driveways, assignment methodology is clearly explained and considers travel time, most logical path, location of development features such as parking, etc.
- Figures for percentages and volumes provided
- Volumes match trip generation

Future Analysis

- Volume development spreadsheet provided
- Figures provided
- Capacity analyses inputs consistent with existing conditions
- Opening year analysis provided (TIS and TIA)
- Design Horizon year analysis provided (TIS only or as discussed at scoping meeting)
- With dev. analysis provided for 2 scenarios (no improvements and with improvements)
- Analysis for 5 years after phase opening provided for phased developments
- Without Dev. volumes = exist. volumes + annual growth + permitted or planned projects
- With Development volumes = Without Development volumes + proposed site volumes
- Volumes consistent between analyses, volume development spreadsheets, and figures
- Committed transportation improvements described/included
- Signal timings optimized for Without Development and With Development in Opening and Design

Horizon year analyses

- Lead/lag phasing not optimized
- PHF of 0.90 used for proposed driveway movements
- Heavy vehicle % for proposed driveway movements based on ITE *Trip Generation Manual* data, if available. Otherwise 2% is used.
- Left turn signal phasing calculations required/provided
- Proposed signal timings within Min/Max range shown on existing permit; copy of plan included
- Opening year signal timings are realistic
- Cycle lengths consistent with corridor for coordinated systems
- Signal timing changes required/included in recommendations
- Queue analysis – provided for all movements (Synchro and HCM methodologies)
- Queue analysis – lengths match analysis
- Queue analysis – With Dev. queues < Without Dev. queues or storage length
- Queue analysis – Analysis in electronic format needed for further review
- Queue analysis – Study addresses $V/C > 1$ and theoretically infinite queues
- Queue analysis – Distances to adjacent intersections provided in queue table
- Turn lane warrant/length analysis – provided
- Turn lane warrant/length analysis – consistent with Pub. 46, Ch. 11
- Turn lane warrant/length analysis – correct traffic volumes/percentages used
- Turn lane warrant/length analysis – correct type of terrain used
- Turn lane warrant/length analysis – correct speed used
- Turn lane warrant/length analysis – cycle length matches capacity analysis
- Turn lane warrant/length analysis – storage lengths rounded to the next highest 25-foot increment
- Turn lane warrant/length analysis – provided for proposed off-site turn lanes
- Turn lane warrant/length analysis – included in recommendations / lengths match analysis

Level of Service Requirements

- LOS/delay presented
- Mitigation provided at int.'s with overall int. LOS drop and increase in delay >10 s
- Mitigation improves int. LOS to original Without Development int. LOS
- Mitigation provided at int.'s with overall int. LOS F and increase in delay >10 s
- If LOS F, mitigation improves int. delay to original Without Development int. delay
- Mitigation provided to address critical lanes or approaches

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- MOE's at unsignalized int.'s presented
 - Toolbox for unsignalized intersection evaluation used for lane movement LOS drop
 - New signals – acceptable LOS (LOS C in rural areas/LOS D in urban areas)
 - Other mitigation explored for LOS drops at int. not meeting warrants for a traffic signal or roundabout
 - Municipal input provided seeking Department approval for an unsignalized int. Design (LOS) Waiver.
 - New int. – acceptable LOS (LOS C in rural areas/LOS D in urban areas)
 - New int. provides best access plan
 - New int. – municipal input provided if LOS E
 - Number of driveways acceptable
 - Proposed driveway aligns w/ driveways/road/lanes across highway
 - Proposed driveway located as far as possible from signalized intersection
 - LOS/delay results from analyses match figures and tables
 - Correct lane configurations shown in figures/tables

Mitigation Analysis

- Analysis provided
- Description of proposed mitigations provided
- Concept plans at 1:50 scale provided; proposed improvements dimensioned
- Design (lane/shoulder widths, tapers, etc.) shown on concept plans consistent with design criteria
- Cost estimates provided for proposed improvements
- Right-of-way issues identified
- Impractical/infeasible improvements – reasons documented
- Impractical/infeasible improvements – Local Land Use Transportation Plan for marginal LOS degradation
- Impractical/infeasible improvements – ATP for significant LOS degradation
- LOS waiver if Local Land Use Transportation Plan or ATP are unachievable
- Alternatives other than signals evaluated for new/reconstructed int.'s
- Signal warrant analysis – needed/provided
- Signal warrant analysis – all applicable MUTCD warrants evaluated
- Signal warrant analysis – warrants other than peak hour warrant met
- Signal warrant analysis – Central Office approval provided if only peak hour warrant is met
- Signal warrant analysis – ADT volume warrant analysis required/provided
- Signal warrant analysis – separate analysis provided if not met in Opening year
- Signal warrant analysis – correct number of lanes and volumes used
- Signal warrant analysis – correct graphs and volume thresholds used
- Signal warrant analysis – reduction in minor-street right-turning traffic required/applied
- Signal warrant analysis – acceptable method used to project new trips for off-peak hours
- Signal monitoring agreement with municipality needed/provided
- Underground conduit needed for future signal installation
- Roundabout analysis provided
- Study addresses impacts to coordinated system caused by signal retiming at one of the int.
- Longer cycle lengths required to help alleviate over-capacity conditions
- Traffic signal timed to balance capacity / additional capacity is provided to state road
- Type of proposed coordinated system identified
- Fair share contributions not acceptable

ATTACHMENT G: CONVENIENCE MARKET WITH GASOLINE PUMPS

The following guidance should be followed when completing studies for convenience markets with gasoline pumps:

Trip Generation

- 1) Weekday: Using the Gasoline/Service Station with Convenience Market land use (ITE *Trip Generation Manual* Land Use Code 945) data, calculate the number of trips utilizing the independent variable of Vehicle Fueling Positions.
- 2) Weekday Peak Hour of Adjacent Street Traffic One Hour Between 7 and 9 A.M., Weekday Peak Hour of Adjacent Street Traffic One Hour Between 4 and 6 P.M., and Saturday Peak Hour of Generator: Using the Convenience Market with Gasoline Pumps land use (ITE *Trip Generation Manual* Land Use Code 853) data, calculate the number of trips utilizing the independent variable of 1000 Square Feet Gross Floor Area and the independent variable of Vehicle Fueling Positions and use the more conservative trip generation methodology in the study.
- 3) Existing Facilities: For existing facilities that are being rebuilt or being relocated within the same municipality, traffic counts shall be completed at the existing site driveways and local trip generation rates established for each analysis period. The engineer should then determine whether the local trip generation rates or the ITE rates should be used based on the proposed location, size and adjacent traffic conditions.
- 4) Local trip generation: Although a proposed development might correspond to the ITE land use code with adequate data points, the applicant may request or the Department may require the use of data collected at comparable sites if there is reason to believe that site trip generation will vary from ITE rates.

Pass-by Trips

- 1) Weekday A.M. Peak Period and Weekday P.M. Peak Period: Use the average pass-by trip percentage for the Convenience Market with Gasoline Pumps land use (ITE *Trip Generation Manual* Land Use Code 853).
- 2) Saturday Midday Peak Period: Use ten percent less than the Weekday P.M. Peak Period average pass-by trip percentage for the Convenience Market with Gasoline Pumps land use (ITE *Trip Generation Manual* Land Use Code 853).
- 3) According to ITE's *Transportation Impact Analyses for Site Development*, adjustments should be made to the number of pass-by trips if the results do not appear to be logical or reasonable given the characteristics of the road system and trip distribution. For example, ITE's *Transportation Impact Analyses for Site Development* states that pass-by trips diverted from a thoroughfare should be rechecked if they represent more than 15 percent of the traffic volume on that street.

Driveway Design

The study should identify the driveway classification (low volume, medium volume, or high volume), as defined in PA Code Title 67, Chapter 441.1, for each driveway serving the proposed development. If the design standards provided in PA Code Title 67, Chapter 441.9 for the driveway classification cannot be met (i.e., driveway throat length), justification must be provided. Queue analyses should be completed for the driveway egress to justify driveway throat lengths that are less than those shown in the standards. The site should also be designed to ensure that site traffic circulation (e.g. the location of the gasoline pumps and parking spaces) will not negatively impact the driveway operation. For sites being designed to accommodate trucks, the location of on-site trucking facilities and the impact on site circulation and driveway operation should also be considered.

Access Management

The study should evaluate the need to restrict turning movements at the proposed driveway(s). If a driveway is proposed within the functional area or corner clearance of an intersection as described in TRB's *Access Management Manual*, consideration to restrict turning movements should be analyzed based on but not limited to the site design, the adjacent street lane configurations, traffic volumes, traffic speeds, type of highway being accessed, and alternative access points. Additional restrictions may also be required such as the complete elimination of the proposed access.

APPENDIX "B" SERIES – DRAINAGE GUIDES

APPENDIX B1 – GUIDELINES FOR PREPARATION OF A DRAINAGE IMPACT REPORT
APPENDIX B2 – HOP STORM WATER FACILITY GUIDEBOOK

APPENDIX B1 – GUIDELINES FOR PREPARATION OF A DRAINAGE IMPACT REPORT

When is a Drainage Impact Report required?

- (a) A drainage impact report may be required for properties served by other than minimum use driveways.
- (b) If the Applicant or PennDOT determines that there may be an increase in the flow rate or flow velocity of water onto the highway or into highway drainage facilities as a result of action authorized by the permit, or that there may be an increase in the flow rate or flow velocity of water onto adjacent properties as a result of action authorized by the permit, a drainage impact report shall be submitted with the application.

Preparation of a Drainage Impact Report

- (a) General. When a drainage impact report is required, the Applicant is responsible for assessing the overall effect of drainage flow rate and flow velocity associated with the proposed development.
 - (1) The Applicant is responsible for data collection efforts.
 - (2) The report shall be conducted under the supervision of a person who possesses a professional engineer's license issued by the Pennsylvania State Registration Board for Professional Engineers, who shall affix a seal to the report, or may be conducted by other persons authorized by law.
 - (3) Upon receipt of a completed report, PennDOT will review the Applicant's assessment on whether drainage system enhancements are needed to mitigate drainage impacts.
- (b) Drainage impact report contents. The drainage impact report shall contain the following:
 - (1) Cover sheet and plans. The drainage impact report shall include a cover sheet and plans stating the name and principle address of the property owner, the type and purpose of the development and other pertinent information. Plans shall include the plan scale, the plan contour interval, the source of the information, and the date of information.
 - (2) Contour plans. The drainage impact report shall include contour plans identifying the total drainage area in which the development is located, with both the drainage area and development labeled and outlined. If requested by PennDOT, the drainage impact report shall also include a United States Geological Survey map showing the drainage area affected by the development.
 - (3) Highway plans. The drainage impact report shall include a field verified location map and highway plans identifying the drainage system into which the drainage area containing the development will drain.
 - (4) Existing conditions. The drainage impact report shall include a plan identifying the land use for the drainage area before development, showing where existing drainage currently flows including surface and subsurface drainage systems with contributing areas clearly outlined and identified.
 - (i) The plan shall identify elevations with two-foot interval contours within the proposed development area of the site.
 - (ii) The plan shall identify relevant existing features and their locations including pavements, medians, structures, highway appurtenances, bridge locations and elevations, flow line

- (iii) inverts, guide points, gradients, utilities, right-of-way lines, property lines and buildings.
 - (iv) The drainage impact report shall include aerial or other photographs if requested by PennDOT.
- (5) Future conditions. The drainage impact report shall include a plan identifying the site drainage area after each development phase, and shall identify existing structures and features which will remain after each development phase.
- (i) The plan shall identify where the proposed structures and features will be located, including proposed surface and subsurface drainage systems.
 - (ii) The plan shall identify elevations with two-foot interval contours within the proposed development area of the site and shall outline and identify contributing areas.
- (6) Hydraulic computations. The drainage impact report shall include hydraulic computations identifying the effects of additional drainage flow rate and flow velocity on both the highway drainage within the right-of-way affected by the development and the drainage outside the right-of-way that is affected by the development.
- (i) The computations shall identify both pre-development and post-development conditions and shall specify the change in runoff.
 - (ii) The computations shall identify whether the available capacity of the highway drainage system will be adequate as a result of the development and whether there will be an increase in the flow rate or flow velocity from the developed property after the installation of proposed storm water detention systems.
 - (iii) The hydraulic computations relating to the highway drainage and any concentrated flows within the right-of-way shall be developed consistent with the procedures and criteria in Design Manual, Part 2, and pertinent policy directives.
 - (iv) The hydraulic computations relating to the drainage outside the right-of-way shall be developed in accordance with procedures and criteria acceptable to the Commonwealth or governmental bodies.
- (7) Recommended remedies. If the analysis indicates that the available capacity of the highway drainage system will not be adequate due to an increase in the flow rate or flow velocity, or that there will be an increase in the flow rate or flow velocity from the developed property, the drainage impact report shall include a description of proposed actions which will remedy the identified deficiencies, including hydraulic computations, arranged by location and type of remedy. The remedies may not include projects programmed by the Commonwealth or other governmental bodies.
- (8) Storm Water Management Act. If the proposed development is located within an area which has an approved watershed storm water management plan and ordinances pursuant to the Commonwealth's Storm Water Management Act (32 P.S. § 680.1--680.17), the drainage impact report shall demonstrate that proposed post-development conditions are consistent with the standards of the individual watershed storm water management plan and shall include a consistency letter from the affected municipality.
- (9) Summary. The drainage impact report shall include a clear, concise description of the report findings, and shall include recommended remedies designed to ensure that post-development flow meets the requirements and standards of PennDOT.

APPENDIX B2 – HOP STORM WATER FACILITY GUIDEBOOK

The following pages are considered a standalone document for the development of storm water facilities, but are implemented as part of this policy by incorporation into the Appendices.



APPENDIX B2

HIGHWAY OCCUPANCY PERMIT

STORM WATER FACILITY

GUIDEBOOK



**Pennsylvania Department
of Transportation
July 2017**

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- ATTACHMENT B** FIGURE 1 – ESCROW EXAMPLE WORKSHEET
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The Storm Water Facility Guidebook provides guidance on who should be the applicant for storm water installation as part of Highway Occupancy Permit work, alternatives to including the local government as an applicant, and how to prepare an agreement between developer and local government should the local government be an applicant.

Why is this guidebook needed?

This guidebook has been prepared to assist designers, local governments, and landowners with projects that require installation of storm water facilities and/or modifications to existing storm water facilities during the Highway Occupancy Permit (HOP) process. A policy addressing such facilities was issued on June 24, 2010, by Strike-Off-Letter (SOL) 470-10-03 (HOP policy). The HOP policy discusses storm water facility maintenance responsibilities.

In some instances, the law requires that the local government in which an HOP project is located must be the permittee or co-permittee with the landowner for enclosed surface storm water facilities. The HOP policy provides an avenue to local governments for landowners to fund future maintenance. This guidebook explains the five categories of HOP-installed or modified facilities and which categories require the local government to be a co-permittee.

This guidebook also provides possible alternative storm water designs for landowners and local governments to consider when designing an HOP project to create situations where the local government will not need to be a co-permittee. For those local governments that agree to take on maintenance responsibilities, the HOP policy provides that the landowner is responsible for providing funding to the local government to offset future maintenance costs. In the alternative, a local government may consider requesting security for future costs as part of land development review.

Why is Storm Water Maintenance important?

In previous presentations and policy on the subject matter, “open surface storm water facilities” were referred to as “surface storm water facilities”, and “enclosed surface storm water facilities” was referred to as “subsurface storm water facilities.” Moving forward, to be consistent with the Department’s Maintenance Manual, Publication 23, the Department will use the terms “open surface storm water facilities” and “enclosed surface storm water facilities.”

Identifying storm water maintenance responsibilities is of high importance for every HOP project. The maintenance of storm water facilities is required to achieve the full expected life from facilities and to protect the travelling public from hazards related to ill-performing storm water systems. A functioning storm water infrastructure is critical to support the movement of goods, people, and services on State highways.

The HOP policy is beneficial to all parties, including the state tax payer. It provides an opportunity to have landowners, who are altering land for their purposes, fund maintenance of enclosed surface storm water facilities (as opposed to PennDOT or local governments). Additionally, the policy allows all involved parties an opportunity to provide input towards the ultimate design solution.

Purpose

Who is responsible for Storm Water Maintenance?

The permittee is responsible for maintenance of storm water facilities under an HOP. The term maintenance includes routine maintenance as well as repair, replacement, and reconstruction when necessary.

Quick Definition Reference:

“Local governments”: townships, cities, boroughs, incorporated towns, home rule municipalities, and counties

“Open surface storm water facilities”: Ditches, swales, gutters, roadway crowns, shoulders, and curbs.

“Enclosed surface storm water facilities”: Storm water cross pipes/culverts and parallel pipes/culverts including any attached inlets, headwalls, and end walls.

Section 421 of State Highway Law, 36 P.S. § 670-421, states:

“It is unlawful for any person to discharge sewage or drainage, except surface drainage, on, or within the legal limits of, any State highway.”

State Highway Law & the HOP Policy

Ideally, every new development should retain site development storm water runoff on their property; however, this is not always practical or possible. PennDOT has historically interpreted the surface water drainage allowed under Section 421 of the State Highway Law [see sidebar] to be surface/sheet flow only; concentrating water and directing it into a State highway is not surface drainage and thus not allowed, even by HOP, except in limited circumstances. PennDOT has long recognized an exception to Section 421 for surface storm water facilities draining a proposed driveway because landowners abutting non-limited access highways have a constitutional right of access that may be impeded if drainage at a driveway could not flow onto the highway (Category #1).

For purposes of drainage in connection with driveways and local roads, PennDOT now considers open surface storm water facilities, whether connected to a highway storm water facility or not, as surface drainage under Section 421 and therefore permissible by HOP. This allows applicants other than a local government to be the sole permittee for such open surface facilities (Category #2). PennDOT also now recognizes an exception to Section 421 for local governments due to their public nature, their historic and statutory responsibility for storm water management within their geographic boundaries, and their review and approval of land development plans. These reviews and approvals frequently include storm water management. This allows permits to be issued to local governments for enclosed storm water facilities connected to highway storm water facilities (Category #3) and enclosed storm water facilities draining the highway and/or adjacent properties (Category #4).

PennDOT has the discretion to deny an application to permit modifications to an existing highway storm water system to accommodate an abutting landowner, except as necessary to accommodate the constitutional right of access. PennDOT is only obligated to accept surface/sheet flow under the common enemy rule applicable in Pennsylvania; it is not obligated to accept water that has been collected and channeled for general land development purposes. PennDOT may do so by HOP, however, within its discretion for economy of maintenance as well as supporting land development.

Local governments should consider entering into agreements with the landowners developing their land to address future maintenance of storm water facilities. A sample agreement outlining responsibility for maintenance as well as funding and security in that regard can be found by following the link on Page 15 of this guidebook.

Policy References

The policy is consistent with the State Highway Law, PA Code, Title 67, Chapters 441 & 459 and PennDOT’s general maintenance policy. The design of storm water facilities should be completed in accordance with the following publications:

- [PennDOT Publication 584- Drainage Manual](#)
- [PennDOT Publication 408- Highway Construction Specifications](#)
- [PennDOT Publication 13M- Design Manual 2, Chapter 10](#)
- [PennDOT Publication 23- Maintenance Manual](#)
- [PennDOT Publication 72M- Roadway Construction Standards](#)
- DEP Protocol Municipal Separate Storm Sewer System (MS4) Storm Water Management Program

The five different storm water facility scenarios identified in the HOP policy are referenced in this HOP Guidebook as Storm Water Facility Categories to be consistent with previous presentation on this subject matter. A summary of each of the storm water categories is as follows:

1. *Open or enclosed surface storm water facilities draining or conveying drainage under a proposed driveway or local road.*

Systems under this storm water facility category are appurtenant to and serve the driveway or local road as opposed to the land being developed. The driveway or local road applicant is the permittee in this situation.

2. *Open surface storm water facilities draining more than a proposed driveway or local road, whether connected to a highway storm water facility or not.*

Systems under this storm water facility category service development of the land in general and typically are not under or directly adjacent to the driveway or local road. They may connect to a highway storm water facility. The driveway or local road applicant is the permittee for these open surface storm water facilities, but local government approval is required if a local ordinance addressing storm water exists. If a local ordinance does not exist, county government should be consulted to determine if there are any county imposed requirements for which approval must be obtained from the county.

3. *Enclosed surface storm water facilities draining more than a proposed driveway or local road and physically or hydraulically connected to an existing or new highway storm water facility.*

Systems under this storm water facility category service development of the land in general and are connected to an existing or new highway storm water facility. The local government must be the applicant or a co-applicant with the landowner for these enclosed surface storm water facilities. An agreement between the landowner and the local government addressing funding for the future maintenance is recommended.

4. *New or modified enclosed surface storm water facilities draining the highway and/or adjacent properties.*

Systems under this storm water facility category service development of the land in general and drain water away from the highway as opposed to Category 3 facilities that drain into the right-of-way. The facilities are often needed due to roadway improvements such as curbing and roadway widening. The local government must be the applicant or a co-applicant with the landowner for these enclosed surface storm water facilities. An agreement between the landowner and the local government addressing funding for future maintenance is recommended.

5. *Enclosed surface storm water facilities not connected to a highway storm water facility.*

Systems under this storm water facility category are not connected to PennDOT's storm water facilities, but cross into PennDOT right-of-way. Either the landowner or the local government can be the permittee for these

CHAPTER 1- Storm Water Facility Categories

enclosed surface storm water facilities, provided the applicant can demonstrate the system directly or indirectly serves the public and is thus a utility facility.

The co-applicant requirements for local governments of Categories 3 and 4 can be avoided by using one of the “Alternative Designs” outlined in Chapter 2. An HOP would still be required for the installation, but the landowner can be the permittee.

Utility Qualification

To satisfy the conditions of Storm Water Category 5, the property owner must meet the requirements of a utility facility as defined in the PA Code Chapter 459 **Occupancy of Highways by Utilities**. A utility facility is defined as “*privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, coal, water, steam, waste, storm water not connected to Department storm water facilities, and other similar commodities including fire and police signal systems and street lighting systems, which directly or indirectly serve the public or any part thereof.*”

Drainage Release

Obtaining an HOP does not insulate a permittee from liability for impacting downstream owners. Consideration must therefore be given to how open channels and other storm water facilities affect adjacent properties. A drainage release (PennDOT Form M-947) is required from downstream property owners by the HOP applicant for any work increasing, changing or otherwise affecting the volume and/or flow of water over the downstream property, as calculated by using the appropriate design storm outlined in Design Manual 2. An easement or other agreement could also be acceptable to PennDOT. Additional information can be obtained by contacting the local PennDOT Permit Unit.

Cross-Government Application

Sometimes development occurs within one local government that results in storm water facilities being installed within the boundaries of a neighboring local government. If this situation occurs, the local government in which the development occurs may apply under the policy for drainage outside of its boundaries in the neighboring local government.

Developer’s Responsibility:

The onus is ultimately on the developer to meet local government ordinances, including storm water ordinances



1.1 Storm Water Facility Category #1

Description: *Open or enclosed surface storm water facilities draining or conveying drainage under a proposed driveway or local road.*

Permittee: *Driveway/local road applicant.*

Agreement: *Not Applicable.*

Examples: *Driveway pipes, culverts, ditches, swales and/or associated surface and enclosed surface facilities under or directly adjacent to the driveway or local road that serve only to drain the driveway or local road.*



Figure 1.1.1- Pipe conveys water under driveway from storm water feature



Figure 1.1.2- Culvert conveys water under driveway.



Figure 1.1.3- Storm water sheet flow across private driveway

Examples of Category #1

CHAPTER 1- Storm Water Facility Categories

1.2 Storm Water Facility Category #2

Description: *Open surface storm water facilities draining more than a proposed driveway or local road, whether connected to a highway storm water facility or not.*

Permittee: *Driveway/local road applicant.*

Agreement: *Not Applicable.*

Examples: *Ditches, curbing, culverts, swales and inlets servicing development of the land in general and typically not under or directly adjacent to the driveway or local road.*

Examples of Category #2



Figure 1.2.1- Storm water conveyed by parallel ditch along road.

Category Assumption:

The ditch was installed to convey site drainage from the abutting property and not highway drainage



Figure 1.2.2- Storm water conveyed by parallel ditch along road.

CHAPTER 1- Storm Water Facility Categories

If the capacity of an existing storm water facility is compromised by increased surface water not from the State highway, PennDOT is authorized under Sections 411 and 420 of the State Highway Law to take appropriate action against the private property owner or local government that caused or failed to prevent the capacity issue, as its issuance authority extends beyond the right-of-way where work may have an adverse effect on the State highway. Capacity is defined as the maximum expected quantity of water, created by a design storm, arriving at a particular location. The applicant is responsible for providing engineering calculations with the Highway Occupancy Permit application that confirm the open channel is able to adequately retain storm water runoff from additional development.

Overflow From Adjacent Land

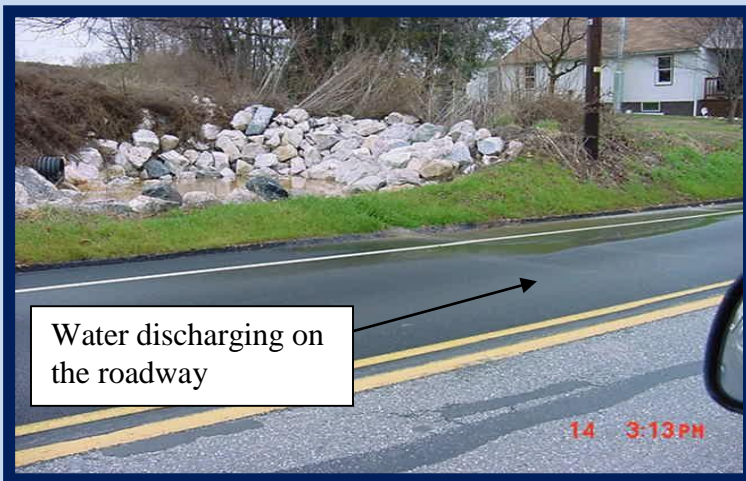


Figure 1.2.3- A photo of storm water that is not adequately retained and overflow water ponds on the roadway surface.

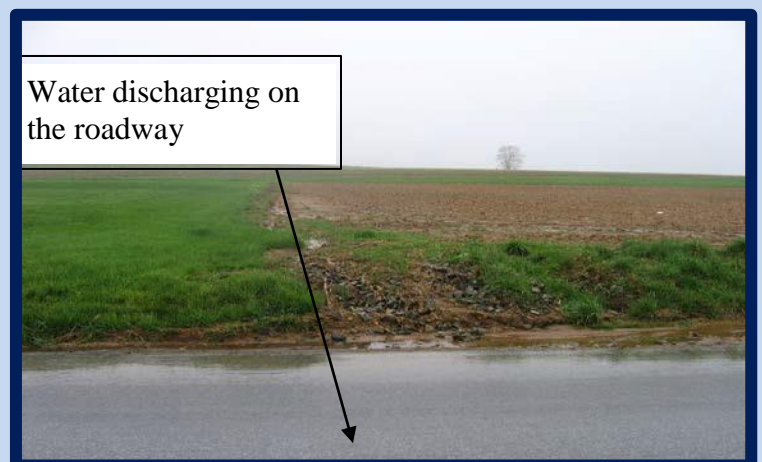


Figure 1.2.4- A photo of storm water that is not adequately retained and overflow water runs off onto the roadway surface

CHAPTER 1- Storm Water Facility Categories

1.3 Storm Water Facility Category #3

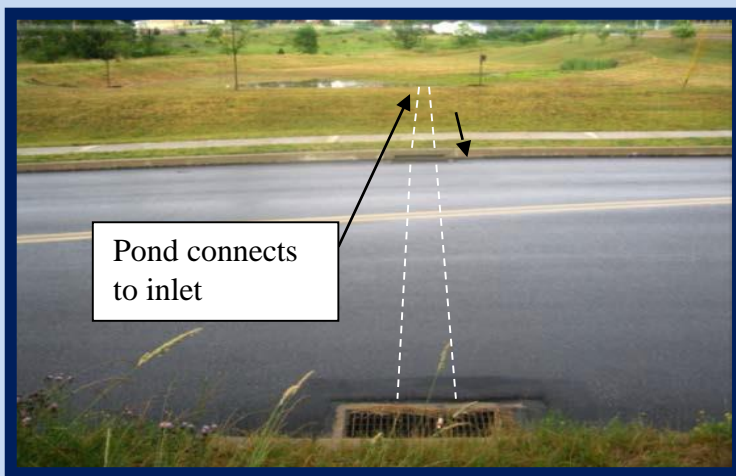
Description: *Enclosed surface storm water facilities draining more than a proposed driveway or local road and physically or hydraulically connected to an existing or new highway storm water facility.*

Permittee: *Local government or local government and landowner as co-applicants.*

Agreement: *Recommended.*

Examples: *Pipes servicing development of the land in general and typically not under or directly adjacent to the driveway or local road.*

Examples of Category #3



Category Assumption:

A cross pipe existed without inlets prior to development.

Figure 1.3.1- Site storm water directed into PennDOT Right-of-Way through enclosed surface storm water facilities tied into an existing inlet which is part of a larger storm water system.



Figure 1.3.2- Site storm water directed into PennDOT Right-of-Way through enclosed surface storm water facilities tied into an existing inlet which is part of a larger storm water system.

1.4 Storm Water Facility Category #4

Description: *New or modified enclosed surface storm water facilities draining the highway and/or adjacent properties.*

Permittee: *Local government or local government and landowner as co-applicants.*

Agreement: *Recommended.*

Examples: *Enclosed surface storm water facilities created due to the installation of curbing along the highway. This category also includes "city inlets," which are inlets that are placed under the sidewalk and inside of the right-of-way, but drain the highway.*

Examples of Category #4



Figure 1.4.1- New enclosed surface storm water installed with curb gutter as part of widening for right turn lane.

Category Assumption:

The turn lane was installed by developer and the curb/curb gutter is assumed to be required by ordinance.



Figure 1.4.2- New enclosed surface storm water installed with curb gutter as part of widening for left turn lane.

1.5 Storm Water Facility Category #5

Description: *Enclosed surface storm water facilities not connected to a highway storm water facility.*

Permittee: *Property owner or local government.*

Agreement: *Not applicable for property owner but recommended when local government is the applicant.*

Examples: *Pipes servicing development of the land in general that are independent of highway storm water facilities.*

Examples of Category #5

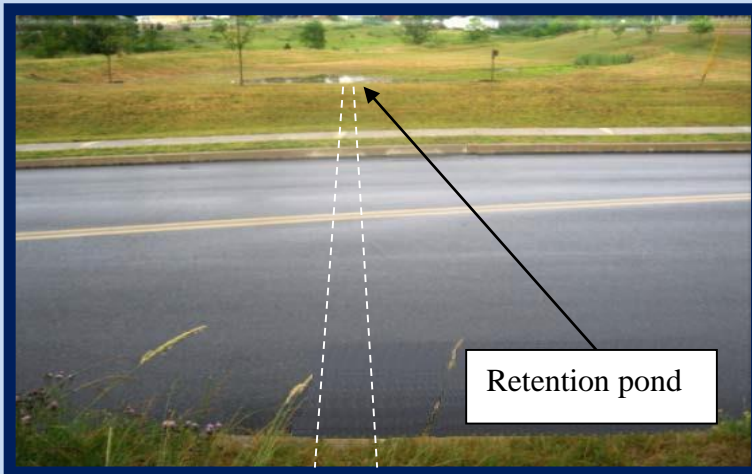


Figure 1.5.1- An example of an enclosed surface storm water facility that drains a retention pond but does not connect to a highway enclosed storm water facility

Category Assumption:

There was no existing cross pipe prior to development.

Local governments may not desire to be an applicant for storm water facilities connected with the development of land abutting a highway. The local government may have limited funding or a limited maintenance crew to utilize for the long-term upkeep of the storm water facilities. PennDOT recognizes these concerns and does not want to hinder development based on the resources of the local government. This is why the HOP policy provides for the placement of ultimate financial responsibility on the landowner when a local government is a co-permittee. Another way to address the long-term maintenance concerns of local governments is to explore alternative storm water designs, preferable early in the design process.

For private development, the use of alternative storm water designs will not require the local government to be an HOP co-applicant. In such cases, the private land owner would be the sole HOP applicant. This section details several storm water design alternatives that can reduce the number of land developments where the local government is required to be a permittee for an HOP. Refer to the PennDOT Drainage Manual (Publication 584), Chapter 14 - Post- Construction Storm Water Management for more information on storm water alternatives. It is important to note that the alternative designs may not apply in all circumstances. Section 14.5 further discusses impervious disconnection.



CHAPTER 2- Alternative Storm Water Designs

2.1 Sample Alternative for Category 3 Projects

Disconnect enclosed surface storm water feature from site.



Figure 2.1.1- Conventional installation where enclosed surface storm water facility connects to highway storm water facility

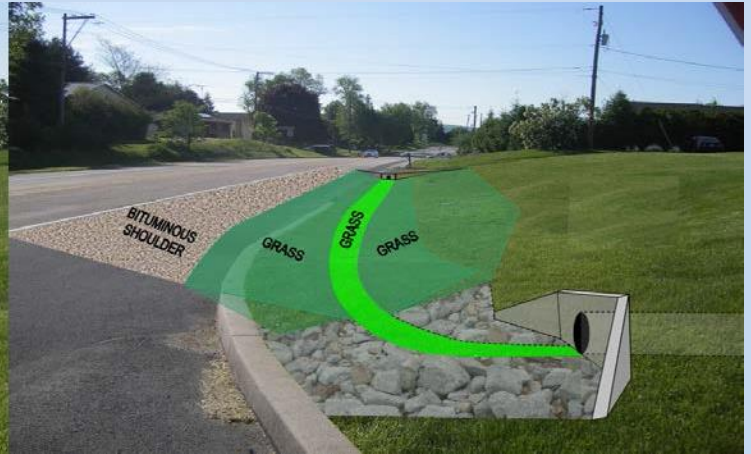
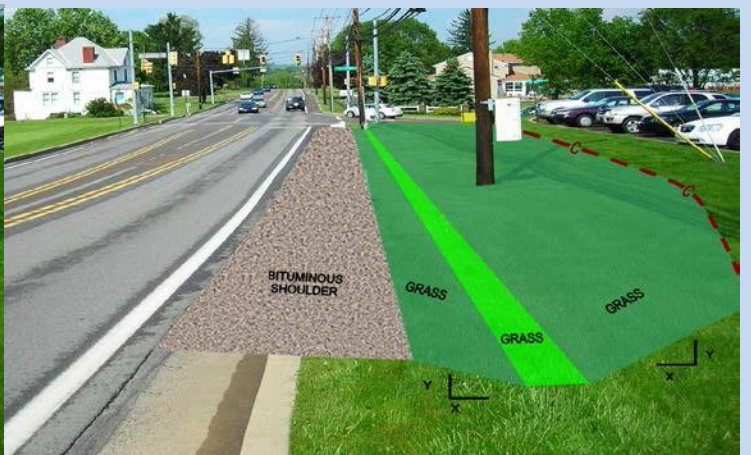


Figure 2.1.2- Alternative installation that utilizes an open surface channel

2.2 Sample Alternative for Category 4 Projects

Eliminate concrete curb gutter and widen road with shoulder and parallel ditch.



2.3 Sample Alternative for both Category 3 and 4 Projects

Install curb cut to redirect storm water off the roadway to an infiltration trench off the right-of-way



Figure 2.3.1- Conventional installation



Figure 2.3.2- Alternative installation directs water to an infiltration trench off the right-of-way without the use of inlets and enclosed storm water facilities

3.1 Co-Applicant Agreements

- Description:** *Agreement for maintenance of enclosed surface storm water facilities installed in PennDOT right-of-way and/or connected to PennDOT storm water facilities between property owner and local government. This applies to Storm Water Facility Categories 3, 4 and 5.*
- Property Owner:** *Responsible for design, construction, future maintenance, repair, replacement and reconstruction costs associated with the enclosed surface storm water facilities. Agree to indemnify the Local Government.*
- Local Government:** *Has the right to review and make request to the proposed design of the enclosed surface storm water facilities before submission to PennDOT. Agree to be the applicant or co-applicant for the HOP for the enclosed surface storm water facilities. Property Owner to provide funding to the local government as specified by HOP condition to offset future maintenance costs associated with the enclosed surface storm water facilities.*

A sample agreement can be found [here](#).

Pipe selection and design life is also a critical element for the local government to review to ensure the storm water facilities provided by the developer will not need immediate replacement. Refer to Appendix C for a pipe selection and design life chart.



3.2 Security Options for Local Government

Description: *At the **sole discretion** of the Local Government, Property Owner may be required to provide security for the construction, maintenance, and indemnity obligations concerning the enclosed surface storm water facilities in the form of (a) **Escrow Account** or (b) **Bond** in a form and amount satisfactory to the Local Government. Refer to Attachment B for sample calculations if Escrow, Bond, and Lump Sum amounts.*

3.2.1 Escrow – deposit of funds into an account to be held by the Local Government in the developer’s name in an interest bearing segregated account.

- a. Example includes a one-time payment (initial sum) to maintain enclosed surface storm water features.
- b. Similar to escrow accounts that Local Governments use for impact fees or traffic signal maintenance.

3.2.2 Bond – posting of a construction and maintenance bond and naming the Local Government as obligee.

- a. Example includes a one-time payment (bond price) to maintain the enclosed surface storm water features.
- b. Similar to municipal bonds where regular coupon payments would be used by Local Government.

3.2.3 Letter of Credit (LOC) – deposit of funds into an account similar to an Escrow. Please see the PennDOT Irrevocable Letter of Credit Form [M-950L](#) for an example of a LOC for a PennDOT HOP.

3.2.4 Lump Sum – a one-time payment made to the local government when they don’t want the burden of a security payment. The fee should take into account the anticipated cost of the future improvements.

3.2.5 Additional types of security may be accepted by the Local Government.

3.2.6 Additional worksheets could be developed to calculate annual payments or match the Local Government’s current acceptable practices for providing security.



ATTACHMENT A

TABLE 1 – SUMMARY OF RESPONSIBILITY WHERE PROPERTY OWNER IS APPLICANT FOR HOP				
<i>Storm Water Category</i>	<i>Scenario</i>	<i>Local Government Responsibility</i>	<i>Department Responsibility</i>	<i>Driveway/Local Road Applicant Responsibility</i>
Category 1	Open and enclosed surface storm water facilities draining or conveying drainage under a proposed driveway or local road.	None	Issue HOP to applicant	Apply for HOP and maintain storm water facility
Category 2	Open surface storm water facilities draining more than a proposed driveway or local road, whether connected to a highway storm water facility or not.	Approve	Issue HOP to applicant with local government approval	Apply for HOP and maintain storm water facility
Category 5	Enclosed surface storm water facilities not connected to a highway storm water facility	Option to apply for HOP	Issue HOP to applicant or local government	Apply for HOP if deemed to directly or indirectly serve the public & maintain storm water facility

ATTACHMENT A

TABLE 2 – SUMMARY OF RESPONSIBILITY WHERE LOCAL GOVERNMENT IS APPLICANT FOR HOP				
<i>Storm Water Category</i>	<i>Scenario</i>	<i>Local Government Responsibility</i>	<i>Department Responsibility</i>	<i>Driveway/Local Road Applicant Responsibility</i>
Category 3	Enclosed surface storm water draining more than a proposed driveway or local road and physically or hydraulically connected to an existing or new highway storm water facility.	1) Apply for HOP individually, <i>or</i> 2) Apply as co-applicant with driveway/local road applicant	1) Issue HOP to local government, <i>or</i> 2) Issue HOP to local government & driveway/local road applicant	Financially responsible for maintenance of storm water facility(ies)
Category 4	New or modified enclosed surface storm water facilities draining the highway and/or adjacent properties.	1) Apply for HOP individually, <i>or</i> 2) Apply as co-applicant with driveway/local road applicant	1) Issue HOP to local government, <i>or</i> 2) Issue HOP to local government & driveway/local road applicant	Financially responsible for maintenance of storm water facility(ies)
Category 5	Enclosed surface storm water facilities not connected to a highway storm water facility	Option to apply for HOP	Issue HOP to applicant or local government	Apply for HOP if deemed to directly or indirectly serve the public & maintain storm water facility

ATTACHMENT B

Figure 3 – Lump Sum Example Worksheet
 Yellow values are user inputs from the agreement.

DRAINAGE FEE ESTIMATING WORKSHEET - LUMP SUM		AGREEMENT NO.
COUNTY		
MUNICIPALITY		
SR-SEGMENT-OFFSET		
APPLICATION/PERMIT NO.		
APPLICANT/PERMITTEE		
User Inputs	User Inputs	
3 # OF INLETS	UNIT PRICE	
1 # OF MANHOLES	\$ 2,848.00 \$ 8,544.00	50 LIFE CYCLE FOR AGREEMENT
2 # OF ENDWALLS	\$ 3,900.00 \$ 3,900.00	1.00% APPROXIMATE INFLATION
300 LF OF STORM PIPES	\$ 1,750.00 \$ 3,500.00	
	\$ 75.00 \$ 22,500.00	
	CURRENT CONSTRUCTION COST \$ 38,444.00	\$63,226.23 LUMP SUM PAYMENT

This worksheet can be found at: [link](#)

ATTACHMENT C

Table 3 – Pipe Selection and Design Life

ALTERNATE PIPE SELECTION CRITERIA BASED UPON LOCATION OF DRAINAGE PIPES

LOCATION OF DRAINAGE PIPES		TYPES OF PIPE		NO. OF ALTERNATES REQUIRED
Cross Drains Under Pavement, Shoulder, or Between Curbs; Parallel Storm Sewers Under Pavement or Between Curbs	Fill*	Interstate/ Arterials	Collectors/ Locals	2
	< 0.6 m (< 2 ft)	100 Years Life (Pipes 1, 2, 5 & 7)	50 Years Life (Pipes 1 & 3 thru 7)	
	0.6 m - 4.6 m (2 ft - 15 ft)	100 Years Life (Pipes 1, 2, 5 & 7)	50 Years Life (Pipes 1 & 3 thru 7 & 8)	
	> 4.6 m (> 15 ft)	100 Years Life (Pipes 1, 2, 5 & 7)	100 Years Life (Pipes 1, 2, 5 & 7)	
Parallel Storm Sewers Outside of Pavement or Curbs	50 Years Life (All pipes in LEGEND)		3	
Cross Drains Outside of Pavement, Shoulder or Curbs (Cross Drains in Medians, etc.)	50 Years Life (All pipes in LEGEND except 9)		3	
Combination Storm Sewer and Underdrain and Other Special Drainage System	100 Years Life*	Pipe 2, open joint, & perforated pipes 5 & 7		2
	50 Years Life**	Fill * < 0.6 m (2 ft)	Pipe 3, open joint, & perforated pipes 4, 5 & 7	3
Fill * ≥ 0.6 m (2 ft)		Pipe 3, open joint, & perforated pipes 4, 5, 7 & 8		
Slope Pipes	50 Years Life (Pipes 4 thru 9)		2	
Side Drains (Driveways, etc.)	25 Years Life (All pipes in LEGEND)		3	

Separate tables are provided for fill height requirements. Utilize those tables for determination of minimum and maximum fill requirements. Specified minimum fill heights are applicable to pipes under pavement or between curbs. Specified maximum fill heights are applicable to all installations.

- * Fill is defined as the material from the top of the pipe to the riding surface, including the pavement structure.
- For pipes under pavement or between curbs on Interstate/Arterials.
- ** For pipes other than under pavement or between curbs on Interstate/Arterials.

LEGEND (Types of Pipe)

1. DIP = Ductile Iron Pipe.
2. RCP (Type A) = Reinforced Concrete Pipe, heavy duty.
3. RCP (Type B) = Reinforced Concrete Pipe, normal duty (1200 mm (48 in) max).
4. CGSP = Corrugated Galvanized Steel Pipe.
5. CASP = Corrugated Aluminized Steel Pipe.
6. CCGSP = Coated (Polymer) Corrugated Galvanized Steel Pipe.
7. CAAP = Corrugated Aluminum Alloy Pipe.
8. TP (Group I, II, III, IV or VI) = Thermoplastic Pipe, Group I, II, III, IV or VI (1500 mm (60 in) max). Thermoplastic Pipe Groups are defined in Publication 408 Section 601.
9. TP (Group V - Corr PE) = Thermoplastic Pipe, Group V - Corrugated Polyethylene (900 mm (36 in) max). Thermoplastic Pipe Groups are defined in Publication 408 Section 601.

NOTES:

1. Select pipes with specified years life based on the type of drainage installation, class of highway and fill height (cover). The years life indicated (100, 50 and 25) are approximate expected service lives.
2. Pipe alternates may be eliminated for the following reasons: (1) unstable support, (2) high impact and concentrated loading, (3) high embankments, (4) limited clearance, (5) steep gradients, (6) high acidity to alkalinity of soils and water or other corrosive elements, (7) high erosive forces or (8) for other pertinent reasons.

ATTACHMENT D

LOCATING SAMPLE AGREEMENT ON THE INTERNET

STEP 1 – Navigate to PennDOT’s [home page](#).

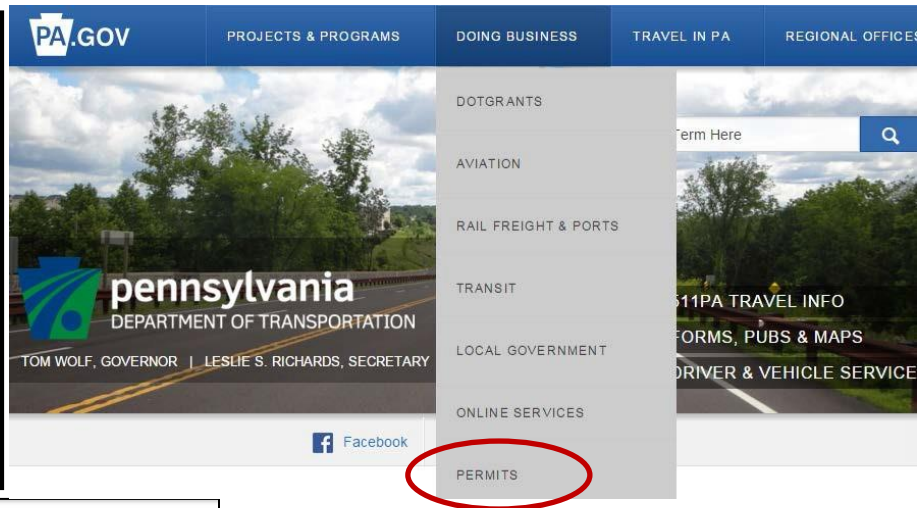
STEP 2 – Select **Permits** under the Doing Business dropdown.

STEP 3 – [Highway Occupancy Permits \(HOP\)](#) on the right side

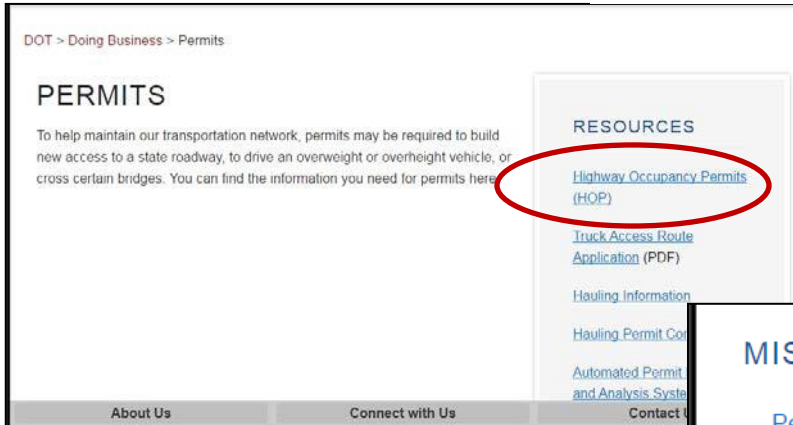
STEP 4 – Scroll down to bottom of page.

STEP 5 – Select [Model Municipal/Land Owner Subsurface Storm Water Facilities Agreement](#) under Miscellaneous Information.

STEP 6 – Save to local network.



Step 2



Step 3

MISCELLANEOUS INFORMATION

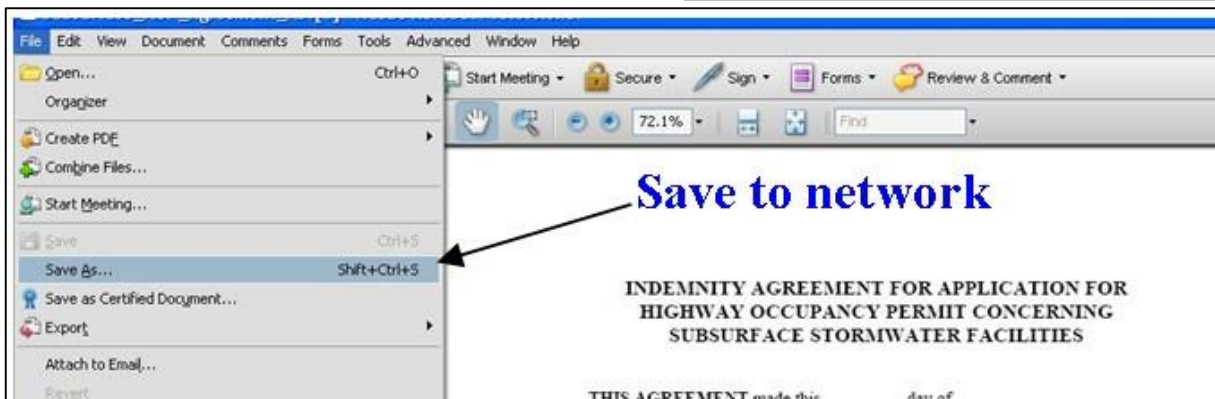
[PennDOT Approved Core Bore Process \(PDF\)](#)

[Model Municipal/Land Owner Subsurface Storm Water Facilities Agreement \(PDF\)](#)

[Municipal Driveway Permit Issuance Ordinance \(PDF\)](#)

[Municipal Driveway Permit Issuance Agreement \(PDF\)](#)

Step 5



Step 6

APPENDIX "C" SERIES – OTHER HOP REFERENCE MATERIALS

APPENDIX C1 – HOP PROJECT APPLICATION CHECKLIST

APPENDIX C2 – GENERAL PERMIT NOTES

APPENDIX C3 – OUTLINE OF RIGHT-OF-WAY ACQUISITION PROCEDURES FOR HIGHWAY OCCUPANCY PERMITS

APPENDIX C4 – MINIMUM USE DRIVEWAY DESIGN FOR UNCONVENTIONAL GAS DRILLING AND HYDROFRACKING WELL SITES

APPENDIX C5 – SAMPLE ACORD FORM WITH INSTRUCTIONS

APPENDIX C6 – SIGNATURE AUTHORITY GUIDE (RIGHT-OF-WAY MANUAL, APPENDIX F)

APPENDIX C7 – PRE-CONSTRUCTION CHECKLIST

APPENDIX C1 – HOP PROJECT APPLICATION CHECKLISTS

The following pages offer separate driveway and utility application checklists. They have been included on their own sheets for ease of printing.

Applicant Checklist For Low, Medium & High Volume Driveways and Local Roads Highway Occupancy Permit

The following checklist has been prepared to aid in the preparation and submission of plans for a Highway Occupancy Permit Application other than a minimum use driveway application. These guidelines are not all encompassing nor are they applicable to every application. (References: 67 Pa. Code, Chapter 441; PennDOT Publication 282; and as noted below).

General

- Project narrative
- Letter of review/acknowledgement of proposed development from Municipality (Ch. 441.3 (j))
- Land Use Questionnaire (form M-950MPC) is completed & attached (Sections 619.2 and 1105 of the Municipal Planning Code; Pub. 282, Ch. 3.3)
- Proof of submission to PHMC (MOU between PA State Historic Preservation Office and PennDOT)
- E&S Plan approved by the County Conservation District
- Estimated cost of work within Legal Right-of-way (Pub. 282, Ch. 3.6)
- Meeting minutes provided for all previous correspondence with PennDOT
- Within limits of planned PennDOT project
- Verification of PUC coordination (Title 66 of the PA Consolidated Statutes, Section 2702 (a))
- TIS/TIA required/approved/signed/sealed
- Signal plans/traffic signal study required/approved
- School Zone speed reduction permit required/approved
- Bridge/structure review/approval
- Access Covenant (form M-946) required/provided (Ch. 441.6(16))
- Drainage Release required/provided (Ch. 441.3(h))
- Permit to be recorded at the County Recorder of Deeds office (Pub. 282)
- Indemnification required/provided
- Insp. reqs: PennDOT spot/full time or consultant insp., cost considerations, reimbursement and invoicing.

Application

- Correct fee received (Ch. 441.4)
- Permit processing, review, and inspection fees required/submitted (Ch. 441.4)
- Check is more than 6 months old (Ch. 441.4)
- Application submitted in the name of property owner (Ch. 441.3(b) and 441.5(b))
- Copy of the deed, sales agreement, or lease of property (> 15-year lease) is attached (Ch. 441.3(e)(6))
- M-950 CFO submitted if Applicant not fee owner of property
- Agent Authorization (form M-950 AA) required/provided
- Access correctly classified as low/med/high volume with (Ch. 441.1 and Pub. 282)
- Average daily traffic and broken down by type (Ch. 441.3(i)(7))
- Business Partner ID completed on application
- Existing driveways to be removed indicated on application
- All work proposed within ROW indicated on application

General Notes

- Applicable general permit notes provided
- Typical Section notes provided
- Applicable pavement marking notes provided
- Applicable MPT notes provided
- Guiderail removal note required/provided
- R/W reference note provided (Pub. 14M, Section 2.3.(A)1)
- ADA Compliance note provided for pedestrian facilities beyond R/W
- Applicable drainage notes provided
- Applicable utility notes provided

Plan Presentation

- North arrow
- Scale bar, plan view: 1"=50' or less (1"=50' and 25' preferred); details: 1"=20' or less
- Existing pavement, travel lanes, and shoulders (type & width) (Ch. 441.3(i))
- Location & type of existing/proposed highway features (guide rail, curb, drainage, signage, etc.) (Ch. 441.3(i))
- All affected utilities (all existing & proposed, aboveground & subsurface) (Ch. 441.3(i))
- Adequate topo along SR and frontage (road edges, buildings, trees, curb, sidewalks, parking, etc.) (Ch. 441.3(i))
- Dimension proposed driveway and SR if applicable (Ch. 441.3(i)(4))
- Show existing driveways (Ch. 441.3(i)(4))
- Show and dimension tapers (lane, shoulder, driveway, etc.) (Ch. 441.3(i)(4))
- Driveway angle dim. to SR centerline/as close to 90 degrees as possible (Ch. 441.8(b)(1))
- Show Limits of approved paving in plan (Ch. 441.3(i)(4))
- SR and Segment/Offsets provided and correct (Pub. 14M)
- Centerlines and stationing provided for SR and driveways (Pub. 14M)
- All relevant property owners/lines shown (Ch. 441.3 (i)(5))
- Limits of work indicated
- Right-of-Way lines (both sides & width) & type (Legal, Limited Access, etc.) (Pub. 14M, Ch. 3.5.A.1)
- Distance to nearest driveway & intersection to left/right for both sides of SR (Ch. 441.3.)
- List ADT's for each separate driveway (Ch. 441.3(i)(7))
- Posted speed limit provided on plans (Pub. 14M)
- Posted speed limit is correct (Pub. 14M)
- HOP application number referenced on plan
- Location map provided on the plans (Pub. 14M)
- Appropriate RC & TC standards/latest date ref. (Pubs 72M, 111; Ch. 441.6 (3))
- PA One-Call serial number provided (Ch. 441.6(2)(i)(B))
- Plans/reports signed and sealed by PE/PLS/RLA (49 Pa Code, Ch. 37.59)
- Plans signed and sealed by PLS
- No references to Preliminary plan
- Overall site plan indicating internal traffic patterns (Ch. 441.3(i))
- Red-Lined plans to be returned

Access Configuration

- Number of driveways acceptable (Ch. 441.7(e))
- Justification for more than two (2) driveways (Ch. 441.7(e))
- Meet Pub. 282, Subchapter 2.4 requirements
- 10' tangent distance between end of driveway radius & intersection radius (Ch. 441.8(c)(1))
- 20' tangent distance in curbed area between driveway & intersection (Ch. 441.8(c)(2))
- 30' tangent distance in uncurbed area between driveway & intersection (Ch. 441.8(c)(2))
- 20' between driveways serving the same property (Ch. 441.8(e))
- 50' between driveways and ramp of speed change lane (Ch. 441.8(l))
- Permanent curb defines driveways when multiple driveways are less than 50' apart (Ch. 441.8(g))
- Aligns w/ driveways/road/lanes across highway (Ch. 441.7(c))
- Classified correctly as local road vs. driveway (Ch. 441.7(d))
- Driveway not to encroach on adjacent property frontage (Ch. 441.8(d))
- Returns offset per 3R criteria (Pub. 13M, page 1-41)
- Sufficient for trucks/largest vehicle (Ch. 441.8(a)(2))
- Any truck restrictions per Title 75 PA. C.S. §4908
- Radius returns extend full quadrant (Pub. 282, Ch. 2.4)
- Restricted driveways – radii designed to discourage wrong way movements (Ch. 441.8(a)(2))
- 16' min. lane width if channelization island
- Driveway throat length (Pub. 282, Subchapter 2.4)
- PC/PT/break points identified/dimensioned
- Contours needed/provided (Pub. 14M, Ch.2.6)
- Spot elevations along radii at 10' intervals

- Local road width in accordance with Pub. 70M
- Local road radius returns in accordance with Pub. 70

Access Profile

- Maintains SR travel lane and shoulder cross slope across the driveway (441.8(i)(4) and Figure 1)
- Difference between cross slope of roadway shoulder and grade of driveway does not exceed 8% (Ch. 441.8(i)(4))
- If on high side of superelevation >2%, slope is 2% away (Pub. 13M, Ch.1.2)
- Provided and meets Pa. Code, Title 67, Ch. 441, Figure 1
- Existing/proposed grades for SR and driveway (Pub. 14M, Ch. 2.6)
- Centerline/EOTL/EOP/legal ROW/crosswalk (Pub. 14M, Ch. 2.6)

Sight Distance

- Available and minimum requirements indicated (Ch. 441.3(i)(6))
- Meets 441 minimum safe stopping sight distance (Ch. 441.8(h)(2)(iv))
- Driveway location maximizes sight distance
- Justification provided for sight distance values that are less than the safe sight distance values
- Parked cars obstruct sight line for exiting vehicles? (Ch. 441.8(h))
- Embankment removal – sight line profile provided
- Sight distance provided for ex. driveways if widened
- Temporary barrier for traffic control obstructs sight lines
- Minimum sight distance calculated using 85th percentile speed or posted speed, whichever is greater
- Continuous sight distance for left-turn ingress shown on plan & profile

Typical Sections

- Minimum pavement thickness of 4 inches provided within R/W (Ch. 441.8(k))
- Pavement design provided / min depth requirements met (Pub. 242)
- Utilize SuperPave/PennDOT descriptions
- Pavement design approved by PennDOT
- Pavement history obtained/prop. match ex.
- Concrete pavement is at least 4 feet wide & dowel rods are used to connect to existing (Pub. 72M, RC-20M)
- Sawcut full depth pavement noted
- Open cuts are prohibited in bituminous pavement < 5years old and in all concrete pavement
- Leveling/ cross-slope correction shown if applicable (Pub. 13M, Ch. 1.5)
- Minimum 2% cross slopes on widened SR thru and auxiliary lanes (Pub. 13M, Ch. 1.5)
- Trench restoration detail with pavement design (Pub. 13M, Ch. 1.5)
- Typical roadway widening detail provided (Pub. 13M, Ch. 1.5)
- Min. 2' pavement width at tie-in point
- Seal joints with PG 64-22
- Bituminous tack coat indicated between each layer
- Bottom of subbase at or below existing for SR widening
- Pavement base drain or combination storm/underdrain provided (Pub. 13M, Ch. 1.5)
- Undercutting note provided if CBR values indicate subgrade is unsuitable

Roadway Geometrics

- Edge line or centerline milled rumble strips
- Horizontal curvature info if construction/driveway is along a state highway curve (Pub. 14M, Ch. 2.6)
- Vertical curvature – ASSHTO criteria (PVI Sta, Elev, VC length, MO, SSD/HLSD, PVC, PVT) (Pub. 14M, Ch. 2.6)
- Contour/Grading limits (Ch. 441.3(i)(1))
- Roadway centerline profile (widening) (Pub. 14M, Ch. 10)
- Centerline (Pub. 14M, Ch. 10)
- Stationing if improvement to SR are proposed
- Lane widths – 3R design criteria (Pub. 13M)
- Intersection alignment
- Intersection radii

- Adjustment profile required
- Milling required
- Overlay required
- Permitted Oversize Vehicles considered in the design of roadway/intersection improvements

Shoulders

- 4% cross slope if curbed or >8' in width; 6% ≤ 8' (Pub. 13M, Ch. 1.5)
- Low side of superelevation extends at SE cross slope when > required slopes (Pub. 13M, Ch. 1.5)
- Slopes away from high side of superelevation at 2% (Pub. 13M, Ch. 1.5)
- 100' of full-depth shoulder upgrade on both sides of driveway (Ch. 441.8(n))
- Shoulder widths, 3R design criteria, 2' min (Pub. 13M)
- Through traffic directed over existing shoulder, full-depth paving for rollover/grade break correction

Left Turn Lanes

- Full width overlay provided within widening limits (Pub. 282, Ch. 7.7)
- Turn lane lengths, shifting tapers, & bay tapers dimensioned
- Transverse gore markings required and labeled (Pub. 111, TC-8600)
- Turn lane lengths = required length in TIS/analysis
- Shifting tapers per Pub. 111, TC-8600
- Bay tapers per Pub. 111, TC-8600
- Offset (opposing) left turn lanes
- 12' lane widths desirable; 10' min (11' min if trucks)
- Hour glass effect (provide two-way center left-turn lane)
- SR profile and cross sections provided every 50' or contours and spot elevations every 20'

Right Turn / Deceleration Lanes

- 100' (75' in low speed, high traffic area) bay tapers
- Turn lane lengths, bay taper lengths, & lane widths dimensioned
- 14' curbed lanes; 12' uncurbed lanes with 3R shoulder
- Turn lane lengths/bay taper lengths = required lengths in TIS/analysis
- SR profile and cross sections provided every 50' or contours and spot elevations every 20'

Curb

- Reference RC-64M and current approval date (Pub. 72M, RC-64M)
- 5' curb end taper with a 0" reveal at finish grade
- Provide top/bottom curb elevations every 10'/20'
- Curb ramps if sidewalk; specifies RC-67M and type (Pub. 72M, RC-67M)
- Dimension at POT, POC, PT, PC, PCC (Pub. 14M, Ch. 2.6)
- Eliminate curb along taper if no adjacent curb
- 4 foot flat area behind curb sloped at 2% in same direction as surrounding terrain
- Label/dimension depressed curb (Pub. 13M, Ch. 6.11(B))
- Min. sidewalk width is 5' or 4' with 5'x5' passing areas every 200' (Pub. 72M, RC-67M)

Medians/Islands

- Driveway medians provided for med/high vol. (Pub. 282, Subchapter 2.4)
- Dimensions of islands (lengths, radii, offsets, etc.) provided (Ch. 441.3(i)(4))
- Type of curbing and proposed material provided (Ch. 441.3(i)(4))
- Flexible delineators/hazard markers per Pub. 111, TC-8604
- Medians/islands offset 4' behind edge/curb line (DM-2)
- Island size sufficient per AASHTO Geometric Design of Highways and Streets

Cross Sections

- Cross sections provided for SR improvements
- Match ex but with min. 2% widening slope – tangent roads (Pub. 13M, Ch. 1.2)
- Match existing superelevated slope – curved roads (Pub. 13M, Ch. 1.5)
- Centerline and breakpoint elevations provided (Pub. 13M, Ch. 1.5)
- Existing and proposed cross slopes labeled (Pub. 13M, Ch. 1.5)
- Cut/fill slopes provided/labeled/acceptable (Pub. 13M, Ch. 1.5)
- Fill slope benching/detail required/provided (Pub. 13M, Ch. 1.5)
- Legal/Required ROW locations shown (Pub. 13M, Ch. 1.5)
- Grading outside of ROW; ROW or easements obtained
- Full-depth pavement & mill/overlay locations shown (Pub. 13M, Ch. 1.5)
- Pavement base drain shown (Pub. 13M, Ch. 1.5)
- Superelevation transition notes provided (Pub. 13M, Ch. 2.13)
- Superelevation transitions labeled & are in accordance with Pub. 13M, Ch. 2.13
- 50' intervals or 25' intervals in non-uniform areas (Pub. 14M, Ch. 2.7)
- Scale at 1"=5' desirable, 1"=10' max (Pub. 14M, Ch. 2.7)
- Dimensioned from centerline

Signing

- Location and size/designation (Pub. 236) of all relocated and proposed signs shown (Ch. 441.3(i))
- All existing signs shown (Ch. 441.3(i))
- Existing signs to be relocated or removed labeled (Ch. 441.3.i)
- Details provided for non-standard signs (Ch. 212.B.101)
- Stop (R1-1) sign required
- R3-7 or R3-8 lane use control signs required for auxiliary lanes (Pub. 236)
- R4-7 and OM1-3 signs for medians (Pub. 236)
- Do Not Enter (R5-1) & One Way (R6-1L and R6-1R) signs on sign post on each side of access (6 signs) (Pub. 236)
- No Left Turn (R3-2) signs, near right and far left, entering and exiting (Pub. 236)
- Do Not Enter (R5-1) sign mounted back-to-back with Stop (R1-1) sign stays within edges of Stop sign (MUTCD 2B.10)
- Right clearance markers at obstructions required (Pub. 236)

Pavement Markings

- Type, size, color and orientation indicated/correct
- Existing type, size, & color shown (Ch. 441.3(i)(1))
- 24" stop bar provided if necessary (Pub. 46, Ch. 3)
- Reference TC-8600, current edition
- Stop bar placed according to turning templates
- Proposed labeled "match existing" at limits of work
- Stations or seg/offset for proposed pavement markings (stop bars, lane separation lines, etc.)
- Crosswalk widths dimensioned (6' min) (Pub. 111, TC-8600)
- 6" minimum crosswalk lines (Pub. 111, TC-8600)
- Min 2 direction arrows per auxiliary lane (MUTCD, Ch. 3, Section 3B.20.21)
- First direction arrow 20' from stop bar (Pub. 111, TC-8600)
- 6" lane dividing lines; 4" edge lines and double yellow lines (Pub. 111, TC-8600)
- Min of 2 direction arrows with overhead signs provided for lane drops (Pub. 111, TC-8600)
- No "ONLY" legends for auxiliary lanes unless lane drop (Pub. 111, TC-8600)

Maintenance and Protection of Traffic

- Sequence/narrative referencing PATA figures (Ch. 441.3(f))
- TCP provided if necessary
- Detour required/approved
- Located near signalized intersection (note provided)

- PATA figures attached in EPS
- Drop-off/safety slope protection note or detail provided
- PATA figure 10a referenced in conjunction with PATA 7
- Road Users Liquidated Damages

Guiderail

- Required per Pub. 13M, Ch. 12
- Impact attenuators provided/shown/correct (Pub. 13M, Ch. 12.8)
- Can guiderail be eliminated by regrading? (Pub. 13M, Ch. 12)
- Substandard guiderail (Pub. 408)
- Weathering steel guiderail not permitted

Right-of-Way

- Dimension to physical centerline (Pub. 14M, Ch. 3.5.A.1)
- Dedication to PennDOT required (Pub. 14M, Ch. 3.0.H.)
- R/W plans approved by PennDOT
- Drainage/Slope/Temporary construction easements required (Pub. 14M, Ch. 3.1(N), (O), & (R))
- Convert required R/W to legal R/W on HOP plans
- Deeds provided with R/W submission
- Additional R/W necessary for auxiliary lane (Ch. 441.8(j))
- Conveyance of R/W form (M-950 D1) used
- Acquisition of R/W from adjacent owners required
- Points of transition identified on the plan (Pub. 14M, Ch. 3)
- Legal verification of easements related to HOP provided and referenced in general notes

Access Approval Procedures – Impacts to Access of Neighboring Owners

- Form M-950R1 required/provided (Pub. 282, Subchapter 2.6)
- Modification to adjacent frontage (installation of auxiliary lane)
- Approval letter / plan signature required/provided
- Modification of adjacent driveway
- Separate application for impacted driveway required/provided (Ch. 441.3(b))
- Impacted driveways brought up to code (Ch. 441)

Traffic Signals

- Municipal awareness letter/permit (Ch. 212.5(b)(v)(A) addresses local municipality responsibility for maintaining signal)
- Interconnection required
- System permit plan required
- 10' max distance between push button and location where pedestrian would wait for signal (Pub. 13M)
- 10" max distance between push button and edge of landing area (Pub. 13M)
- Pedestrian study required (Pub. 149, Ch. 19)
- Standard notes provided
- Build volumes match analysis
- Signal warrants met (MUTCD, Ch. 4)
- Left-turn warrant (Pub. 149, Ch. 3.1 and Pub. 46, Ch. 4.6)
- Signal phases work with ped movements
- Clearance calculations provided
- Posted speed limit used for clearance calculations (Pub. 149)
- Correct widths used for clearance calculations
- Yellow and all-red times rounded to nearest whole second (Pub. 149)
- Walk/Man indication is at least 7 seconds
- Pedestrian clearance calculations provided
- 3.5 ft/s walking speed used in ped clearance calculations (Pub. 46, Ch. 4.3)

HIGHWAY OCCUPANCY PERMIT OPERATIONS MANUAL
Appendix C1 – HOP Project Application Checklists

- Width of crossing measured from curb to curb (Pub. 46, Ch. 4.3)
- Countdown timers
- 4' pedestrian pathway provided (Pub. 13M)
- Intersection alignment
- Mast arm location, size in 5 ft increments, 65 ft max
- Separate mast arms provided for each approach (Pub. 149, Ch. 8)
- Mast arm allows for left-turn signal placement (Pub. 149, Ch. 6)
- Support location in accordance with Pub 149 offsets (Pub. 149, Ch. 5)
- Controller cabinet shown on plan (Pub. 14M, Ch. 10)
- Signal equipment within right-of-way or easement
- Overhead street name signs use Clearview 1W, 2W, or 3W font (Pub. 236)
- Street name, not development name, used on overhead street name signs (Pub. 236)
- Proper abbreviations used on overhead street name signs (Pub. 236)
- Permit General Notes
- Final conditions shown on the Permit Plan (Pub. 14M, Ch. 10)
- Revisions shown (Pub. 14M, Ch. 10)
- Plan Legend complete and accurate (Pub. 14M, Ch. 10)
- Timing diagram completed and correct
- "No Turn on Red" required
- Right-of-way lines shown in accordance with Pub. 14M
- Right-of-way lines labeled as "Legal Right-of-way line" (Pub.14M)
- Traffic signal easements labeled as "Legal Traffic Signal Easement" (Pub. 14M)
- Permit Plan updated to meet current field conditions
- Speed limits and grades provided on plan (Pub. 14M, Ch. 10)
- Distances to the nearest signal indicated on plan (Pub. 14M, Ch. 10)
- Sign chart (plan symbol, series number, size, and sign name) provided/correct (Pub. 236)
- H, I, O, Q, or U not used for sign plan symbol
- Pushbutton sign corresponds with ped signal head (Pub. 236)
- Preemption provided (Pub. 149, Ch. 10)
- Preemption note (Pub. 149, Ch. 10)

ADA Compliance

- Upgrade ADA if pedestrian path is changed (Pub. 13M, Ch. 6)
- Maintain 4' sidewalk width (Pub. 13M, Ch. 6)
- Proposed sidewalk > 100' must meet current standards (Pub. 13M, Ch. 6.3.B)
- Upgrade curb ramp w/in 15' of proposed sidewalk (Pub. 13M, Ch. 6.3.B)
- Upgrade curb ramps w/in 5% of proposed sidewalk (>300') (Pub. 13M, Ch. 6.3.B)
- ADA access provided (Pub. 13M, Ch. 6.2.C)
- Pedestrian study required/approved (Pub. 13M, Ch.'s 6, 7, and 9, and MUTCD Section 4E)
- Proposed sidewalk limits are logical (Pub. 13M, Ch. 6.2)
- Relocate inlets within curb ramps (Pub. 13M, Ch. 6.10.D)
- Traffic Control accommodates pedestrians (Pub. 13M, Ch. 6.9.D.11)
- Technically Infeasible Form included/approved (Pub. 13M, Ch. 6.2.B.4)
- Cross-slopes do not exceed 2% (Pub. 13M, Ch. 6.5.A.5)
- Adequate plan details provided (Pub. 72, RC-67M)
- Inspection form provided/completed (Pub. 13M, Chapter 6.2.B)
- Accessible push-button
- Reserved property compliance (Pa Code, Title 75, Ch. 33, §3354)

Drainage - Hydrology

- Drainage Control Plan required/provided (Ch. 441.3(g) & Drainage Impact Report Guidelines, Pub. 282, App. B)
- Location and type of existing/proposed drainage features (e.g., pipes, ditches, inlets, manholes, etc.) (Ch. 441.3(i))
- All drainage features shown with flow arrows

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- Drainage Control Report signed and sealed (Drainage Impact Report Guidelines, Pub. 282, App. B)
- Pre- vs. post-development peak flow analysis
- Post < or = to Pre (Ch. 441.6(6); Pub. 584, Ch. 13.11.E)
- Possible to maintain/ not alter Dept. facilities (Ch. 441.6(6))
- Application from municipality (Pub. 282, Ch. 7)
- Drainage release required (Ch. 441.3(h))
- Narrative (Drainage Impact Report Guidelines, Pub. 282, App. B)
- Overall Site Development Plan (Drainage Impact Report Guidelines, Pub. 282, App. B)
- Pre/post drainage area plans (Drainage Impact Report Guidelines, Pub. 282, App. B)
- Proposed flow into/out of ROW consistent with existing grades/flow (Ch. 441.6(6))
- Time of concentration (5 min. if pipe 30" or less) (Pub. 13M, Ch. 10)
- TC paths shown on drainage area plans
- Storm frequency correct (Pub. 13M, Ch. 10.6.E)
- Rational formula used for drainage areas up to 200 acres (Pub. 13M, Ch. 10.2.C)
- 'C' coefficients; curve numbers (Pub. 13M, Table 10.2.1)
- Rainfall intensity rate correct (Pub. 584, Ch. 7, Appendix A, Figures 7A.7 through 7A.16)

Drainage - Inlets

- TG and invert elevations (Drainage Impact Report Guidelines, Pub. 282, App. B)
- Inlet drainage area plans (Drainage Impact Report Guidelines, Pub. 282, App. B)
- Not located in radius return (Pub. 72M, RC-45M)
- Inlet capacities (Pub. 13M, Ch. 10.3.A.7)
- Inlets not sumped
- Inlet spacing and location (Pub. 13M, Ch. 10.3.A.7)
- Flanking inlets at low points (Pub. 13M, Ch. 10.3.A.7)
- Not located in travel lane; convert to manhole or cap (Pub. 584, Ch. 13)
- Gutter capacity/spread (Pub. 13M, Ch. 10.3.A)
- Manholes not located in travel lane (Pub. 584, Ch. 13.10.A)
- Type/size indicated

Drainage - Pipes

- 1' minimum cover (Pub. 13M, Ch. 10.3.B.2)
- Pipe capacities analysis
- Minimum 18" pipe within ROW (Pub. 584, Ch. 13.11.E)
- Minimum 15" pipe under driveways (Ch. 441.8(i)(2))
- Minimum 0.35% slope
- 2" drop across inlets (Pub. 13M, Ch. 10.3.B.2)
- Storm frequency correct (Pub. 13M, Ch. 10.6.E & Ch. 10.2.C)
- Cross pipe that is part of a system uses same design storm as remainder of system
- Pipe profiles provided (type, corrugations, length, slope, inverts, ground profile, min/max fill heights.) (Pub. 584, Ch. 9; Pub. 13M, Ch. 10; SOL 431-10-07)
- Pipe information provided on plan (size, slope, length, type) (Pub. 584; Pub. 13M, Ch. 10; SOL 431-10-07)
- Pipe nomenclature consistent with Pub. 13M, Ch. 10; SOL 431-10-07
- Downstream pipe analysis if increase flow (Drainage Impact Report Guidelines, Pub. 282, App. B)
- Combination storm sewer and underdrain pipe
- Culvert analysis; inlet/outlet control
- Pipe velocity, 3-8 fps
- Trench restoration detail
- Extension-same type, slope
- Misc. details
- Inspector required for trench backfill in pavement, sidewalk or shoulder (Pub. 408, Sec. 601)

Drainage – Channels and Swales

- Typical swale section provided (Drainage Impact Report Guidelines, Feb 2004)

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- Capacity analysis (Drainage Impact Report Guidelines, Feb 2004)
- Encroach upon shoulder/lane (Pub. 13M, Ch. 10.3.A.1)
- Flow across driveway acceptable; cross driveway pipe required
- Swale slope acceptable
- Grading details provided

Drainage – Storm Water Management Basins

- Detention basin analysis
- Does not point discharge toward State Highway
- Minimum 8 feet from ROW because of basin embankment requirements

Utilities

- Separate application submitted (Pub. 16M)
- Updated Act 287 note
- Separate application for street lights (Pub. 16M)
- Existing utilities that may conflict with proposed construction are noted (Pub. 16M, Ch. 1)
- Acceptable pole location (Pub. 13M and Pub. 16M, Ch. 1)
- PennDOT fiber optic impacted
- Relocated utility positions/pole ID numbers required/provided

Waiver Requests

- Alternatives considered (Ch. 441.5(e))
- Right-of-way correspondence/documentation (Ch. 441.5(e))
- Indemnification (Ch. 441.5(e))
- Waiver approval
- Design waiver request required

Applicant Checklist for Utility Highway Occupancy Permit

The following checklist has been prepared to aid in the preparation and submission of plans for a Highway Occupancy Permit Application. These guidelines are not all encompassing nor are they applicable to every application. (References: 67 Pa. Code, Chapter 459; PennDOT Publication 282; and as noted below).

Application

- Application Submitted/Signed & Dated by the Facility Owner/Operator (Ch. 459.3(d)(2))
- Application Submitted in the Name of Property Owner/Operator (Ch. 459.3(b))
- Correct Fee is Attached (Ch. 459.3(d)(4) and 459.4)
- Application complete and all work proposed within ROW indicated on appl. (Ch. 459.3(a))
- Business Partner ID completed on application

Plan Presentation

- North Arrow
- Show highway Right-of-Way Lines (Ch. 459.3(d)(3))
- Color coded or grey-scale plans are not acceptable (Ch. 459.3(d)(3))
- Freehand drawings are not acceptable (Ch. 459.3(d)(3))
- Scale Bar, scale of 1"= to no more than 50'(Ch. 459.3(e)(1))
- Dimensions from edge of pavement to facility (Ch. 459.3(d)(3); (Ch. 459.3(e)(1)))
- Existing utility facilities that may be affected shown (Ch. 459.3(d)(3))
- Existing structures that may be affected shown (Ch. 459.3(d)(3))
- Cross Sections (Ch. 459.3(e)(2))
- Located outside of pavement or shoulder (Ch. 459.3(e)(3))
- Traffic Control provided (Ch. 459.3(f))
- Location Map provided (Ch. 459.3(d)(3))
- Plans of acceptable quality (Ch. 459.3(d)(3))
- Details showing location and size of opening both horizontal and vertical (Ch. 459.3(d)(3))
- Proposed facility size and type labeled (Ch. 459.3(d)(3))
- Highway appurtenances shown (Ch. 459.3(d)(3))
- Highway segment and offset provided (Ch. 459.3(d)(3))
- Topography shown (Ch. 459.3(d)(3))
- Centerline provided (Ch. 459.3(d)(3))
- Pavement and shoulders shown (Ch. 459.3(d)(3))
- Curb shown (Ch. 459.3(d)(3))
- Guiderail and type shown (Ch. 459.3(d)(3))
- Drainage facilities shown (Ch. 459.3(d)(3))

Restoration and Location

- 3' below surface (Ch. 459.8(a)(1); Ch. 459.8(b)(1); Ch. 459.8(c)(2) Ch. 459.8(e)(5))
- Grout used to fill void for > 30" pipes (Ch. 459.8(a)(1)(i))
- Proper boring methods (Ch. 459.8(a))
- 3' away from shoulder if boring (Ch. 459.8(a))
- Only trenching because drilling, boring not feasible (Ch. 459.8(b)(2))
- No trenching in pavement < 10 yrs old and ADT >500 (Ch. 459.8(b)(2)(ii)(B))
- Placed outside shoulder (Ch. 459.8(c)(1))
- 12' away from centerline (Ch. 459.8(c)(3))
- < 200' openings at one time (Ch. 459.8(c)(4))
- Backfill details provided (Ch. 459.7(3)(ii); Ch. 459.8(g))
- Backfill compaction testing documentation required (Pub. 282, Subchapter 5.1)
- Inspector required during trench backfill in pavement, sidewalk, shoulder (Pub. 282, Subchapter 5.2)
- Bituminous trench restoration detail provided (Ch. 459.8(h))

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- Concrete trench restoration detail provided (Ch. 459.8(i))
- High early strength concrete indicated (Ch. 459.8(i)(2))
- Reinforcement provided for concrete restoration (Ch. 459.8(i)(3))
- > 100' opening in wearing course < 5 yrs old = overlay full lane (Ch. 459.8(n)(2); Ch. 459.8(n)(3)(i))
- Two transverse opening < 100' apart in wearing course < 5 yrs old = overlay full width for entire length (Ch. 459.8(n)(2)(ii))
- 4 or more openings within 100' in wearing course <5 yrs old = overlay full lane (Ch. 459.8(n)(2)(iii) ; Ch. 459.8(n)(3)(ii))
- Milling required for lane overlays (Ch. 459.8(n)(2)(iv))
- If travel lanes overlaid, overlay shoulder to match elevations (Ch. 459.8(n)(2)(v))
- Pavement restoration shown to edge of lane/shoulder (Ch. 459.8)
- Poles located outside clear zone as near right-of-way line as practicable (Ch. 459.9(b))
- Acceptable vertical clearance, 18' min. (Ch. 459.9(c))

ADA Compliance

- Upgrade ADA if pedestrian path is changed (Pub. 14M, Ch. 6)
- Proposed sidewalk > 100' must meet current standards (Pub. 14M, Ch. 6)
- Maintain 4' sidewalk width (Pub. 14M, Ch. 6)
- Upgrade curb ramp w/in 15' of proposed sidewalk (Pub. 14M, Ch. 6)
- Upgrade curb ramps w/in 5% of proposed sidewalk (>300') (Pub. 14M, Ch. 6)

APPENDIX C2 – GENERAL PERMIT NOTES

"DRIVEWAYS AND LOCAL ROADS"

1. THE EXISTING SPEED LIMIT ON S.R. _____ IS _____ M.P.H.
2. THE RIGHT-OF-WAY IS _____ ACCESS. (LIMITED OR FREE)
3. ALL WORK IN PA STATE HIGHWAY RIGHT-OF-WAY IS TO BE PERFORMED CONSISTENT WITH THE FOLLOWING:
 1. PENNDOT PUBLICATION 13M, DESIGN MANUAL PART 2 – HIGHWAY DESIGN
 2. PENNDOT PUBLICATION 34, APPROVED AGGREGATE PRODUCERS (BULLETIN 14)
 3. PENNDOT PUBLICATION 35, APPROVED CONSTRUCTION MATERIALS (BULLETIN 15)
 4. PENNDOT PUBLICATION 41, PRODUCERS OF BITUMINOUS MATERIALS (BULLETIN 41)
 5. PENNDOT PUBLICATION 42, PRODUCERS OF READY-MIX CONCRETE (BULLETIN 42)
 6. PENNDOT PUBLICATION 46, TRAFFIC ENGINEERING MANUAL
 7. PENNDOT PUBLICATION 72M, STANDARDS FOR ROADWAY CONSTRUCTION
 8. PENNDOT PUBLICATION 111, PAVEMENT MARKINGS AND SIGNING STANDARDS
 9. PENNDOT PUBLICATION 212, OFFICIAL TRAFFIC CONTROL DEVICES
 10. PENNDOT PUBLICATION 213, TEMPORARY TRAFFIC CONTROL GUIDELINES
 11. PENNDOT PUBLICATION 408, SPECIFICATIONS
4. DETAILS, OTHER THAN THOSE INDICATED, ARE ON THE FOLLOWING STANDARD DRAWINGS:
(Provide the Roadway Construction and any other standards here)
5. THE DRIVEWAY HAS BEEN DESIGNED (AND WILL BE CONSTRUCTED AND MAINTAINED) CONSISTENT WITH TITLE 67, CHAPTER 441 REGULATIONS.
6. PA STATE HIGHWAY RIGHT-OF-WAY MAY NOT BE USED FOR PARKING.
7. PERMITTEE IS RESPONSIBLE FOR MAINTENANCE OF ALL AUTHORIZED STRUCTURES, FACILITIES AND DRAINAGE.
8. PERMITTEE IS RESPONSIBLE FOR MAINTENANCE OF ALL AUTHORIZED SIGNS AND PAVEMENT MARKINGS.
9. CONTACT PENNSYLVANIA ONE-CALL (1-800-242-1776) THREE WORKING DAYS BEFORE EXCAVATION OR DEMOLITION WORK. SERIAL NUMBER_ FOR (list Municipality).
10. ANTICIPATED AVERAGE DAILY TRAFFIC (ADT) FOR THE PROPOSED ACCESS IS:
_____ CARS
_____ SINGLE UNIT TRUCKS AND COMBINATIONS.

ANTICIPATED DAILY TRIPS FOR THE PROPOSED ACCESS IS:
_____ CARS
_____ SINGLE UNIT TRUCKS AND COMBINATIONS

11. DISTANCE TO THE NEAREST INTERSECTION IS: RT. _____ LT. _____.
DISTANCE TO THE NEAREST TRAFFIC SIGNAL IS _____ FEET.
DISTANCE TO THE NEAREST OPPOSITE DRIVEWAY IS: RT. _____ LT. _____.
DISTANCE TO THE NEAREST ADJACENT DRIVEWAY IS: RT. _____ LT. _____.
12. IF A TRAFFIC SIGNAL IS WITHIN 500 FEET OF THE SITE, CALL THE DISTRICT TRAFFIC ENGINEER AT _____ AT LEAST 3 DAYS PRIOR TO THE START OF WORK.
13. THIS PERMIT MAY BE RESTRICTED ON WORKING HOURS AND TIMES FOR HOLIDAYS, WEEKENDS, AND SPECIAL OR UNFORESEEN EVENTS AND WILL REQUIRE APPROVAL FROM THE COUNTY OFFICE PRIOR TO WORKING DURING THESE PERIODS.
14. THE PERMITTEE'S CONTRACTOR SHALL SAWCUT AND REMOVE SHOULDER MATERIAL AS NECESSARY TO ENSURE THE PAVEMENT REPLACEMENT IS ADJACENT TO THE FULL-DEPTH PAVEMENT OF THE TRAVEL LANE.
15. FINAL APPROVAL OF THE PROPOSED SAWCUT LOCATION WILL BE AT THE DISCRETION OF THE INSPECTOR-IN-CHARGE AND WILL BE CONFIRMED AT THE PRE-CONSTRUCTION MEETING. IF THE SAWCUT MUST BE LOCATED WITHIN A TRAVEL LANE, IT WILL BE NECESSARY TO MILL AND OVERLAY THE TRAVEL LANE TO PREVENT A JOINT IN A WHEEL PATH.
16. THE PROPOSED PAVEMENT SECTION MUST BE AS INDICATED ON THE PLAN, OR MATCH THE EXISTING AS FOUND IN THE FIELD, WHICHEVER IS GREATER.
17. PRIOR TO AN OVERLAY, BITUMINOUS OR CONCRETE BASE REPAIR OR JOINT REPLACEMENT MAY BE REQUIRED. REPAIR/REPLACEMENT WILL BE AT THE DISCRETION OF THE INSPECTOR-IN-CHARGE.
18. ALL EXISTING PAVEMENT MARKINGS WHICH ARE NO LONGER APPROPRIATE SHALL BE ERADICATED BY THE PERMITTEE. THE PERMITTEE SHALL PLACE ALL REQUIRED NEW PAVEMENT MARKINGS.
19. ALL PAVEMENT MARKINGS OTHER THAN LONGITUDINAL LINES TO BE HOT THERMOPLASTIC (PENNDOT PUBLICATION 111, TC-8600).
20. MATCH EXISTING PAVEMENT MARKINGS AT THE LIMITS OF WORK.
21. MATERIAL CERTIFICATION MUST BE PROVIDED, BY AN APPROVED MANUFACTURER LISTED IN THE DEPARTMENT'S PUBLICATION 35 (BULLETIN 15), FOR ALL MATERIALS AND STRUCTURES WITHIN PENNDOT RIGHT-OF-WAY.
22. THE PERMITTEE SHALL CONTACT THE COUNTY MAINTENANCE MANAGER AT THE TIME OF THE GUIDERAIL REMOVAL; ALL EXISTING GUIDERAIL TO BE REMOVED SHALL BE TRANSPORTED TO AND STORED AS PER THE DIRECTION FROM THE COUNTY

MAINTENANCE MANAGER OR HIS REPRESENTATIVE.

23. ALL PROPOSED PEDESTRIAN FACILITIES REFLECTED ON THESE PLANS, INCLUDING THOSE THAT ARE OUTSIDE OF PENNDOT LEGAL RIGHT-OF-WAY, SHALL BE CONSTRUCTED TO COMPLY WITH THE REQUIREMENTS OF THE U.S. ACCESS BOARD, PUBLIC RIGHT-OF-WAY ACCESSIBILITY GUIDELINES (PROWAG) OF THE ACCESSIBILITY GUIDELINES OF BUILDINGS AND FACILITIES (ADAAG). PENNDOT DESIGN MANUAL PART 2, CHAPTER 6, AND PENNDOT STANDARDS FOR ROADWAY CONSTRUCTION (PENNDOT PUBLICATION 72M, RC-67M) PROVIDE GUIDANCE ON ADA ACCESSIBLE DESIGN FOR PEDESTRIAN FACILITIES AND CAN BE UTILIZED FOR REFERENCE.
24. ALL SLOPE MEASUREMENTS WILL BE INSPECTED/VERIFIED WITH A 2-FOOT SMART LEVEL.
25. IT IS THE RESPONSIBILITY OF THE PERMITTEE TO REMOVE ANY DEBRIS AND FLUSH OUT ALL EXISTING AND NEW STORM DRAINAGE FACILITIES WITHIN THE PROJECT LIMITS AT THE COMPLETION OF THE CONSTRUCTION.
26. MODIFICATION TO EXISTING DRAINAGE STRUCTURES MAY RESULT IN THE NEED TO REPLACE THE STRUCTURE. REPLACEMENT WILL BE AT THE DISCRETION OF THE INSPECTOR-IN-CHARGE.
27. STRUCTURAL STEEL BICYCLE SAFE GRATES MUST BE PROVIDED FOR ALL INLETS WITHIN THE ROADWAY PAVEMENT OF THOSE THAT MAY RECEIVE BICYCLE TRAFFIC (PENNDOT PUBLICATION 72M, RC-45M).
28. THE RESPONSIBILITY FOR ENSURING THAT ALL UTILITY POLES WITHIN THE PROPOSED PAVING ARE RELOCATED OUTSIDE OF PAVED AREAS AND SHOULDERS SHALL BE THAT OF THE PERMITTEE. THE UTILITY POLES MUST BE RELOCATED BEFORE THE START OF ANY PAVING OPERATIONS.
29. THE PERMITTEE IS RESPONSIBLE FOR THE COORDINATION OF RELOCATING ANY CONFLICTING UTILITIES WHICH ARE A RESULT OF THESE IMPROVEMENTS.
30. ALL UTILITY RELOCATION PERMITS TAKE PRECEDENCE OVER THE UTILITY RELOCATION POSITIONS SHOWN ON THE HOP PLANS.
31. *(Provide a List of Public Utilities in accordance with Act 287-1974. List the name, address with Zip Code, and the name, title, and telephone number of the appropriate utility representative.)*
32. *(A note referencing the specific PennDOT plan of record, road docket, or other basis of PennDOT Legal Right-of-Way width must be provided on the plans. Refer to PennDOT Publication 14M, Chapter 2 for example notes.)*

MAINTENANCE AND PROTECTION OF TRAFFIC (MPT) NOTES

1. THIS WORK CONSISTS OF THE MAINTENANCE AND PROTECTION OF TRAFFIC AND THE PROTECTION OF THE PUBLIC WHEN APPROACHING AND DEPARTING THE CONSTRUCTION AREA AND WITHIN THE LIMITS OF CONSTRUCTION.
2. FURNISH, ERECT, PLACE AND MAINTAIN TRAFFIC CONTROL SIGNS AND DEVICES. MAINTAIN TRAFFIC DURING HOURS OF CONSTRUCTION AND AT ALL OTHER TIMES CONSISTENT WITH THE METHODS INDICATED ON THESE DRAWINGS AND THE FOLLOWING:
 1. PENNDOT PUBLICATION 35;
 2. PENNDOT PUBLICATION 46;
 3. PENNDOT PUBLICATION 72M;
 4. PENNDOT PUBLICATION 111;
 5. PENNDOT PUBLICATION 212;
 6. PENNDOT PUBLICATION 213;
 7. PENNDOT PUBLICATION 236;
 8. PENNDOT PUBLICATION 408; AND
 9. MUTCD, CURRENT EDITION.
3. REMOVE THESE DEVICES IMMEDIATELY UPON COMPLETION OF THE WORK. PENNDOT WILL REMOVE ANY TRAFFIC CONTROL DEVICES ERECTED BY DEPARTMENT FORCES.
4. PERMITTEE MUST ARRANGE FOR INSPECTION OF ALL TRAFFIC CONTROL DEVICES PRIOR TO START OF WORK.
5. COVER OR REMOVE ALL CONFLICTING SIGNS AND ERADICATE ALL CONFLICTING PAVEMENT MARKINGS.
6. MOUNT ALL LONG-TERM ADVANCE WARNING SIGNS ON TYPE III BARRICADES UNLESS OTHERWISE NOTED OR INSTRUCTED BY DISTRICT OFFICE.
7. ALL SIGNS AND DEVICES TO BE MAINTAINED IN NEW OR LIKE NEW CONDITION.
8. DRIVEWAYS WILL BE KEPT ACCESSIBLE AT ALL TIMES. LOCATE ALL SIGNS SO THAT SIGHT DISTANCES WILL NOT BE OBSTRUCTED AT DRIVEWAYS AND LOCAL ROADS.
9. ALL CHANNELIZING DEVICES, BARRICADES, AND SIGNS SHALL HAVE TYPE III OR BETTER PRISMATIC RETROREFLECTIVE SHEETING. SHEETING SHALL BE APPROVED AND LISTED IN PENNDOT PUBLICATION 35 (BULLETIN 15).
10. NO TRAFFIC RESTRICTIONS OR LANE CLOSURES ARE PERMITTED BETWEEN 6:00 AM AND 9:00 AM AND BETWEEN 3:00 PM AND 6:00 PM MONDAYS THROUGH FRIDAYS OR ON LEGAL HOLIDAYS AND WEEKENDS ASSOCIATED WITH LEGAL HOLIDAYS. ALL RESTRICTIONS AND CLOSURES ARE TO BE REMOVED BY NOON ON THE DAY PRIOR TO THE LEGAL HOLIDAY.

11. PERMITTEE SHALL NOTIFY LOCAL EMERGENCY AUTHORITIES (E.G., POLICE, FIRE, MEDICAL), AFFECTED BUSINESSES, SCHOOL DISTRICT(S), THE GENERAL PUBLIC, THE DISTRICT PERMIT MANAGER AND THE DISTRICT APRAS COORDINATOR AT LEAST FOURTEEN DAYS PRIOR TO ANY SIGNIFICANT TRAFFIC IMPACTS (E.G., LATERAL WIDTH RESTRICTIONS LESS THAN 16 FEET, DETOURS).
12. MAINTENANCE AND PROTECTION OF TRAFFIC DURING CONSTRUCTION SHALL BE IN ACCORDANCE WITH APPLICABLE PATA DRAWING (S) _____ IN THE CURRENT PENNDOT PUBLICATION 213, “TERMPORARY TRAFFIC CONTROL GUIDELINES”.
13. DROPOFFS CREATED BY CONSTRUCTION OPERATIONS SHALL BE TREATED CONSISTENT WITH PUBLICATION 408, SECTION 901.3(J).
14. REMOVE ALL SHORT-TERM WORK ZONE TRAFFIC CONTROL SIGNING UPON COMPLETION OF THAT DAY’S WORK PERIOD.
15. RESTRICTING TRAFFIC FLOW WITHIN THE WORK AREA SHALL BE MINIMIZED TO PREVENT TRAFFIC CONGESTION AND UNSAFE TRAFFIC CONDITIONS.
16. NOTIFY THE LOCAL MUNICIPALITY WHERE SIGNALIZED INTERSECTIONS FALL WITHIN THE WORK ZONE. DO NOT FLAG A SIGNALIZED INTERSECTION WITHOUT THE MUNICIPALITY PLACING THE SIGNAL ON FLASH.
17. THE CONTRACTOR SHALL COMPLY WITH ACT 229 OF DECEMBER 2002 DURING CONSTRUCTION ACTIVITIES WITHIN PENNDOT’S RIGHT-OF-WAY.

*This Is The Desired Format For The General Permit Notes and MPT Notes.
Please Include These On First Plan Sheet.
This Section Will Differ Based on Individual Situation.
Please Add Any Additional Notes That Apply.*

APPENDIX C3 – OUTLINE OF RIGHT-OF-WAY ACQUISITION PROCEDURES FOR HIGHWAY OCCUPANCY PERMITS

The following are suggested chronological steps for successfully completing the conveyance process when an Applicant must obtain land for State highway right-of-way in connection with obtaining a highway occupancy permit (HOP). Because each conveyance may have unique circumstances and requirements the process may and should be adjusted based on direction from the specific Engineering District in which the permit is being issued.

This outline is not intended to be a substitute for the policy set forth in Chapter 3 on right-of-way acquisition procedures in permit projects. There are requirements and guidance in the chapter that apply but are not contained in this outline.

1. Complete traffic study identifying impacts. (Approved by PennDOT)
2. Propose capacity or safety mitigation improvements. (Approved by PennDOT)
3. Obtain appropriate existing PennDOT right-of-way (R/W) plans.
4. Develop sketch plan of improvements.
5. Conduct RW and property research:
 - a. Obtain copies of tax maps from the local tax assessor's office.
 - b. Identify all properties and tabulate property tax numbers.
 - c. Obtain names of property owners, mailing addresses, deed references.
 - d. Obtain copies of all deeds.
 - e. Obtain ordinances, dedications.
 - f. Obtain utility easements.
 - g. Identify railroad R/W.
6. Perform preliminary determination of utility involvement.
7. Perform preliminary determination of environmental involvement.
 - a. The Applicant and PennDOT should conduct a thorough visual inspection of the property for evidence of hazards or regulated resources before accepting a deed.
 - b. PennDOT may require an Applicant to deliver an environmental report for review before accepting a deed.
8. Prepare more detailed preliminary plan showing property(ies) with existing and proposed improvements and required R/W.
9. Arrange for a Pre-Meeting with PennDOT, with the following recommended attendees:
 - a. PennDOT single point of contact (Permit Unit representative).

- b. District R/W Administrator (or representative).
- c. Chief of Survey, Environmental Manager, Utility Administrator as appropriate.
- d. Applicant.
- e. Applicant's consultant.
- f. Applicant's counsel as appropriate.
- g. PennDOT counsel as appropriate

10. Suggested Pre-Meeting agenda:

- a. Identify and define single point of contact (usually within Permit Unit).
- b. Submissions to be whole submissions, not partial submissions. Preliminary submission can be made. Final submission to include draft M950 D Deed and title documentation.
- c. Select standard or simplified R/W plans presentation (DM-3, Chapter 3).
- d. Review plan presentation details unique to HOP plans (DM-3, Chapter 3).
- e. Review acceptable form of deed (i.e. fee simple or easement).
- f. Review title documentation requirements:
 - i. Record owner and lien certificate/ abstract of title / title report.
 - ii. Exceptions to title must be addressed and removed where appropriate in the determination of PennDOT.
- g. Review issues customized to a particular site.
 - i. Elimination of utility easements, general utility clearance requirements.
 - ii. Environmental requirements for R/W area to be transferred.
 - iii. Determine if drainage easements needed and deeded to municipality if the municipality maintains drainage.
 - iv. Obtain general concurrence by PennDOT as to how much R/W needed beyond roadway to maintain facilities (e.g.: 5' min for signs, sometimes 8' beyond toe of slope in a fill section, total width multiples of 5', etc).
 - v. Confirm that necessary temporary construction easements (TCEs), rights of entries or permissions have been acquired; do not show TCE's on R/W plans.
 - vi. Consider effect of land development requirements including building set-backs
 - vii. Discuss survey requirements.
- h. Explain recording procedures
 - i. Who, when and where.
 - ii. Discuss particular county recorder needs; every county a little different; R/W Administrator may give guidance.

11. Suggested appropriate method to approach property owners where State or Federal funds are not being used and PennDOT has not authorized the local government to condemn if necessary (see Design Manual, Part 3).
 - a. Use standard form for initial letter/contact with property owners:
 - i. Explain general overview of the project.
 - ii. Assess general interest or cooperation.
 - iii. Clarify that this is not a PennDOT project but rather a private inquiry.
 - iv. Include a statement of no condemnation authority.
 - v. Assurance that only amicable arrangements possible.
 - vi. Offer to have appraisal performed at no cost to property owner.
 - vii. Offer to provide fair market value.
 - viii. Offer to do all paperwork.
 - ix. Offer to meet and discuss.
 - x. Offer contact person at PennDOT for information or to request PennDOT participation in meetings.
 - xi. Offer contact person at municipality for information or to request municipal participation in meetings.
 - xii. Offer to consider counter offers.
 - xiii. Allow reasonable response times.
 - xiv. Make sure documents are notarized if necessary.
 - b. Follow up with formal offer including conditions, schedule information and opportunity to accept or decline.
12. If not successful in acquiring R/W and thus unable to meet design standards, then the Applicant will need to redesign the project or pursue having the local government condemn the property if authorized by PennDOT (see Design Manual, Part 3); if the project cannot be reasonably redesigned or the local government or PennDOT will not authorize condemnation, then the Applicant will need to request a design waiver. [see 67 Pa. Code §441.5(e) and Chapter 3 of this manual on Waiver of Design Requirements.]
13. PennDOT may give a municipality the power to condemn property for State highway purposes in exceptional circumstances with the approval of the District Executive (see Design Manual, Part 3).
14. If Applicant is successful in obtaining R/W, then the following information must be prepared by the Applicant:
 - a. Drawings depicting right-of-way to be conveyed for the state highway prepared in accordance with PennDOT Publication 14, Design Manual Part 3, Chapter 3.
 - b. Deed, Fee Simple (Form M-950 D1); or, if approved by the District, Deed of Easement (Form M- 950 D2). These form deeds are available from any Engineering District Office.

- c. Title documentation.
 - d. Perform survey if necessary. PennDOT conveyances are generally based on a plot plan showing the area being conveyed and all or part of the tract of land from which it will be conveyed.
 - e. A metes and bounds description may be acceptable if it is supported by a sealed survey for PennDOT review. Confirm with PennDOT prior to performing a field survey. Review by PennDOT's Survey Unit typically requires verification of the point of beginning and subsequent deed calls, which can be impractical.
 - f. Obtain permission to enter property before surveying.
 - g. Survey wells and septic systems, all building, commercial signs, and private and public utilities which are adjacent to the highway corridor.
 - h. Locate miscellaneous property corners readily available along the highway corridor.
 - i. Survey references should conform to PennDOT Publication 122M, Survey and Mapping Manual.
15. Prepare final R/W plans.
- a. These drawings document the extent of the new R/W in PennDOT's record keeping system. In order to do so the Applicant is required to generate a plan depicting the R/W that will be deeded to PennDOT. This plan shall follow the procedures set forth in Design Manual Part 3, Chapter 3 for generating drawings authorizing the acquisition of R/W for PennDOT projects as modified for permit projects under Chapter 3. Use only 22" X 34" sheet size.
 - b. Where the majority of the HOP construction is within existing right-of-way, only a few properties are involved and the areas to be acquired are minor, the right-of-way plan can be a simple, one or two page plan that need not depict related proposed highway construction features. See DM3, Chapter 3, Section 3.0.G (Simplified Right-of-Way Plans). Otherwise, typical drawings can be organized as follows:
 - i. Sheet 1 – Title Sheet to include special title and signature blocks for District Executive and Secretary of Transportation. Appropriate personnel, such as the District Plans Engineer, District Chief of Surveys, District Permit Manager and/or District R/W Administrator, should review the plan prior to signature. The title sheet will need to contain a recording block because the plan will be recorded. [DM3 Sections 3.0.H, page 3-5, and 3.2.I.6, page 3-18, and references therein.]
 - ii. Sheet 2 – Index Sheet which may be combined with Sheet 3 if a one-sheet presentation is being used. [DM3, Section 3.3, pages 3-20, et seq.]
 - iii. Sheet 3 – Typical Section Sheet [DM3 Section 3.4, pages 3-25, et eq.]
 - iv. Sheet 4 – Plan Sheet showing the proposed work area with legal and required R/W designated. Instead of the normal designation of "required R/W" the areas that will be deeded to PennDOT should be designated as "required R/W to be deeded to the Commonwealth." If an area is intended for other than highway R/W the area should be marked in a similar manner indicating the nature of the interest that will be transferred to PennDOT (e.g. "required limit of slope to be deeded to the Commonwealth" or "required drainage easement to be deeded to Mellon Township"). Show all dimensions, plus(s)/offsets, and geometric data. If the centerline of the road is relocated, it must be

- v. clearly referenced and dimensioned from the existing centerline [DM3, Section 3.5, pages 3-40, et seq.].
 - vi. Sheet 5 – Property Plot Plan (formally known as Property Plat) of parcel from which the R/W is being acquired. Check with District Permit Manager if this sheet is required as determined in consultation with the District R/W Administrator or other real estate expert (discuss during pre-meeting). Identify deed information on plot. Fit plots to topographic features. Mark proposed R/W monument points. Include all other slope easements, drainage easements, utility easements, etc. [DM3, Section 3.6, pages 3-50, et seq.]
- c. Calculate preliminary areas and complete the information block Title Block [DM3 Section 15.1, page 15-4 for sample]. Remove the word “Claim” for HOP R/W drawings.
 - d. Drawings will be reviewed by the District Permit Manager, staff, and other District staff deemed appropriate such as the District R/W Administrator, District Surveyor, District Plans Engineer and District Utility Administrator, and the assigned Central Office Field Liaison Engineer.
 - e. Stamp reproducible drawings with those of the Professional Land Surveyor and Professional Engineer responsible for the plans.
 - f. Sign the R/W plan Title Sheet.
 - g. PennDOT process for execution by Secretary of Transportation.
 - h. District to insure acquisition of the new R/W is properly filed and documented for future reference and use by the District and others.
16. Resolve utility/environmental issues.
17. Deed delivered, approved by District and recorded.
- a. Form M-950 D1 (Deed Fee Simple) shall be used to convey the needed R/W from the Applicant to PennDOT unless PennDOT approves use of Form M-950 D2 (Deed of Easement).
 - b. Land not owned by the Applicant must first be conveyed to the Applicant and then by the Applicant to PennDOT in one deed using the appropriate deed form.
 - c. The deeds utilize a plot plan referenced as an exhibit. A metes and bounds description can be used with the M-950 D1 if only fee simple title is being transferred.
 - d. The Applicant is required to provide title documentation (preferably a record owner and lien certificate) updated to within 15 calendar days of the date the land will be conveyed to PennDOT. All exceptions to title must be addressed and removed as determined necessary by PennDOT.
 - e. Once the executed deed is obtained, the District must review and approve the deed and the plot plan or description before it is recorded (by the Applicant if requested by PennDOT).
18. Issue HOP (all other requirements unrelated to right-of-way must also be satisfied).
- a. All negotiations must be settled and the approved deed (with approved plot plan and title documentation) must be executed prior to issuance of the HOP except in exceptional circumstances with the approval of the District Executive.

- b. The R/W plan must likewise be completed and approved prior to issuance of the HOP except in exceptional circumstances with the approval of the District Executive.

19. Record RW plan and deed.

- a. The District Permit Manager, along with the District RW Administrator or representative will, preferably during a pre-meeting, provide and explain the recordation process based on PennDOT recording needs and the applicable county recording requirements.
- b. Costs associated with the county's recordation process are the responsibility of the Applicant.

APPENDIX C4 – MINIMUM USE DRIVEWAY DESIGN FOR UNCONVENTIONAL GAS DRILLING AND HYDROFRACKING WELL SITES

The following page is the detail of the minimum use driveway design for unconventional gas drilling and hydrofracking well sites.

APPENDIX C5 – SAMPLE ACORD FORM WITH INSTRUCTIONS

The following page is the sample ACORD form with instruction. It has been included on its own sheet for ease of printing.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Complete all contact information for producer and insured including NAIC number(s).	CONTACT NAME: PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL _____ ADDRESS: _____	
	INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED ACORD forms for driveway, local roads or other structures must list insured as the name of the permittee exactly as it appears on the application. ACORD forms for utility facilities may be submitted with either the permittee or the contractor for the facility as the insured.	INSURER A: Name(s) of Insurer(s)	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 2825621 **REVISION NUMBER:** See below

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			General liability insurance shall be occurrence based. The amount of coverage should be \$250,000 per person and \$1,000,000 per occurrence, as seen at right. If additional amounts are required it should be so indicated.			EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 250,000 GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below			N/A			WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Describe in detail the work you intend to do being sure to include: District, application number, state routes, and operation (i.e. construct driveway and related improvements within PennDOT right of way at SR, seg, offset). The Commonwealth of Pennsylvania, Department of Transportation is named as an additional insured. If the form is for blanket insurance, it should be so indicated here.

CERTIFICATE HOLDER Certificate holder is the Commonwealth of Pennsylvania, Department of Transportation.	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE The Department requires 30 days advance written notice of cancellation.
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APPENDIX C6 – SIGNATURE AUTHORITY GUIDE (RIGHT-OF-WAY MANUAL, APPENDIX F)

The following page is the Signature Authority Guide. It has been included on its own sheet for ease of printing.

Signature Authority Guide

Right-of-Way Acquisition Forms

Form and Legality Review

Office of Chief Counsel, PennDOT
April 2007

APPENDIX F SIGNATURE AUTHORITY GUIDE

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PRELIMINARY NOTICE

The *Signature Authority Guide, Right-of-Way Acquisition Forms, Form and Legality Review* is intended to provide general guidance and is sufficient to address the majority of questions pertaining to documents requiring approval as to form and legality by the Office of Chief Counsel. However, there will always be instances where factual peculiarities will take a case outside of the provisions of the *Signature Authority Guide*. In those instances, you are strongly urged to contact the Office of Chief Counsel, Real Property Division, Right-of-Way Section, before completing the transaction.

Moreover, it is important to remember that **any time** you rely on documentation from the grantor to determine the proper grantor and signatory, e.g., corporate resolution, death certificate, corporate by-laws, etc., you must provide a copy of that documentation to Central Office along with the acquisition documents.

Also, transactions involving purchasers under installment sales contracts as well as life estates, while not as commonplace as the transactions covered in-depth here, warrant special attention. For these types of transactions, **ALL** interested parties must be listed in the deed as grantors. Who is required to sign will depend on the status of the grantor(s).

CHAPTER 1

INDIVIDUALS

1.01 MARRIED INDIVIDUALS

A tenancy by the entirety exists when property, either real or personal, is held jointly by a husband and wife.¹ Neither spouse, acting independently, may sever the estate by conveying part of the property away.² Therefore, if the subject property is held jointly by husband and wife, both of them must sign PennDOT documents.

A tenancy by the entirety includes the right of survivorship. Upon the death of one spouse the survivor becomes the sole owner of the entirety property.³ You must provide proof of death of the deceased spouse.

EXAMPLE: John Doggett and Barbara Doggett jointly own real property. John Doggett dies. Barbara Doggett becomes the sole owner of the real property.

CORRECT: Made on January 1, 2007, by Barbara Doggett, widow.

INCORRECT: Made on January 1, 2007, by John Doggett, deceased, and Barbara Doggett, widow.

EXAMPLE: John Doggett and Barbara Doggett owned real property as tenants in common with Monica Reyes. John and Barbara held a 50% interest and Monica held a 50% interest. John died. Barbara became the sole owner of the 50% interests that she held as tenancies by the entireties with John. Barbara and Monica now each hold a 50% interest in the real property as tenants in common.

If the record owner is married but his or her spouse is not a record owner, the spouse is not required to sign PennDOT documents. It is also not necessary to name the spouse in the acquisition documents.

1.02 DIVORCED INDIVIDUALS

If the record owners have divorced since acquiring the property and have not entered into a property settlement agreement, they are now tenants in common.⁴ Both ex-spouses must sign PennDOT documents.

If the divorced record owners entered into a property settlement agreement in which one person conveyed all of his or her interest in the property to the other, the person to whom the interest was conveyed may execute PennDOT documents alone, even if there is no new deed reflecting the transfer.

The being clause should be written as follows: "Being a portion of the property conveyed or devised to the SELLER by a Property Settlement Agreement dated _____, recorded in n/a."

1.03 MULTIPLE INDIVIDUAL OWNERS

Unmarried individuals may own property as tenants in common or as joint tenants with the right of survivorship. All record owners must execute PennDOT documents.

If a tenant in common dies, his or her interest in the property passes to that person's devisees (if there was a will) or heirs (if there was no will). If two or more persons own the property as tenants in common and one of them dies, the deceased's interest in the property does not automatically vest in the remaining owners. The deceased's share is devised by his or her will or passes to his or her heirs according to the intestacy statute.

If a joint tenant with the right of survivorship dies, all of his or her interest in the property automatically vests in the person who holds the right of survivorship.

--See Chapter 6 for specific rules in dealing with decedents' estates.

1.04 NAME CHANGES

If the record owner's name was legally changed from what is shown on the base deed, that person is not required to sign his or her former name.

EXAMPLE: Mary Jones is named on a deed as the owner of the subject property. After acquiring the property, Mary married and changed her name to Mary Smith. Mary can sign her name as "Mary Smith" and the signature line should be prepared as follows:

Mary Smith, f/k/a Mary Jones

It is appropriate to add a sentence after the "being all or a portion sentence" stating that Mary Jones was married on _____ and changed her name to Mary Smith.

1.05 MINORS AND INCAPACITATED PERSONS

If the real estate being acquired has a net value of \$25,000 or less, the minor or incapacitated person, a parent, or other person maintaining the minor or incapacitated person may execute the settlement documents after getting the approval of the court.⁵

If the real estate being acquired has a net value greater than \$25,000, the court must appoint a legal guardian to act on behalf of the minor or incapacitated person. That legal guardian can only sell real property owned by the minor or incapacitated person after getting the approval of the court.⁶

1.06 CLAIMANTS WHO CANNOT WRITE

The purpose of a signature is to verify that the document is authentic. If a claimant cannot write his or her name, the claimant may mark "X," provided the claimant intends it as his or her signature and it is acknowledged by at least two witnesses.⁷

CHAPTER 2

BUSINESS ENTITIES

There are several types of business entities recognized by the laws of the Commonwealth of Pennsylvania. They include corporations (for business and nonprofit); partnerships (general, limited, limited liability); limited liability companies; business trusts; and, sole proprietorships.⁸

Each type of business entity is obliged to adhere to signature authority requirements and will be addressed separately below.

If the business entity was formed in another state, it may be necessary to look at that state's laws to determine proper signature authority.

2.01 CORPORATIONS

The Commonwealth of Pennsylvania (Pennsylvania) recognizes Pennsylvania corporations organized for profit (business corporations) and nonprofit corporations. Both business and nonprofit corporations can organize as a cooperative corporation or elect to be an S Corporation. Because the statutory signature requirements for contracts are the same for business corporations⁹ and nonprofit corporations¹⁰, they will be addressed together. While this was not always the case, it is no longer necessary to have a corporate seal affixed to any document.¹¹

There are three different situations in which a corporation can be bound by one or more of its members.

1. Apparent authority of senior corporate officers—the signature of one senior corporate officer is sufficient to bind the corporation in its dealings with PennDOT. A “senior corporate officer” is defined as one of the following: chairman; president; vice-president (any type—e.g., senior vice-president, executive vice-president, assistant vice-president, etc.); chief executive officer; and, chief operating officer.
2. Traditional Rule of Two—contracts are properly executed for and on behalf of a corporation if signed by two duly authorized officers. One of the officers signing the document must be either the president or the vice president. The other officer signing the document must be one of the following: the treasurer, the assistant treasurer, the secretary or the assistant secretary. While the signature of only the president or vice president would be sufficient, having the secretary/assistant secretary or treasurer/assistant treasurer sign the documents as well does not void the agreement.
3. Actual Authority—if the corporation provides sufficient evidence (such as: a resolution by the Board of Directors; corporate by-laws; a letter from the president or vice-president on corporate letterhead; or, a letter from corporate counsel) that signature authority has been delegated to another officer or person, that officer or other person may sign instead of the ones listed above.

A. Closely-Held Corporations. In small or closely-held corporations it is not uncommon for one individual to hold two or more corporate offices. The individual signing may indicate that he or she holds all the offices. In this situation, the individual can execute a document in more than one capacity and his or her signature is treated as that of both offices held.¹²

2.02 PARTNERSHIPS

Partnerships in Pennsylvania are either general or limited. In addition, general and limited partnerships can register with the Department of State as a Pennsylvania limited partnership. Each type of partnership is addressed separately below.

A. General Partnerships. A partnership is defined as “an association of two or more persons to carry on as co-owners a business for profit.”¹³ The existence of a partnership depends upon the intentions of the parties as to being partners and no formal or written agreement need be executed in order for a valid partnership to exist.¹⁴ Unlike limited partnerships, there is no legal requirement that a general partnership register with the Department of State. In determining whether a partnership exists, the receipt of a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business.¹⁵

If title to the property is in the partnership name, any partner may convey title to the property.¹⁶

A partner can be a person:

ENTITIES

Seller:

Millennium Group
(Name of Entity)

BY: _____
Frank Black, Partner

Or a business entity:

ENTITIES

Seller:

Millennium Group
(Name of Entity)

BY: _____
Frank Black, President
2000 Corporation, General Partner

BY: _____
Stan Black, Secretary
2000 Corporation, General Partner

ENTITIES

Seller:

Millennium Group
(Name of Entity)

BY: _____
Frank Black, Member
2000 Group, LLC, General Partner

B. Limited Partnerships. In order to form a Pennsylvania limited partnership, a Certificate of Limited Partnership must be executed and filed with the Pennsylvania Department of State.¹⁷ The Certificate must set forth the names of the general partners.¹⁸

General partners in a limited partnership have the same powers as a partner in a general partnership.¹⁹ Limited partners are granted no such power. Therefore, only general partners may convey property owned by the partnership.

A general partner can be a person:

ENTITIES

Seller:

Millennium Group
(Name of Entity)

BY: _____
Frank Black, General Partner

Or a business entity:

ENTITIES

Seller:

Millennium Group
(Name of Entity)

BY: _____
Frank Black, President
2000 Corporation, General Partner

BY: _____
Stan Black, Secretary
2000 Corporation, General Partner

ENTITIES

Seller:

Millennium Group
(Name of Entity)

BY: _____
Frank Black, Member
2000 Group, LLC, General Partner

C. Limited Liability Partnerships. Pennsylvania Limited Liability Partnerships (LLP) are either general or limited partnerships registered with the Department of State as a LLP.²⁰ If the LLP is a general partnership, follow the signature authority rules for general partnerships. If the LLP is a limited partnership, follow the signature authority rules for limited partnerships.

2.03 LIMITED LIABILITY COMPANIES (LLCS)

A Limited Liability Company (LLC) combines features of a partnership and a corporation. The management and business affairs of a LLC is vested in members, unless the certificate of organization filed with the Department of State provides that management is vested in one or more managers.²¹

If the LLC is run by members, any member can convey property.²²

ENTITIES

Seller:

The Donut Shack, LLC
(Name of Entity)

BY: _____
Amy Shack, Member

If the LLC is run by managers, any manager can convey property. Members cannot.²³

ENTITIES

Seller:

The Donut Shack, LLC
(Name of Entity)

BY: _____
Linus Shack, Manager

2.04 FICTITIOUS NAMES/SOLE PROPRIETORSHIP

If a person or persons is operating a business under a fictitious name, but has not organized that business as a corporation, partnership or LLC, a Fictitious Name Registration must occur. The fictitious name is any chosen or assumed name, style or designation other than the proper name of the entity using the name. Registration must be made with the Department of State.

ENTITIES

Seller:

Beans Galore

(Name of Entity)

BY: _____

Beanie McGee, d/b/a Beans Galore

CHAPTER 3 GOVERNMENT ENTITIES

Counties, cities, boroughs, townships and municipal authorities are examples of government entities or political subdivisions of the Commonwealth of Pennsylvania (Commonwealth) from which PennDOT may acquire real property. Each is separately addressed below.

Important Note: There are certain situations where special documentation will supercede the general rules that follow. One such instance is when the government entity passes an official resolution delegating authority to a specific person or persons to deal with the property in question or property transfers in general. Another instance would be where a delegation letter is provided by a solicitor or official for the government entity reflecting authorization to a specific person or persons to sign. In these cases, a copy of the document evidencing the delegation must be presented to the Office of Chief Counsel.

3.01 COUNTIES

The corporate power of each county is vested in the board of county commissioners.²⁴ The board of commissioners is authorized to make and acknowledge deeds of any real estate belonging to the county which they are authorized to sell.²⁵ The seal of the county must be affixed to the deed.²⁶ PennDOT acquisition documents must be signed by **all** of the county commissioners **OR** by the person granted the authority to sign by resolution of the board of commissioners.

ENTITIES

Seller:

The County of Berks
(Name of Entity)

BY: _____
John Byers, County Commissioner

BY: _____
Melvin Frohike, County Commissioner

BY: _____
Richard Langly, County Commissioner

3.02 CITIES

Signature authority questions for cities will be addressed on an as-needed basis for the reasons set forth below.

A. First Class Cities. Philadelphia is the only first-class city in the Commonwealth. It is governed by the Philadelphia City Charter. Pursuant to the Philadelphia City Charter, only the Commissioner of Public Property is authorized to transfer property held in the name of the City. Therefore, only that person’s signature is required on PennDOT acquisition documents.

B. Second Class Cities. Pittsburgh is the only second class city in the Commonwealth. It is governed by the Pittsburgh City Charter. The Pittsburgh City Charter requires three signatures: the Mayor executing the document; the Mayor’s executive secretary attesting to the Mayor’s signature; and the City Solicitor as to form.

C. Second Class A Cities. The City of Scranton is the only Second Class A City. Pursuant to Scranton’s Home Rule Charter, PennDOT acquisition documents must be signed by the Mayor, the City Clerk, the City Controller, and the City Solicitor, and be approved by City Council.

D. Third Class Cities. Signature authority for third class cities will vary, depending on whether the city is operating under the third class city code or one of the forms of government under the optional Third Class City Charter Law. If you are unable to obtain a resolution from the city council delegating signature authority to a responsible individual or individuals, please contact the Office of Chief Counsel for further assistance.

3.03 BOROUGHES

The governing body of a borough is the borough council.²⁷

Whenever any action by the council results in a specific written contract or agreement, such contract or agreement must be signed by the president of the borough council.²⁸ Execution of the document(s) by the borough council president is sufficient without further documentation. The borough council may delegate this authority to the borough manager by ordinance.²⁹ You must present evidence of the delegation to the borough manager to Central Office along with the acquisition documents.

ENTITIES

Seller:

The Borough of West Reading
(Name of Entity)

BY: _____
Stephanie J. Murray, President
Borough Council

3.04 TOWNSHIPS

A. First class townships. The corporate power of a township of the first class is vested in the board of township commissioners.³⁰ Every board of township commissioners has a president and a vice-president.³¹ The First Class Township Code does not specify the manner in which contracts, deeds or other instruments are to be executed on behalf of the township. Therefore, PennDOT acquisition documents must be signed by all of the township commissioners OR by the person granted the authority to sign by resolution of the board of commissioners.

B. Second class townships. The corporate powers of second class townships are exercised by the board of supervisors.³² Every board of township supervisors has a chairman and a vice-chairman.³³ The Second Class Township Code does not specify the manner in which contracts, deeds or other instruments are to be executed on behalf of the township. Therefore, PennDOT acquisition documents must be signed by all of the township supervisors OR by the person granted the authority to sign by resolution of the board of supervisors.

3.05 MUNICIPAL AUTHORITIES

The corporate powers of municipal authorities are exercised by a board of members.³⁴ The Municipal Authorities Act does not specify the manner in which contracts, deeds or other instruments are to be executed on behalf of the authority. Therefore, PennDOT acquisition documents must be signed by **all** members of the authority board **OR** by the person granted the authority to sign by resolution of the board of members.

CHAPTER 4 SCHOOL DISTRICTS

The board of school directors for each school district is vested with the power to sell unused and unnecessary lands belonging to the school district.³⁵ The president and secretary of the board of school directors must execute any and all deeds and contracts.³⁶

ENTITIES

Seller:

The West Shore School District
(Name of Entity)

BY: _____
Kris L. Mailey, President
Board of School Directors

BY: _____
Louis V. Stephens, Secretary
Board of School Directors

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CHAPTER 5 RELIGIOUS SOCIETIES

Pennsylvania law dictates that real property owned for a church, congregation or religious society is held subject to the control and disposition of its officers or authorities.³⁷ The control and disposition of the property must be exercised in accordance with and subject to the rules, regulations, usages, canons, discipline and requirements of the religious body, denomination or organization to which such church, congregation or religious society belongs.³⁸

Signature authority is governed by the particular rules and regulations of the church that owns the property.

For example, the Roman Catholic Church is governed by the Canons. The Canons dictate that the diocesan bishop owns real property in trust for the parish and that he alone may dispose of it.

ENTITIES

Seller:

The Diocese of Harrisburg

(Name of Entity)

BY: _____

Most Reverend Kevin C. Rhoades
Bishop of Harrisburg

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CHAPTER 6 ESTATES

Dealing with a claim in which the owner or owners of the subject property is deceased can be extremely complicated. This is because there are a variety of ways in which the assets of a decedent's estate can be distributed.

If the owner or owners of the subject property are deceased, you must first determine whether or not the decedent had a will.

6.01 WHERE THE DECEDENT HAD A WILL

In the typical situation, a family member of the deceased will bring the will to the Register of Wills and offer it for probate. "Probate" is the judicial act whereby an instrument is adjudged a valid will and ordered to be recorded. The will must be probated in the county where the deceased had his last family or principal residence.³⁹

After (or at the same time as) the will is probated, the person(s) named in the will as the executor(s) will file a Petition for Grant of Letters. If the Petition is in order, the Register will grant letters testamentary to the executor.

The Petition itself can be a valuable resource, as the petitioner typically lists all real estate located in the Commonwealth.

The executor will file a statement of proposed distribution. After the Court approves the proposed distribution, the executor can distribute the real estate in accordance with the decree.⁴⁰

The executor bears the responsibility to preserve and protect the decedent's property for distribution to the proper persons within a reasonable time.⁴¹ Conversely, the executor may sell any real property that is not specifically devised by will.⁴²

If the decedent had a will, but the will did not specifically devise the real property in question, **the executor alone may sign the acquisition documents.**

If the real property in question is specifically devised in the will, the executor **AND** the devisee may **jointly** sell the property.⁴³ Therefore, the **signatures of both the executor and the specific devisee(s) are required.**

ENTITIES

Seller:

The Estate of John Smith
(Name of Entity)

BY: _____
Betty Smith, Executor

BY: _____
John Smith, Jr., Devisee

Once distribution of the decedent's real property is approved by the court, legal title to the real property in question is in the person to whom the real property was awarded.

Important Note—If the decedent divorced after making the will, the ex-spouse **does not** get what was devised to him or her in the will.⁴⁴ In such an instance, the executor alone may sign the acquisition documents.

6.02 WHERE THE DECEDENT DIED INTESTATE (WITHOUT A WILL)

Any real property not disposed of by will passes to the decedent's heirs as set forth in the Probate, Estates and Fiduciaries Code.⁴⁵

Since an executor can sell any real property that is not specifically devised, a personal representative (if one exists) can sell the real property in question when there is no will:

ENTITIES

Seller:

The Estate of John Smith
(Name of Entity)

BY: _____
Betty Smith, Administrator

If there is no personal representative, the heirs all must sign the acquisition documents. If some of the heirs are unknown or cannot be located, you must condemn.

Once distribution of the decedent's real property is approved by the court, legal title to the real property in question is in the person to whom the real property was awarded.

CHAPTER 7 POWER OF ATTORNEY

All powers of attorney must be in writing and must be signed and dated by the principal.⁴⁶ The following notice must appear at the beginning of all powers of attorney made on or after April 12, 2000:

NOTICE

The purpose of this power of attorney is to give the person you designate (your “agent) broad powers to handle your property, which may include powers to sell or otherwise dispose of any real or personal property without advance notice to you or approval by you.

This power of attorney does not impose a duty on your agent to exercise granted powers, but when powers are exercised, your agent must use due care to act for your benefit and in accordance with this power of attorney.

Your agent may exercise the powers given here throughout your lifetime, even after you become incapacitated, unless you expressly limit the duration of these powers or you revoke these powers or a court acting on your behalf terminates your agent’s authority.

Your agent must keep your funds separate from your agent’s funds.

A court can take away the powers of your agent if it finds your agent is not acting properly.

The powers and duties of an agent under a power of attorney are explained more fully in 20 Pa.C.S. Ch. 56.

If there is anything about this form that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

I have read or had explained to me this notice and I understand its contents.

Additionally, the following acknowledgment must be attached to powers of attorney executed on or after April 16, 2000:

I, _____, have read the attached power of attorney and am the person identified as the agent for the principal. I hereby acknowledge that in the absence of a specific provision to the contrary in the power of attorney or in 20 Pa.C.S. when I act as agent:

- I shall exercise the powers for the benefit of the principal
- I shall keep the assets of the principal separate form my assets.
- I shall exercise reasonable caution and prudence.
- I shall keep a full and accurate record of all actions, receipts and disbursements on behalf of the principal.

Powers of attorney executed after April 16, 2000, changed the term “attorney in fact” to “agent.” Accordingly, signature blocks for powers of attorney should mirror the below example:

ENTITIES

Seller:

Monica Reyes
(Name of Entity)

BY: _____
John Doggett, Agent

It is acceptable to substitute the term “attorney in fact” for the term “agent,” when the power of attorney at issue was executed prior to April 16, 2000.

Powers of attorney made in a different state must conform to that state’s power of attorney law.

CHAPTER 8 TRUSTS

Except as otherwise provided by the trust instrument, the trustee(s), for any purpose of administration or distribution, may sell any real property of the trust.⁴⁷ If the trust instrument designates co-trustees, then both co-trustees need to sign the acquisition documents.

ENTITIES

Seller:

The Walter Skinner Revocable Trust
(Name of Entity)

BY: _____
Alex Krycek, Trustee

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CHAPTER 9

CONDOMINIUM ASSOCIATIONS

Condominium property may be held in a variety of ways and often at the same time by separate entities. To ensure that PennDOT is dealing with the proper landowner when it is acquiring land in and around a condominium, it is important to ascertain the status of the lands in the condominium and identify the record owners of these lands.

Condominium units are usually owned by individuals or business entities and common areas are usually owned by the condominium association. In some situations, however, ownership of common areas can be shared by the association with individual owners or retained by the declarant of the condominium.

Ultimately, acquisitions dealing with condominiums require a careful inspection of the declaration of condominium, deeds, and by-laws of the condominium association to ensure PennDOT has identified the appropriate landowner. Once the appropriate landowner (grantor) is identified, who will be required to sign PennDOT acquisition documents will depend on the status of the grantor(s).

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CHAPTER 10

MISCELLANEOUS ENTITIES

10.01 UNINCORPORATED ASSOCIATION

Unincorporated associations are not legal entities and cannot hold title to property. Title to property is held in trust for an unincorporated association by trustees or members.

If the deed is in the name of trustee(s) for the unincorporated association, the trustee(s) must sign the settlement documents.

If the deed is in the name of an unincorporated association, a majority of members, a member designated by a majority of the members by a majority vote, or an officer designated by the bylaws to act on behalf of the members must sign.

10.02 UNSTRUCTURED GROUPS

An unstructured group differs from an unincorporated association in that unstructured groups do not have organizing documents, i.e., constitution, bylaws, etc. Settlement documents involving an unstructured group must be signed by the group leader. Oftentimes, the identity of the group leader can be ascertained through a review of tax records or property records.

10.03 JOINT VENTURES

A joint venture involves two or more parties. The parties can be all the same type of business entity—for example, all partnerships or all corporations—or a combination of different types of entities. The settlement documents must be signed by all joint venturers. Signatures will be dictated by the status of the joint venturers.

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Endnotes

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- ¹ *Clingerman v. Sadowski*, 513 Pa. 179, 519 A.2d 378 (1986).
² *Id.*
³ *In re Estate of Fazekas*, 737 A.2d 1262 (1999).
⁴ 23 Pa.C.S. §3507.
⁵ 20 Pa.C.S. §5101; 5505.
⁶ 20 Pa.C.S. §5155; 5521.
⁷ *See, e.g.*, 20 Pa.C.S. §2502(2).
⁸ 15 Pa.C.S. §102.
⁹ (15 Pa.C.S. §1506)
¹⁰ (15 Pa.C.S. §5506)
¹¹ *Id.*
¹² *Collins v. Tracy Grill & Bar Corporation*, 19 A.2d 617 (Pa. Super. 1941).
¹³ 15 Pa.C.S. §8311(a).
¹⁴ *Barbet v. Ostovar*, 273 Pa. Super. 256, 417 A.2d 636 (1979).
¹⁵ 15 Pa.C.S. §8312.
¹⁶ 15 Pa.C.S. §8322 (a).
¹⁷ 15 Pa.C.S. §8511(a).
¹⁸ 15 Pa.C.S. §8511(a)(1).
¹⁹ 15 Pa.C.S. §8533.
²⁰ 15 Pa.C.S. §8201.
²¹ 15 Pa.C.S. §8941, §8913(5).
²² 15 Pa.C.S. §8904(a)(1).
²³ 15 Pa.C.S. §8904(a)(2).
²⁴ 16 P.S. §203.
²⁵ 16 P.S. §2307.
²⁶ 16 P.S. §2307.
²⁷ 53 P.S. §46006.
²⁸ 53 P.S. §46006(3).
²⁹ 53 P.S. §46142.
³⁰ 53 P.S. §56502.
³¹ 53 P.S. §55701.
³² 53 P.S. §66505.
³³ 53 P.S. §65602.
³⁴ 53 P.S. §5610.
³⁵ 24 P.S. §7-707.
³⁶ 24 P.S. §4-427.
³⁷ 10 P.S. §81.
³⁸ 10 P.S. §81.
³⁹ 20 Pa.C.S. §3131.
⁴⁰ 20 Pa.C.S. §3514, Orphan's Court Rule 6.11.
⁴¹ *In re Estate of Westin*, 874 A.2d 139 (Pa. Super. 2005).
⁴² 20 Pa.C.S. §3351.
⁴³ 20 Pa.C.S. §3351.
⁴⁴ 20 Pa.C.S. §2507(2).
⁴⁵ 20 Pa.C.S. §2101.
⁴⁶ 20 Pa.C.S. §5601(b).
⁴⁷ 20 Pa.C.S. §7141.

APPENDIX C7 – PRE-CONSTRUCTION CHECKLIST

The following page is a checklist that has been prepared to aid in the preparation and execution of a pre-construction meeting for “substantial” permit projects.

PRECONSTRUCTION NOTES/CHECKLIST

DATE: _____ PERMIT NO: _____ DISTRICT: _____
COUNTY: _____ MUNICIPALITY: _____ SR: _____
PERMITTEE: _____
DEVELOPMENT NAME: _____
DEVELOPER CONTACT: _____
CONSULTANT(S): _____
CONTRACTOR(S): _____
DEPARTMENT SUPERVISOR: _____
DEPARTMENT INSPECTOR: _____
PERMITTEE'S INSPECTOR: _____

**include phone/e-mail information for each contact*

1. Status of Permit

Type of Work: _____

- Permit has been issued
- Permit has been conditionally approved/is in recording process.
- Permittee copy of permit/related documents must be on project site at all times.
- Comments: _____

2. Supplements

- Any amendment or change of work from what was originally permitted requires a supplement before work is performed.
- If work has not been completed by the completion date, a supplement must be submitted before expiry of the permit.
- If completed work differs from what is shown on approved plans, a supplement with as-built plans attached must be issued prior to permit closeout.
- Comments: _____

3. Status of Letter of Credit/Bond

- Security is not required (if security is not required, skip remainder of section).
- Security requirement has been waived due to municipally initiated driveway project.
- Security must be provided before start of work.
- Security has been forwarded to Central Office for review.
- Security has been returned for additions/corrections.
- Company has blanket security. If so, furnish copy with documentation.
- If blanket security amount does not cover all work, additional security must be provided.
- Letter of credit for project has been provided by third party.
- PennDOT must be listed as co-beneficiary.
- Comments: _____

4. Status of Insurance

- Insurance certificate submitted and approved.
 - Insurance policy is current and will not have expired at time of work.
 - Insurance is being obtained by Permittee's contractor.
 - Insurance has been forwarded to Central Office for review.
 - Work may not start until insurance certificate is approved.
 - Project will require blasting- no blasting will be permitted until additional insurance and blasting plan have been approved.
 - Comments:
-

5. Acknowledgement of Restoration

- Form M-945U must be executed if other than pneumatic tire equipment is used or if any material is going to be placed on pavement or shoulder.
- Form must be executed by Permittee, not the Contractor.

6. Photo-documentation

- Acceptable photo-documentation has been submitted, if required.
 - Acceptable photo-documentation must be delivered to the District prior to start of work.
 - Photo-documentation was not acceptable and has been returned.
 - Comments:
-

7. Anticipated Work Schedule

- PennDOT must be given notice by Permittee____business days prior to start of work.
 - The anticipated starting date in the Department right-of-way is_____.
 - Anticipated completion date: _____
 - Anticipated work schedule: _____
 - Anticipated number of crews:_____
 - Comments:
-

8. Permit Inspector Invoicing

- Full time inspection will be assigned to work within the State right-of-way (If not, skip remainder of section).
- The inspector invoice forms will be signed by_____.
- If not provided at preconstruction meeting, written correspondence documenting who is authorized to sign off on billing and payments shall be provided to the District Office.
- Inspector's invoice form must be signed daily.
- Overtime will be charged for over 8 hours/day, 40 hours/week.

- Payroll additive approximated ____% for Department inspectors.
- Any day that the inspector reports to the project and the Permittee's contractor does not work, the Permittee will be billed: (per consultant agreement) and 2 hours for the day plus travel time (for Department inspector).
- Comments:

9. Acknowledgement of Completion

- When the permitted work is completed, the Permittee must notify the District Office.
- Comments:

10. Responsible Persons and Telephone Numbers

- Provide Department with contact information for the Permittee, including emergency telephone numbers for both the Permittee and Contractor working on project:

- Telephone number for funding Agency: _____
- Agency will be contacted for noncompliance.
- Comments:

11. Traffic Control and Detour Approvals

- All Pub. 213 signing must be set up on the project site before any work on right-of-way can be performed.
- Application for detour must be submitted to the District Traffic Unit at least 2 weeks prior to set up. The Traffic Control Plan must include area of road to be closed and the alternate route.
- Signing must be checked and maintained continuously.
- At end of workday, signs must be taken down or covered and equipment staged outside of R.O.W.
- Notify the permit inspector in charge three (3) days in advance for any lane restrictions or lane closures. On the day(s) of the actual work, contact the inspector prior to traffic control devices being placed. You will need to inform the inspector of the start and stop times of the restrictions. The inspector will, in turn, notify the **Traffic Management Center (TMC)**. You must recall the inspector (stoppage time or earlier) and verify the stop time was met and the traffic restrictions have been removed.
- As directed, local and/or state police, fire departments, emergency services, school district transportation coordinators, post offices, etc. must be notified prior to imposing traffic control.

Comments:

12. Hard Hat and Safety Color

- Publication 213-compliant hard hat and appropriately colored vest, shirt or jacket must be worn by all personnel in or adjacent to the traffic within the right-of-way.
 - Reflectorized garments must be worn during the dark hours.
 - Comments:
-

13. O.S.H.A

- O.S.H.A. requirements, in particular backup alarms on all vehicles and proper shoring, will be enforced.
 - Comments:
-

14. Citations

- Consistent with Pub.282, Department Citations will be used to document violations, including those pertaining to traffic control setup, compaction, etc.

15. Highway Materials

Publication 408 Roadway Standards

Pub 72M

- Select granular material (2 RC) is not obtained from an approved source as listed in Department Publications. Therefore, Permittee must arrange with the Permit Manager to have the 2 RC stockpile tested.
 - 2 RC material must be from an accepted source and will be tested in accordance with Department Publication 19 (Field and Laboratory Testing Manual).
 - Other highway materials must be obtained from an approved source.
 - Flowable Fill is an acceptable substitute backfill material and preferred if opening in pavement and/or shoulder.
 - For backfill operations, a certified nuclear gauge tester must be provided if required, consistent with Pub 282, Subchapter 5.1.
 - Comments:
-

16. Notification of Material Inspection

- Provide notification of all fabricated materials to be inspected using Form CS-430.
- All fabricated materials used within Right-of-Way must be inspected and approved by a Department inspector prior to use, per Publication 408.
- Shop inspection does not relieve obligations of field inspector.

Comments:

17. Backfill Operations

- Backfill material shall be placed in loose layers not to exceed 4 inches (8 inches if vibratory compaction equipment is used) or as authorized under Publication 408.
 - Each layer shall be thoroughly compacted to preclude subsidence, under section 601.3(f) of Publication 408.
 - Testing documentation.
 - Comments:
-

18. ADA Ramps Construction and Compliance

- As required, obtain approved TIF documents prior to construction.
 - Comments:
-

19. Paving Operations

- Prior to paving, QC plan must be submitted and approved.
 - Comments:
-

20. Pavement Markings

- Any damage to existing pavement markings must be repaired.
 - Place the center and lane line pavement markings on milled and newly paved surfaces by the end of each work period.
 - Eradicate all temporary pavement markings when no longer applicable.
 - Comments:
-

21. Signal Permit

- All signal operations must be tested by Department staff.
 - All materials associated with signal permit must be approved in Bulletin 15 or Publication 408.
 - Any discrepancies from signal permit should be reflected in as-built plans provided to District.
 - Comments:
-

22. Items Unique to This Permit

Any other location-specific considerations, stream crossings, urban areas, time restrictions, location of other utilities:

APPENDIX "D" SERIES – INTERNAL PENNDOT POLICIES, PROCEDURES & DOCUMENTS

APPENDIX D1 – TRAINING

APPENDIX D2 – ADMINISTRATIVE COSTS APPENDIX D3 – RECORDS RETENTION

APPENDIX D4 – CPO QUALITY ASSURANCE

APPENDIX D5 – VIEWING RMS DATA

APPENDIX D6 – PROGRESSIVE SANCTION GUIDELINES

APPENDIX D7 – GENERAL CHECKLIST FOR REQUEST TO OCCUPY LIMITED ACCESS ROW

APPENDIX D8 – CONDITION STATEMENTS AND HOP AGREEMENTS

APPENDIX D9 – ADMINISTRATIVE LAW AND PROCEDURE FOR PENNDOT PERMITS

**APPENDIX D10 – MUNICIPAL CAPITAL IMPROVEMENT (ACT 209) AND THE TRANSPORTATION
PARTNERSHIP ACT (ACT 47)**

APPENDIX D11 – HOP RELATED COURT CASES

APPENDIX D1 – TRAINING

Existing HOP Staff

Every Permit Office employee must be thoroughly knowledgeable of all *statewide* policies and procedures contained in this Manual, as well as all related regulations and Commonwealth laws. To this end:

1. District Permit Office and CPO staffs must thoroughly cross-trained in Permit Office procedures.
2. Engineering District Permit Managers and CPO should conduct regular HOP program review and training meetings with District and County HOP Permit staffs.

New HOP Staff

Each new District Permit Manager should promptly arrange to meet with two other District Permit Managers and related CPO staff for general orientation and review of laws, regulations, statewide policies and procedures relating to the HOP programs.

Additionally, each new Permit Office employee will promptly read this Manual, Chapters 441 and 459, and documents on the PennDOT P: drive and PennDOT Web Site as part of his/her initial HOP orientation and training.

Access to HOP software

The District's IT Coordinator must first arrange for a new employee assigned to the HOP programs to be granted access to all computer systems the employee will be using, including Mainframe IMS and TSO Systems requiring a RACF User ID, Outlook and PennDOT LAN requiring a CWOPA User ID.

Once a new HOP employee is assigned a valid RACF User ID, the employee and District Permit Manager must complete and submit the appropriate ECMS User ID Request form in order to gain access to the Electronic Permitting System (EPS).

If the new HOP employee will need access to IMS, the District Permit Manager must email the Central Permit Office to arrange for the employee to be assigned access as an HOP User. There are two mainframe security levels for PennDOT HOP users: 1. RACF – security granted by BIS Security. 2. HOP User – security granted by Central Permit Office.

Employees who will no longer be using HOPS or EPS must be identified in an e-mail so the former employee's HOP and/or ECMS User ID can be inactivated.

APPENDIX D2 – ADMINISTRATIVE COSTS

Highway Occupancy

Actual salaries, wages, travel and other expenses of PennDOT employees engaged in the processing and issuing of Highway Occupancy Permits (including the non-reimbursable inspection of Permit work) shall be charged to Program 719, Cost Function 9141, or – in the case of Permit Managers – Cost Function 9149.

Actual salaries, wages, travel, additives and other expenses of PennDOT employees involved in reimbursable inspection of Permit or License work shall be charged to Program 612, Cost Function 2509.

Bridge Occupancy

Actual salaries, wages, travel and other expenses of PennDOT employees engaged in the processing and issuing of Bridge Occupancy Licenses (including the non-reimbursable inspection of License work) shall be charged to Program 719, Cost Function 9143.

APPENDIX D3 – RECORDS RETENTION

The records retention program is established to control the preservation and disposition of records.

The program objectives are to:

1. Ensure the efficient administration and management of records and preserve those having administrative, legal, fiscal, research or historical value.
2. Improve procedures through the management of forms, computer-generated materials, reports, correspondence and file operations.
3. Identify and protect records vital to State government.

Records are defined as any non-verbal information produced, received, owned or used by an agency, regardless of physical form or characteristics. Records include correspondence, memoranda, forms, ledgers, transmittals, maps, photographs, engineering drawings, computer-generated documents and FIDs.

Records are the memory of an agency. From them, managers review information, make decisions, establish *statewide* policy and set goals. A record has a life cycle, consisting of several phases: creation, classification storage and retrieval, purging or retention, transfer to a records warehouse, disposal or archives. Without a records retention and disposition plan, a record-keeping system will become overburdened with inactive and unneeded records. This would lead to delays and inaccuracies in information and adversely affect the communications and integrity of an organization.

Record Retention Periods

Following is a list of documents and their District Permit Office retention periods:

TITLE AND DESCRIPTION	RETENTION PERIOD
HOP Package includes: Applications (M-945 A & M-950 A) plans and correspondence Clearance Transmittals (M-930) Permits (M-945 P) Supplements (M-945 S) Citations (M-945 C) Technical Reports Permit	Retain after scanning to digital format indefinitely, in an orderly, promptly retrievable manner in EPS/EDMS.
Emergency Permit Cards/Certificates	2 years after Card/Certificate expiration date, retain after scanning to digital format, in an orderly, promptly retrievable manner in EPS/EDMS.

HIGHWAY OCCUPANCY PERMIT OPERATIONS MANUAL
Appendix D3 – Records Retention

Permit Security (e.g., M-945 K; L)	2 years after acknowledgment of completion, blanket security until 2 years after such security is no longer available/required after scanning to digital format, in an orderly, promptly retrievable manner in EPS/EDMS.
FIDs/PSAs, Inspection forms (e.g. Form CS-6) or equivalent documentation format	Retain after scanning to digital format indefinitely, in an orderly, promptly retrievable manner in EPS/EDMS.
Denied Applications	2 years after denial letter date retain after scanning to digital format indefinitely, in an orderly, promptly retrievable manner in EPS/EDMS.
Bridge Occupancy License Package	Retain after scanning to digital format indefinitely, in an orderly, promptly retrievable manner in EPS/EDMS for the life of utility on bridge or life of bridge.
Permit Ledgers (Program 940)	Retain after scanning to digital format indefinitely, in an orderly, promptly retrievable manner in EPS/EDMS.
Deposit Transit Slip (STD-421) and copy of associated documents	1 year after Form STD-421 creation date retain after scanning to digital format in an orderly, promptly retrievable manner in

Following is a list of forms and their County Permit Office retention periods:

TITLE AND DESCRIPTION	RETENTION PERIOD
HOPs: Applications (M-945 A & M-950 A) and accompanying plans, Permits (M-945 P), Supplements (M-945 S) Citations (M-945 C)	Authorized HOP digital record is created, then retained indefinitely in an orderly, promptly retrievable manner in EPS/EDMS.
FIDs, Inspection forms (e.g. Form CS-6) or equivalent documentation format	Authorized digital record is created, then retained indefinitely in an orderly, promptly retrievable manner in
Occupancy Permit Ledger (M-945 F)	Authorized HOP digital record is created, then retained indefinitely in an orderly, promptly retrievable manner in EPS/EDMS.

All other documents shall be maintained in the respective District Office in accordance with this manual.

APPENDIX D4 – CPO QUALITY ASSURANCE REVIEWS

The Bureau of Maintenance and Operations CPO staff will periodically conduct Quality Assurance (QA) reviews of District and County Permit operations. Reviews may be conducted in-person or remotely via EPS/EDMS/e-Mail, computer and telephone, on both a scheduled, unscheduled and no-notice basis.

QA reviews are conducted for the purpose of assessing the quality and effectiveness of Permit operations which are required by law, PennDOT regulations and HOP program *statewide* policies and procedures.

The *statewide* QA reviews will encompass all Districts, and will include reviews of each District Office's Highway Occupancy procedures, reviews of selected County Office Highway Occupancy procedures, reviews of selected substantial or critical field operations, and reviews of randomly selected Driveway Permits.

The District Permit Manager will accompany the Central Office Review Team on all QA in-person reviews. Representatives of the District's Construction, Maintenance, or Design Units may also participate in the QA reviews.

QA Scheduled in-person reviews will last approximately three days, and a closeout conference will be held on the last day. A telephone call will be made to the District Permit Office to notify the Permit Manager of the dates of the QA review approximately two weeks in advance.

Subsequent to the QA review, a formal report will be provided to the District identifying major and minor discrepancies noted. The District Permit Manager must submit a detailed follow-up report to the Central Permit Office, outlining appropriate corrective actions that were taken to remedy each minor or major discrepancy. The follow up report must include the District Executive's concurrence for all major discrepancies.

APPENDIX D5 – VIEWING RMS DATA

Viewing RMS Data

Note: Each of the following actions is initiated by hitting the right Ctrl Key:

- Log on to Mainframe session
- Enter IMS
- Enter Userid and password
- Type in RMS (space)
- Select the menu number of the data you want to view from the main menu
- To log off: hit “Pause” key, then enter: /RCL

Example: To view Intersection Data:

- Select 6
- Select 1 (Inventory Inquiry/Maintenance)
- Select 1 (State)
- Select 4 (Intersections)
- Enter the County, SR, and Segment numbers (on right side of screen)
- The Main Intersection Screen will display at-grade intersections matching the entry. All other RMS inquiries can be made in a similar manner.

Note: About 95% of PA quad routes are signed in RMS under the following convention: Most odd-numbered quad routes run North/South. Most even-numbered quad routes run East/West. Traffic Routes are signed in RMS to match the signing along the highway. The screen view in RMS typically runs from South to North or West to East (Segments and Offsets generally increase in these directions). Thus, the first view for a road would typically be either the most southern or western point.

Press F8 key to move forward and press F7 key to move in reverse.

Contact the District RMS Coordinator to gain access to RMS or to view other RMS features.

APPENDIX D6 – PROGRESSIVE SANCTION GUIDELINES

Background

Most persons readily accept their legal obligation as citizens to comply with the laws, regulations and the conditions under which they are issued a Permit.

Some persons may unknowingly violate a requirement, and may only need to be informed of the requirement in order to comply. Some persons may knowingly violate a requirement because they don't understand the underlying reason(s), and may only need a reasonable explanation of the requirement in order to comply. Other persons knowingly violate a requirement because they believe the sanction (e.g., penalty) is not a deterrent, or they decide to reduce their costs at the expense of others, or for numerous other reasons.

As such, law, regulation or Permit requirement may not be faithfully followed by every person, Permittee or its consultant or contractor. Therefore, PennDOT needs a *statewide* policy that: (1) provides a consistent enforcement environment for persons, Permittees, its consultants and contractors who want to comply, (2) protects the traveling public's enormous investment in the Commonwealth's system of highways and bridges, and (3) protects the traveling public from hazards both during work and after work is completed.

PennDOT, the CPO and District staff have primary responsibility for enforcement of utility and access regulations.

If a person is found to be in violation of a law, regulation or Permit condition, the following "progressive sanction guidelines" must be employed, whenever feasible by PennDOT staff. This approach could entail one or more of the following steps. Since each violation and violator are unique, no single procedure will work effectively in every situation; however, take *applicable* steps in the following "*progressive*" sequence.

1. First identification of violation.

First, PennDOT staff should explain the violation and appropriate corrective actions to the violator. Document this discussion in the FID/PSA and issue a Departmental Citation (Form M-945 C) to document any violation which:

- a. is a safety violation,
- b. is a repeat violation, or
- c. is not corrected promptly.

2. Violation not corrected promptly.

If violations are not corrected promptly, PennDOT staff will issue a Departmental Citation (Form M- 945 C) using Citation Corrective Action #2 to establish a time limit by which the violation must be corrected. The time limit for non-safety violations may be up to one normal workday (e.g., up to 24 hours). Safety violations must be corrected promptly.

3. Violation not corrected by established time limit.

If the violation is not corrected by the time specified in the Citation (Form M-945 C), PennDOT staff shall obtain the District Permit Manager's concurrence to issue another Departmental Citation, using Corrective Action #3 to stop all work authorized under the Permit. PennDOT staff shall not stop work authorized under any other Permit, unless the violation relates to that Permit as well.

4. Management meeting.

Even though copies of Citations are forwarded to the violator, corporate/municipal management may not be aware of violations by its work crew, consultant or contractor. A meeting with management may resolve repetitive violations without further action by PennDOT.

5. Revocation and hearing.

Regulations 441.10(a)(3) and 459.11(a)(3) provide for PennDOT to revoke an Applicant's Permit (or Emergency Permit Card) for a violation of a regulation or a Permit requirement. Violations of law are also violations of regulations 441.6(2)(i) and 459.7(2)(i), and are therefore also cause for revocation.

Regulations 441.10(b)(1) and 459.11(b)(1) provide additional grounds for revocation, which need to be reviewed when pursuing this step.

Regulations 441.10(c) and 459.11(c) specify that prior to revoking a Permit (except for nonpayment) the Permittee shall be given an opportunity for a hearing under the Administrative Agency Law.

If reasonable attempts to gain compliance are unsuccessful, PennDOT staff shall notify the facility/property owner, in writing, that his/her Permit will be revoked in 30 calendar days. (See 'Form Letters' Folder (posted on PennDOT P: Drive)). An Administrative Hearing should be expected and PennDOT staff should be prepared to testify and provide evidence at the hearing.

If a violation is ongoing, PennDOT may revoke the Permit (where applicable) and seek an administrative order, through the Hearing Officer, requiring the violator to stop work. This order may be enforced in Commonwealth Court.

6. Security collection.

If the highway has not been properly restored by the violator, prepare an estimate of necessary restoration costs to be used as a basis for reimbursement. If security is in the form of a bond or assignment, submit all relevant documents to the Office of Chief Counsel, Permits Section staff. If security is in the form of a letter of credit or escrow, the Permit Manager and the District Fiscal Officer need to present a claim to the lending institution for necessary restoration costs, and deposit these funds in the appropriate account (e.g., for reimbursement to entity performing restoration work for PennDOT).

7. Work and bill.

The violator should be given a reasonable opportunity to make restoration. PennDOT staff will provide the Surety with a copy of the notice, if security is in the form of a bond or assignment. If the highway has still not been satisfactorily restored, the County Maintenance Manager will schedule PennDOT Maintenance forces to perform the necessary work. If PennDOT Maintenance forces cannot schedule the work, work will be done by a contractor. The violator shall be billed for documented costs associated with such work.

8. District Justice Complaint.

District Justice actions should be commenced after PennDOT has exhausted administrative remedies. Where necessary, the Hearing Officer may issue an equitable order to stop any activity by a Permittee which creates an unsafe condition. PennDOT shall contact the Office of Chief Counsel, Permits Section, staff before filing District Justice actions on behalf of the Commonwealth.

The District may choose to either (a) “work or bill” and furnish documentation of costs incurred, or (b) prepare an estimate of necessary restoration costs to be used as a basis for reimbursement, as part of the complaint before the District Justice.

If the violator fails to stop work authorized under the Permit (except to restore the right-of-way to a safe condition as required under regulations 441.10(a)(1) and 459.11(a)(1)) any person may file a complaint against the violator before a District Justice, under Section 420 of the State Highway Law (36 P.S. Section 670-420). Section 420 provides a fine of not less than \$100 for each offense, together with the costs of prosecution and all necessary restoration. If the violator requests a hearing, it will be necessary for the person who filed the complaint to appear at the hearing to offer eyewitness testimony and evidence (e.g., application, plans, Permit, Supplements, applicable laws and regulations, Citations, photos, FID/PSA, restoration cost estimate).

9. Self-help measures.

The steps outlined above may not be appropriate if the nature of the violation requires prompt corrective action. Districts are authorized to promptly correct an identified traffic safety problem on a State highway, which includes the right to limit an access, and sever, remove, or block drainage facilities or structures constructed without a Permit or in violation of the Permit or Chapters 441 or 459. The Permittee is responsible for all documented costs (see Steps 6 and 7).

10. Injunctive relief.

In some instances, PennDOT Maintenance forces or its contractors may not be able to correct a violation through self-help measures authorized by regulations (e.g., accident damaged pole not relocated, equipment not removed). In such cases, the violation will be referred to the Office of Chief Counsel with a full explanation and documentation, requesting injunctive relief.

Note: This step will not be pursued if PennDOT has the resources to correct the violation, unless otherwise directed by the Secretary.

11. Debarment.

459.3(l) authorizes PennDOT to debar a Permittee, its consultant, its contractor, or other person from placing a facility, working within or otherwise occupying State highway right-of-way under Permit, directing work, or having involvement in a Permit or application, for several reasons including:

- a. Unsatisfactory past performance, as documented by records or reports.
- b. Failure to complete permitted work under the Permit and regulation 459, as documented by records or reports.

Note: Debarment is the only means by which a District may refuse to issue a Permit due to unsatisfactory past performance.

Summary

The above steps are analogous to “tools in a toolbox”. Not every tool is needed to successfully resolve every violation. With experience, the right tool(s) can be selected from the toolbox and, if used as designed, can help to bring violators into conformance.

Note to PennDOT staff: No matter which *combination of the above steps* are utilized in a particular situation, it is important to carefully document the violation, communicate the violation to affected persons, identify appropriate correction action(s) and follow-up until the violation is corrected. It is also important to be professional, courteous and reasonable – but firm – when communicating with violators or their representatives.

APPENDIX D7 – GENERAL CHECKLIST FOR REQUEST TO OCCUPY LIMITED ACCESS ROW

Application #: _____ Utility Name: _____ County Name: _____

SR: _____ Segment: _____ Offset: _____

Make sure there's no longitudinal occupancy (see DM-5, Chapter 1.3A).

Will access to the utility facilities be from outside or within limited access right-of-way? If within, how will the utility access them (see DM-5, Chapter 1.3.A)?

Check aerial and underground clearances (see DM-5, Chapter 1.3.B, C, & D)

Are the utility facilities outside a specified clear zone area? If not, explain why (see DM-5, Chapter 1.3.C).

Does the package need to be sent to Central Office for approval?

Underground Crossings in Limited Access Right-of-Way

Is the underground crossing going to be cased or encased? If not, one of the five conditions below must be met (see DM-5, Chapter 1.3.D).

- * Uncased crossings may be considered for utility lines carrying electric, telecommunication systems, water, gas, petroleum and petroleum products, steam, sanitary sewage, and chemical lines provided they:
 - 1) If using steel carrier pipes, the pipes must be cathodically protected coated welded steel pipes.
 - 2) Meet the requirement of the applicable Federal and industry standards with respect to wall thickness for steel, plastic, ductile iron and reinforced concrete pipes.
 - 3) Are designed for operating stress levels in accordance with Federal Pipeline Safety Regulations.
 - 4) Agree that, if in the future the crossing requires replacement, the replacement line will be installed at a new location.

Utility Corridor

In specific situations and under strictly controlled conditions, the Department may provide for joint development and multiple use of limited access highway right-of-way by establishing a longitudinal utility corridor parallel with the highway centerline (see DM-5, Chapter 1.3.F).

Extreme Case Exceptions

Prior FHWA concurrence is required for proposed longitudinal installations of private lines or approved installations which are not in accordance with Design Manual, Part 5.

APPENDIX D8 – CONDITION STATEMENTS AND HOP AGREEMENTS

Highway Occupancy Permit Condition Statement

A permit may be issued subject to terms and conditions. See: The State Highway Law, 36 P.S. §670-420. The Condition Statement is signed only by the permittee, and if deemed necessary, by other non-Commonwealth parties to the permit. Execution does not have to follow Commonwealth contracting procedures since non-Commonwealth Agency is a signatory. The Condition Statement describes the permittee's additional obligations under the permit. It generally contains more detail than can be provided by standardized "condition codes" and is tailored to meet the needs of the District staff. Condition Statements are used to add simple additional conditions of the permit. The applicant should be notified in writing as early as possible in the application process (and within 60 calendar days of receipt of the application) that a permit agreement will be required.

Agreements

67 Pa. Code §§441.5(f) and 459.5(b) provide authority for permit agreements and describes situations when a permit agreement may be necessary where the applicant may be required to perform a substantial amount of work (for example, off-site intersection improvements, highway widening, drainage structures, acquisition of right-of-way). PennDOT and the permittee, and any other parties to the permit will generally execute the agreement. The applicant should be notified in writing as early as possible in the application process (and within 60 calendar days of receipt of the application) that a permit agreement will be required.

Contribution Agreement

Contribution agreements are used when, instead of performing off-site improvements, the developer pays the Department money toward some or all of the estimated cost of the work. 67 Pa. Code §441.6. It should contain all standard clauses and exhibits and be executed as a Commonwealth contract. The project-specific paragraphs should set forth the amount to be contributed by the developer to the Commonwealth and the work that the Department may or will be doing in return. The purpose of the agreement should be made clear through these paragraphs. No insurance or security is necessary. Depending upon the circumstances, indemnification may be required from the developer from claims which may arise as a result of the work, such as claims in de facto taking.

Municipal Participation Agreement

Municipal Participation Agreements are used when a municipality will be performing work to improve a state highway within the municipality, and the Department in turn will be participating in the cost of the project by reimbursement to the municipality. The municipality must follow Commonwealth contracting procedures for the project, and this needs to be set forth in the agreement. It should also set forth that the municipality will apply for a highway occupancy permit for the project and have a plan for maintenance and protection of traffic during construction, approved by the Department. In most respects, the agreement looks the same as it would if a private party were performing the work, including an indemnification clause and insurance requirement. Security is not required, although a municipality can agree by contract to pledge its entitlement to liquid fuel tax credits due from the Department. See Section 3 of the Act of June 1, 1956, P.L. (1955) 1944, as amended, 72 P.S.

§2615.3 (appropriation of a portion of Liquid Fuels Tax funds and Fuel Use Tax funds out of the Motor License Fund to municipalities).

Third Party Beneficiary Agreement

A Third Party Beneficiary Agreement is an agreement between two parties other than the Department, such as a developer and a municipality, to which the Department is a third party beneficiary. Performance under the agreement is a condition of the highway occupancy permit to be issued by the Department. The developer agrees to construct improvements on state and municipal roadways within the municipality. Security is required and is held by the municipality, but should be drafted so as to protect both PennDOT and the municipality.

Future Improvement Agreement

A Future Improvement Agreement is used when the permittee will be constructing improvements in the future as they become necessary. The improvements to be constructed are spelled out, as well as the events that will trigger the obligation of the permittee to construct those improvements at that time. Indemnification, insurance and security should be included.

Highway Occupancy Permit Coordination Agreement

The HOP Coordination Agreement is the general agreement used to include the performance of off-site improvements as a condition to the highway occupancy permit. Generally, conditions to a permit can only be imposed if they appear in the regulations. *Department of Environmental Resources v. Rushton Mining Company*, 591 A.2d 1168 (Pa. Cmwlth. 1991), appeal denied, 529 Pa. 626, 600 A.2d 541 (1991). Additional conditions can, however, be negotiated with the permittee and imposed contractually. This agreement is the means to accomplish that end. It includes the description of the improvement work to be performed by the permittee and states that performance of the work is a condition of the HOP. The agreement must follow Commonwealth contracting procedures and should include indemnification, insurance and security requirements. These agreements may be helpful where substantial off-site work and design requirements complicate the application review and approval process.

Reimbursement Agreement

A Reimbursement Agreement is used when the Department will be performing work, such as highway improvements, which is the negotiated responsibility of another party, such as a developer, and that party reimburses the Department for the cost of the work. It includes a description of the work to be performed and the obligation of the other party to reimburse the Department for the cost of that work. It should also include a security requirement, in the form of a letter of credit for at least as much as the estimated amount to be reimbursed.

APPENDIX D9 – ADMINISTRATIVE LAW AND PROCEDURE FOR PENNDOT PERMITS

A. ADJUDICATIONS.

PennDOT is a Commonwealth agency. Final permitting determinations are “adjudications”. The law provides that no adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard.

- “Adjudication” is defined as “[a]ny final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made.” [2 Pa.C.S. §101](#).
- Adjudications of an agency head are final orders. [See 1 Pa. Code §35.226 for further discussion of final orders](#).
- A letter from an agency may qualify as an adjudication so long as letter is agency’s final order, decree, decision, determination, or ruling, and such decision impacts on person’s personal or property rights, privileges, immunities, duties, liabilities, or obligations. [O’Brien v. Township of Ralpho, 646 A.2d 663 \(Pa. Cmwlth. 1994\)](#).
- “Adjudication” refers to administrative action which is quasi-judicial in nature, and which determines only personal or property rights or obligations of parties before agency in a particular proceeding. [Insurance Co. of North America v. Department of Insurance, 327 A.2d 411 \(Pa. Cmwlth. 1974\)](#).
- Administrative determination on a petition to intervene is an “adjudication” and is, therefore, appealable as it is a final administrative decision affecting the rights of the proposed intervenor. [XUN Imaging Associates, Ltd. v. Department of Health, 644 A.2d 255 \(Pa. Cmwlth. 1994\)](#). cf. [In Re: Olympic Realty and Development Corporation, Application for a Highway Occupancy Permit, Application No. 635362 \(S.R. 0011\), Application for Installation of Traffic Signal, 187 A.D. 1995, September 15, 1995](#).
- Action taken by Insurance Department in withholding action on insurance broker’s applications to represent new insurance carriers was not a final order or determination, and thus not an “adjudication,” as required for broker to be entitled to notice and hearing prior to decision. [Stone and Edwards Ins. Agency, Inc. v. Department of Insurance, 636 A.2d 293 \(Pa. Cmwlth.\), affirmed 648 A.2d 304, 538 Pa. 276 \(1994\)](#).
- The return of a highway occupancy permit application for additional information or correction under Section 508 of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247, as amended, 53 P.S. §10508, is not an adjudication, since it is not a final action on a pending application.

B. NOTICE OF HEARING.

All persons who are involved in the dispute concerning which an administrative hearing is to be held should receive notice of the hearing so that the rudiments of fair play can be observed.

- No adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard. All testimony shall be stenographically recorded and a full and complete record shall be kept of the proceedings. [2 Pa.C.S. §504](#).
- Hearings for the purpose of taking evidence will be initiated by the agency by issuance of an order or by notice announcing the initiation of a hearing. [1 Pa. Code §35.121](#).
- All persons who are involved in the dispute concerning which an administrative hearing is to be held should receive notice of the hearing. [Silver v. Unemployment Compensation Board of Review, 74 A.2d 772 \(Pa. Super. 1949\)](#).
- Person is a “party” to administrative proceeding if named as such, or he may become a “party” by timely action if authorized by applicable statutory law to do so or if his interest therein is of constitutional proportions. [Department of Insurance v. Pennsylvania Coal Mining Assn., 358 A.2d 745 \(Pa. Cmwlth. 1976\)](#). Access rights are of constitutional proportions. [Hardee’s Food Systems, Inc. v. Department of Transportation, 495 Pa. 514, 434 A.2d 1209 \(1981\)](#).
- A person must intervene to become a party. [1 Pa. Code §35.24](#). Protestants are not parties. [1 Pa. Code §35.24](#). The definitions of “participant” and “intervenor” are found at [1 Pa. Code §31.3](#).
- Adequate notice of administrative action is notice which is reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections. [Clark v. Department of Welfare, 427 A.2d 712 \(Pa. Cmwlth. 1981\)](#). See [Weichart AD & P, Inc. v. Department of Transportation, 631 A.2d 1106 \(Pa. Cmwlth. 1993\)](#), alloc. denied, 540 Pa. 609, 655 A.2d 996 (1995); [Mullane v. Central Hanover Bank and Trust Company, 339 U.S. 306 \(1950\)](#).
- The question of what is proper notice required to be given depends on the facts of each case, the type of investigation being conducted, the violations alleged, and the penalty or order sought to be imposed. [Lumley v. Borough of Hughestown, 66 A.2d 833, 362 Pa. 532 \(1949\)](#).
- Failure to give proper notice of a hearing may render the action taken against a party invalid. [Cook v. Department of Agriculture, 646 A.2d 598 \(Pa. Cmwlth. 1994\)](#). It is important to ensure proper notice to the highway occupancy permit applicant, formal intervenors and also possibly protestants and adversely affected highway access owners from whom no release was obtained.
- Due process requires that notice to party in administrative proceedings must at least contain sufficient listing and explanation of any charges so that individual involved can know against what charges he must defend himself. [Local 668, SEIU v. Department of Labor & Industry, 524 A.2d 1005 \(Pa. Cmwlth. 1987\)](#).

- Failure to provide adequate notice is a jurisdictional defect that invalidates administrative action until defect is cured. [Clark v. Department of Welfare, 427 A.2d 712 \(Pa. Cmwlt. 1981\)](#).

C. TIMELINESS OF APPEAL.

The time for filing appeals from actions of agency staff is within ten days from service of notice of the action, unless otherwise indicated.

- Actions of agency staff under authority delegated by the agency head may be appealed to the agency head by filing a petition within 10 days after service of notice of the action. [1 Pa. Code §35.20](#). Although 67 Pa. Code Chapter 441 does not include its own appeal time period, the Department's revocation and denial letters under both 67 Pa. Code Chapter 441 and 67 Pa. Code §459.3(k) state that the permit applicant has 30 days to appeal that decision. The ten-day appeal period would seem to apply to appeals by an aggrieved person from permits that are issued by the Department, since no other time period is specified for such appeals.
- In order to appeal to the Commonwealth Court a decision of the Department hearing officer, exceptions must first be filed within 30 days after the service of a copy of the proposed report. [1 Pa. Code §35.211](#). See also [67 Pa. Code §491.12 \(time for filing exceptions and waiver of objections\)](#) and [J. B. Steven v. Department of Transportation, 627 A.2d 278 \(Pa. Cmwlt. 1993\) \(time for filing exceptions\)](#).
- The Commonwealth Court cannot review any issue on appeal that has not been raised before the governmental agency, unless due cause for not raising it can be demonstrated. [Section 703 of the Administrative Agency Law, 2 Pa.C.S. §703](#) and [Niles v. Department of Transportation, 674 A.2d 739 \(Pa. Cmwlt. 1995\)](#).
- The 30 day period from the service of a copy of the proposed report is computed by beginning with the mailing date of the proposed report. [1 Pa. Code §31.13](#). The proposed order, therefore, must clearly indicate the mailing date. [Sheets v. Department of Public Welfare, 479 A.2d 80 \(1984\)](#). The mailing date stamped on the proposed report is not dispositive, however, if there is a discrepancy between it and the postmarked date. [Raichle v. Unemployment Compensation Board of Review, 535 A.2d 694 \(Pa. Cmwlt. 1988\)](#).

D. FORMS OF ACTION

The Department commences an administrative action by a petition for a Rule to Show Cause. Any other party can commence an administrative proceeding by either requesting a hearing (See Section B above), by intervention, or by formal complaint.

1. RULE TO SHOW CAUSE

- Whenever an agency desires to institute a proceeding against a person under statutory authority or other authority, the agency may commence the action by an order to show cause setting forth the grounds for the action. The order will contain a statement of the particulars and matters concerning which the agency is inquiring, which shall be deemed to be tentative and for the

purpose of framing issues for consideration and decision by the agency in the proceeding, and the order will require that the respondent named respond orally, or in writing (as provided in §35.37, relating to answers to orders to show cause) or both. [1 Pa. Code §35.16](#).

- When the Department initiates a written request for an order to show cause, that request shall be accompanied by a copy of the proposed order to show cause for the signature of the Department hearing officer. [67 Pa. Code §491.9\(a\)](#).
- The order to show cause shall include a notice to the respondent to answer, in writing, within 20 days of the date the notice was mailed. A respondent who fails to file an answer within 20 days of the mailing date of the notice shall be deemed to have waived objection to the Department's proposed action. [67 Pa. Code §491.9\(d\)](#).
- Two examples of situations where the Department might use a rule to show cause in highway occupancy permit matters would include, for example, when the Department has a highway project planned and it is necessary for the permittee to change its access because of that project, or when driveway operational or design elements create a safety hazard.

2. PROTESTS

- A person objecting to the approval of an application, petition, motion or other matter which is, or will be, under consideration by an agency may file a protest. No particular form of protest is required but the letter or writing should contain the name and address of the protestant, the proceeding or matter to which the protest is addressed and a concise statement of the protest. Only one copy of a protest need be filed. Service need not be effected upon the parties. [1 Pa. Code §35.23](#). A protestant should be given notice of an application's approval or denial. Failure to do so could result in a determination that the Department's action is invalid as to the protestant.
- A protest might be appropriate for non-aggrieved persons who object to the proposed driveway but do not have standing to intervene (because they are not directly impacted by operation of the driveway), such as a citizen group, or for persons who have the right to intervene but do not want to go through the trouble and expense to intervene.

3. INTERVENTIONS

- Participation in an HOP application as a party intervener may be initiated as follows: (1) By the filing of a notice of intervention by another agency of the Commonwealth which is authorized by statute to participate in the proceeding. (2) By order of the agency upon petition to intervene. [1 Pa. Code §35.27](#).
- Petitions to intervene and notices of intervention may be filed at any time following the filing of an application, petition, complaint, or other document seeking agency action, but in no event later than the date fixed for the filing of petitions to intervene in any order or notice with respect to the proceedings published in the Pennsylvania Bulletin, unless, in extraordinary circumstances for good cause shown, the agency authorizes a late filing. [1 Pa. Code §35.30](#). Highway occupancy permit applications are not currently advertised in the Bulletin. In order to give notice to interested

or concerned parties, the highway occupancy permit program requires formal notice and/or a release to/from persons that the Department determines are adversely affected.

- Aggrieved persons should take expeditious action to protect their rights. For example, if an aggrieved person fails to intervene in the consideration of a highway occupancy permit application, his/her right to appeal the issuance of the permit may be adversely affected. This is because an aggrieved person can only become a party to the proceedings by intervening; the Department currently only sends notice of the issuance of a highway occupancy permit to parties to the proceedings; and the time period for appealing the issuance of a highway occupancy permit is only ten days from service of notice of the issuance of the permit (as opposed to the denial or revocation of a permit, where the Department's notice provides 30 days to appeal).
- As soon as practicable after the expiration of the time for filing answers to the petitions or default thereof, the agency will grant or deny the petition in whole or in part or may, if found to be appropriate, authorize limited participation. No petitions to intervene may be filed or will be acted upon during a hearing unless permitted by the agency after opportunity for all parties to object thereto. Only to avoid detriment to the public interest will any presiding officer tentatively permit participation in a hearing in advance of, and then only subject to, the granting by an agency of a petition to intervene. [1 Pa. Code §35.31](#).
- The standards for intervention are found at [1 Pa. Code §35.28](#). See also *In Re: Highway Occupancy Permit, Pike County Environmental, Inc., S.R. 1017, Segment 040, Offset 2294, Pike County, Permit No. 04008193, 165 A.D. 1992, June 15, 1993*.
- A property owner whose access is going to change, for example, from full access to only right turns in and right turns out has standing to intervene in highway occupancy permit application proceedings. The permittee is generally responsible for remediating the adverse impacts, if possible. *Popple v. Department of Transportation, 575 A.2d 973 (Pa. Cmwlth. 1990)*.
- District staff will allow interveners access to HOP applications, plans, review comments and related application documents, and will provide notice of permit issuance to interveners. When requested and deemed appropriate, District staff and applicants will provide interveners with an opportunity to review and comment on HOP application submissions. District staff will consider any such comments in deciding what action to take on pending applications.

4. FORMAL COMPLAINTS

- A person may file a formal complaint with an agency to complain of anything done or omitted to be done by a person subject to the jurisdiction of the agency which is in violation of a statute or regulation administered or issued by the agency. The formal complaint is docketed by the administrative docket clerk and forwarded to the respondent. The respondent must satisfy the complaint or file an answer with the agency within 20 days of service of the complaint. An informal conference will then be set up. If the dispute cannot be resolved in this manner, then the Department will issue a decision to revoke the permit or that the complaint has no merit, or will take other appropriate action. [1 Pa. Code §35.9](#). The decision of the Department is a quasi-judicial order and is appealable. Note that this procedure is not meant for use to take action against the Department.

- [Duquesne Light Company v. Public Utility Commission, 611 A.2d 370 \(Pa. Cmwlth. 1992\)](#), describes the formal complaint procedure as it pertains to the PUC, utilities and utility customers. In particular, the court held that the time period during which the customer's informal complaint is being considered by the PUC should not be included in the calculation of the limitations period for filing the formal complaint.
- The form and content requirements for formal complaints are specified in [1 Pa. Code §35.10](#). A formal complaint can be in the form of a letter and need only contain the name and address of the complainant, the name and address of the party against whom the complaint is made, and a statement of the facts forming the basis for the complainant's conclusion that there has been a violation of a statute or regulation administered or issued by the agency. Supporting material may also be submitted along with the complaint.
- Persons aggrieved by a permittee's failure to comply with its permit or with Department regulations may file a formal complaint. For example, an applicant may misrepresent property boundary lines to the Department in an HOP application. This could be brought to the Department's attention when the affected neighbor files a formal complaint.

5. REQUESTS FOR HEARING

- A written request for a hearing shall contain a clear, concise statement of the facts, including the essential elements of the case and the relief requested. [67 Pa. Code §491.3\(a\)](#).
- Upon docketing a written request for a hearing, the administrative docket clerk will provide written notification to all interested parties and other participants of the request for a hearing and of referral of the matter to the Department hearing officer for scheduling. [67 Pa. Code §491.6\(a\)](#).
- The Department hearing officer will schedule a hearing for the docketed request and will direct and will direct the administrative docket clerk to issue written notice of the time and place of the scheduled hearing to all interested parties and other participants. [67 Pa. Code §491.6\(b\)](#).
- A request for hearing is normally used for appeals from formal denials of highway occupancy permit applications or from revocations of permits by the Department.

E. EVIDENCE

- Administrative bodies, even when they act in a quasi-judicial capacity, are not limited by strict rules as to the admissibility of evidence.
- Commonwealth agencies shall not be bound by technical rules of evidence at agency hearings, and all relevant evidence of reasonably probative value may be received. Reasonable examination and cross-examination shall be permitted. [2 Pa.C.S. §505](#).
- Formal discovery is not available in administrative proceedings. [Weinberg v. Insurance Department, 398 A.2d 1120 \(Pa. Cmwlth. 1979\)](#). There is, however, an opportunity for a manner of informal discovery when a pre-hearing conference is held. Formal discovery is usually not necessary due to the nature of administrative proceedings, where the parties have been interacting with one another regarding the subject of the dispute.

- Dispositive motions are provided for in [1 Pa. Code §35.54](#). A motion to dismiss a complaint because of lack of legal sufficiency appearing on the face of the complaint may be filed along with the respondent's answer to the complaint.
- In a proceeding before the agency head or a presiding officer, relevant and material evidence shall be admissible, but there shall be excluded evidence that is repetitious or cumulative, or evidence that is not of the kind which would affect reasonable and fair-minded men in the conduct of their daily affairs. [1 Pa. Code §35.161](#).
- The presiding officer, subject to §35.190 (relating to appeals to agency head from rulings of presiding officers), shall rule on the admissibility of evidence, and shall otherwise control the reception of evidence so as to confine it to issues in the proceeding. The number of expert witnesses to be heard on an issue may be limited appropriately as provided in §35.127 (relating to limiting number of witnesses), or the production of further evidence upon any issue may be called for, as provided in §35.128 (relating to additional evidence). [1 Pa. Code §35.162](#).
- Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put into evidence, the participant offering such document shall plainly designate the matter so offered, segregating and excluding insofar as practicable the immaterial or irrelevant parts. If other matter is in such document in such bulk or extent as would unnecessarily encumber the record, such document will not be received in evidence, but may be marked for identification, and, if properly authenticated, the relevant and material parts thereof may be read into the record, or if the agency head or the presiding officer so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit, and copies shall be delivered by the participant offering the same to the other participants appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof. [1 Pa. Code §35.163](#).
- Any evidence which has probative force and tends to prove or disprove a material fact is generally admissible in an administrative proceeding. [P.&L.E. R. Co. v. Public Utility Commission, 85 A.2d 646 \(Pa. Super. 1952\)](#).
- Despite the fact that administrative bodies are not limited by the strict rules governing the admissibility of evidence, the essential rules of evidence, by which rights are asserted or defended, must be preserved. In re [Shenandoah Suburban Bus Lines, 50 A.2d 301, 355 Pa. 521 \(1947\)](#).
- Incompetent evidence may be excluded. [Glen Alden Coal Co. v. Unemployment Compensation Bd. of Review, 79 A.2d 796 \(Pa. Super. 1951\)](#).
- Mere admission of matter which would be deemed incompetent in judicial proceedings will not invalidate an administrative order. [Philips v. Unemployment Compensation Bd. of Review, 30 A.2d 718 \(Pa. Super. 1943\)](#).
- The hearsay rule is not a technical rule of evidence but a fundamental rule of law which ought to be followed by administrative agencies at those points in their hearings when facts crucial to

the issue are sought to be placed on the record and an objection is made thereto. [State Bd. of Medical Ed. and Licensure v. Contakos, 346 A.2d 850 \(Pa. Cmwlth. 1975\)](#).

- Where supportive of other evidence, hearsay may be admitted in proceedings before administrative agencies. [School Dist. of Pittsburgh v. Pyle, 390 A.2d 904 \(Pa. Cmwlth. 1978\)](#).
- Hearsay evidence, properly objected to, is not competent to support finding in an administrative hearing and hearsay admitted without objection may support finding only if corroborated by competent evidence in the record. [Anderson v. Department of Public Welfare, 468 A.2d 1167 \(Pa. Cmwlth. 1983\)](#).
- The credibility of witnesses is for the administrative body to determine, and it may accept or reject in whole or in part the testimony of any witness. Although an administrative body must consider all of the evidence and may not disregard credible, undisputed evidence, it is not required to accept any particular testimony as true, even though uncontradicted. [Rozauski v. Glen Alden Coal Co., 69 A.2d 192 \(Pa. Super. 1949\)](#).
- The adjudications and findings of an administrative tribunal must be supported by substantial evidence. [North Am. Coal Corp. v. Air Pollution Commission, 279 A.2d 356 \(Pa. Cmwlth. 1971\)](#).
- The orders and decrees of administrative bodies must be supported by evidence sufficient to convince a reasonable mind to a fair degree of certainty. [Pennsylvania Labor Relations Bd. v. Elk Motor Sales, 130 A.2d 501, 388 Pa. 173 \(1957\)](#).
- “Substantial evidence” which must support agency’s findings of fact when case is decided in favor of party with burden of proof is more than a scintilla, but is such relevant evidence as reasonable minds might accept as adequate to support a conclusion. [Yugas v. W.C.A.B. \(City of Pittsburgh\), 476 A.2d 1377 \(Pa. Cmwlth. 1984\)](#).
- Although expert evidence should be weighed and considered, it is not binding on an administrative tribunal, even though it is uncontradicted. [Rozauski v. Glen Alden Coal Co., 69 A.2d 192 \(Pa. Super. 1949\)](#).
- Existence of conflicting evidence does not mean that there is a lack of substantial evidence in support of the findings. [Lewis v. Department of Health, 437 A.2d 811 \(Pa. Cmwlth.\) appeal after remand 453 A.2d 713 \(Pa. Cmwlth. 1981\)](#).
- “Capricious disregard” of competent evidence, which will serve to defeat agency’s findings of fact when case has been decided against party with burden of proof, is the willful, deliberate disbelief of apparently trustworthy witness, whose testimony one of ordinary intelligence could not possibly challenge or entertain the slightest doubt about. [Yugas v. W.C.A.B. \(City of Pittsburgh\), 476 A.2d 1377 \(Pa. Cmwlth. 1984\)](#).

F. SCOPE OF REVIEW

Commonwealth Court may not reverse or modify agency adjudication unless adjudication violates constitutional rights or is not in accordance with agency procedure or with applicable law, or unless any finding of fact necessary to support adjudication is not based upon substantial evidence, and agency’s

adjudication is not in accordance with law if it represents manifest and flagrant abuse of discretion or purely arbitrary execution of agency's duties or functions.

- The court shall hear the appeal without a jury on the record certified by the Commonwealth agency. After hearing, the court shall affirm the adjudication unless it shall find that the adjudication is in violation of the constitutional rights of the appellant, or is not in accordance with law, or that the provisions of [the Administrative Agency Law] have been violated in the proceedings before the agency, or that any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence. If the adjudication is not affirmed, the court may enter any order authorized by 42 Pa.C.S. §706 (relating to disposition of appeals). [42 Pa.C.S. § 704](#).
- Generally, judicial review of administrative acts and decisions is limited in scope. [Pawk v. Department of Environmental Resources, 395 A.2d 692 \(Pa. Cmwth. 1978\)](#).
- Scope of review of appeals from administrative agencies prohibits Commonwealth Court from making factual findings. [Albert v. Crime Victim's Compensation Bd., 472 A.2d 751 \(Pa. Cmwth. 1984\)](#).
- It is not function of Commonwealth Court to judge weight and credibility of evidence on appeal from administrative board or agency. [Kundrat v. State Dental Council and Examining Bd., 447 A.2d 355 \(Pa. Cmwth. 1982\)](#).
- Commonwealth Court may not reverse or modify agency adjudication unless adjudication violates constitutional rights or is not in accordance with agency procedure or with applicable law, or unless any finding of fact necessary to support adjudication is not based upon substantial evidence, and agency's adjudication is not in accordance with law if it represents manifest and flagrant abuse of discretion or purely arbitrary execution of agency's duties or functions. [Prudential Property and Casualty Insurance Co. v. Department of Insurance, 595 A.2d 649 \(Pa. Cmwth. 1991\)](#).
- Commonwealth Court must accord administrative agency's interpretation of its own regulations great weight, unless that interpretation is plainly erroneous or inconsistent with regulations, or unless regulations are inconsistent with underlying legislative scheme. [Montgomery County Geriatric and Rehabilitation Center v. Department of Public Welfare, 462 A.2d 325 \(Pa. Cmwth. 1983\)](#); [Plumstead Township v. Department of Transportation, 643 A.2d 786 \(Pa. Cmwth. 1994\)](#); [Popple v. Department of Transportation, 575 A.2d 973 \(Pa. Cmwth. 1990\)](#).
- Reviewing court should not stray beyond judicial province to explore procedural format or to impose upon agency its own notion of what procedures are best or more likely to further some vague, undefined public good. [Canonsburg General Hospital v. Department of Health, 422 A.2d 141, 492 Pa. 68 \(1980\)](#).
- It is not within purview or scope of review of an appellate court to change adjudication of a regulatory agency merely because it would have done it differently or because it disagrees with the philosophical approach of the agency. [North American Coal Corp. v. Air Pollution Commission, 279 A.2d 356 \(Pa. Cmwth. 1971\)](#).

- Where an administrative board rests its conclusion upon its own official experience, courts generally respect its special competence. [Hogan v. Unemployment Compensation Bd. of Review](#), 83 A.2d 386 (Pa. Super. 1951).
- Decision to grant or deny request for reconsideration is matter of administrative discretion and as such will be reversed only for abuse of discretion. [Muehleisen v. State Civil Service Commission](#), 443 A.2d 867 (Pa. Cmwlth.) affirmed 461 A.2d 615, 501 A.2d 335 (1982).
- Where statute confers discretion upon administrative tribunal, its actions are subject to judicial review only to determine whether or not there has been abuse of discretion or purely arbitrary exercise of authority; whether court may have reached different opinion or judgment in particular case is not sufficient to reverse administrative action, since judicial discretion may not be substituted for administrative discretion. [Slanina v. Sheppard](#), 366 A.2d 70 (Pa. Cmwlth. 1976).
- There is a presumption that the actions of public officials are within the limits of their discretion. [Snelling v. Department of Transportation](#), 366 A.2d 1298 (Pa. Cmwlth. 1976).
- A presumption of regularity applies to acts of administrative agencies and officials. [Mignatti Construction Co., Inc., v. Environmental Hearing Bd.](#), 411 A.2d 860 (Pa. Cmwlth. 1980).
- Alleged errors in the proceeding before the administrative body which did the complaining party no injury will not justify disturbing the determination of such body. [Pennsylvania Game Commission v. Bowman](#), 474 A.2d 383 (Pa. Cmwlth. 1984).
- An administrative body may interpret a statute which confers upon it duties and functions, generally, and its construction is persuasive upon the courts. [Hotel Casey Co. v. Ross](#), 23 A.2d 737, 343 Pa. 573 (1977).
- The Commonwealth Court's original jurisdiction is governed by Section 761 of the Judicial Code, 42 Pa.C.S. §761.
- The Commonwealth Court's appellate jurisdiction is governed by Section 763 of the Judicial Code, 42 Pa.C.S. §763.
- Actions which seek to compel affirmative actions by Commonwealth officials are barred by sovereign immunity. [Philadelphia Life Insurance Company v. Commonwealth](#), 410 Pa. 571, 190 A.2d 111 (1963); [Snelling v. Department of Transportation](#), 366 A.2d 1298 (Pa. Cmwlth. 1976).
- A petitioner with a claim against a Commonwealth agency must exhaust the administrative remedies available to it before the Commonwealth Court has jurisdiction. [Canonsburg General Hospital v. Department of Health](#), 492 Pa. 68, 422 A.2d 141 (1980); [Matesic v. Maleski](#), 624 A.2d 776 (Pa. Cmwlth. 1993).
- An action in mandamus is permitted only to compel the performance of a ministerial act. [Matesic v. Maleski](#), 624 A.2d 776 (Pa. Cmwlth. 1993). Mandamus cannot be used to compel the performance of a discretionary act. [Matesic](#).

APPENDIX D10 – MUNICIPAL CAPITAL IMPROVEMENT (ACT 209) AND THE TRANSPORTATION PARTNERSHIP ACT (ACT 47)

Act 209 authorizes municipalities to enact an ordinance providing for the imposition of impact fees to fund municipal capital improvements. Impact fees are defined as, "a charge or fee imposed by a municipality against new development in order to generate revenue for funding the costs of transportation capital improvements necessitated by and attributable to new development." 53 P.S. §10502-A. Municipalities can make this fee a condition precedent to final plat approval in their subdivision and land development ordinance. Transportation capital improvements are defined as, "those offsite road improvements that have a life expectancy of three or more years, not including costs for maintenance, operation or repair." 53 P.S. §10502-A. A transportation capital improvements plan must be adopted before the ordinance providing for the imposition of an impact fee can be enacted. 53 P.S. §10504-A(a). Municipalities cannot require as a condition to subdivision and land development approvals the construction, dedication or payment of any offsite improvements or capital expenditures, or impose any contribution in lieu thereof, except as specifically authorized under Act 209. 53 P.S. §10503-A (b). For an overview of Act 209 and the corresponding issues, see the attached outline from the Right-of-Way Preservation Manual. Also attached is an excerpt from the TAC study dated March 1997, outlining Act 209.

Act 209 may present concerns for developers applying to PennDOT for a highway occupancy permit (HOP), especially if the Department demands significant off-site improvements as a result of a traffic impact study (TIS). The developer may argue that it has already paid an impact fee and is being asked to pay twice for the same improvements. Only 50% of impact fees may be applied to state highway improvements, however, and no impact fee funds may be used to improve limited access highways. Coordination between a municipality(ies) and PennDOT in the HOP/Act 209 process, however, has at least a potential to enhance revenue for off-site improvements and reduce overall impacts on developers.

Act 47 is meant to facilitate cooperation between municipalities and the private sector to provide funding for transportation projects. 53 P.S. §1621.1(b). The municipality or municipal authority sets up transportation development districts (TDDs). 53 P.S. §1622(a). Each benefited property within the TDD, not just those which are newly developed, is assessed a portion of the cost of the transportation project(s). 53 P.S. §1621.1(c). A comprehensive study must be performed to develop a program of projects to be financed within the TDD and to identify the beneficiaries of those projects. The study must include an analysis of cost allocation among the identified beneficiaries which is prorated according to the benefits to be received. 53 P.S. §1624(a). Proposed projects must expand or improve existing transportation facilities or services. 53 P.S. §1622(a). Collected funds cannot be used to maintain or repair an existing facility.

The municipality or municipal authority that establishes a TDD must develop a multiyear transportation improvement program and financial plan, 53 P.S. §1624(b), and must cooperate in the formulation of a countywide transportation improvement program of any projects affecting the state highway system. 53 P.S. §1624(c). Plans and programs for any project which affects the state highway system must also be submitted to PennDOT for consideration for consolidation into the Commonwealth's 12-year transportation plan. 53 P.S. §1624(c). The governing body of any municipality or municipal authority may participate in the planning, financing, development or improvement of any state highway located within a TDD. 53 P.S. §1626.

Public hearings are required prior to passage of the enabling ordinance to establish TDDs. If affected property owners with assessed property value of more than 50% of the total property valuations of the TDD sign a written protest against the ordinance and file it in the office of the Prothonotary of the Court of Common Pleas of the county in which the TDD is located within 45 days after enactment of the enabling ordinance, then the ordinance will not become effective. 53 P.S. §1623(e). As a result, consensus building may always be expected to be part of the process before a TDD is established.

APPENDIX D11 – HOP RELATED COURT CASES

REGULATORY POWER

1. *Nardo v. Department of Transportation*, 123 Pa. Commonwealth Ct. 41, 552 A.2d 718 (1988), appeal denied, 525 Pa. 651, 581 A.2d 576 (1990).

The developer was issued a permit to construct a driveway with curbing. It changed the plans before submitting them to the township, and then submitted to the Department their application with as-built plans without curbing and with an additional auxiliary driveway adjacent to the curb radius providing access to a McDonald's restaurant. The Department treated the second application as a resubmittal and rejected it, and the developer appealed. The hearing officer found that the auxiliary cut created confusion and improper traffic movement, affecting the safety of the motoring public. The Commonwealth Court found that access was not denied and that the Department's decision was reasonable. The court opined that the Secretary of Highways' authority to control the flow of traffic on State highways "would be meaningless unless it was accompanied by the power to control internal traffic ... which eventually empties into and enters from a state highway." 67 Pa. Code §441.3 was also held to be a reasonable regulation. (36 P.S. §670-420 and 67 Pa. Code §441.3)

2. *Plumstead Township v. Department of Transportation*, 164 Pa. Commonwealth Ct. 514, 643 A.2d 786 (1994).

The Department issued a permit to Miller & Son Paving, Inc. for a low-volume driveway. Plumstead Township appealed. The court held that there was substantial evidence to support the Department's finding that the improvements required in the permit were adequate. The township also claimed that a letter written by the District Executive announcing a change in policy was a permit condition which Miller & Son violated. The court ruled that the letter was not a regulation binding the Department and that the letter did not apply to Miller & Son's circumstances anyway. The court also held that issuance of the permit was not premature, even though it would expire many years before Miller & Son's quarry would be built, stating that "Miller has the right to apply for a permit as part of its overall development plan whenever it chooses." (36 P.S. §670-420(a),(b) and 67 Pa. Code §441.6(4)(i))

3. *Ice v. Cross Roads Borough*, 694 A.2d 401 (Pa. Cmwlth. 1997), appeal denied, 702 A.2d 1062 (Pa. 1997).

The plaintiffs developed a subdivision and made a restrictive covenant with the borough that a certain driveway would connect with a subdivision road and not with a nearby State highway. The plaintiffs instead, however, constructed the driveway so that it connected with the State highway. The plaintiffs applied for and received a highway occupancy permit from the Department that gave permission to make the State highway connection. When the borough sought to enforce the covenant, the plaintiffs argued that the state approval preempted the covenant and also the local ordinance requiring subdivision driveways to connect with subdivision roads, if possible. Commonwealth Court reviewed the Department's regulations and enabling law and held that the regulations do not preempt local land use ordinances and restrictive covenants, stating: "a landowner seeking access to a state highway must be given permission for this access by both governmental entities." The court also pointed out that 67 Pa. Code §441.6(2)(i)(F) recognizes that the Department's highway access permits are subject to ordinances enacted by local municipalities which may contain more stringent minimum safety requirements. (36 P.S. §670-420 and 67 Pa. Code §§441.2,441.3(j),441.6(2)(i)(F))

4. *Board of Supervisors of Lower Nazareth Township v. Karaliotis*, 65 Pa. Commonwealth Ct. 524, 443 A.2d 421 (1982), vacated, 447 A.2d 1080 (Pa. Cmwlth. 1982).

The township conditioned the approval of Karaliotis' subdivision plan on obtainment of a driveway permit from PennDOT and also required that there be a 14 foot-wide entrance/exit lane onto the State highway. PennDOT required that the entrance/exit lane be 22 feet wide in order for it to approve a driveway permit. Access to the State highway is the province of PennDOT. The township may limit the width of a driveway entering a State highway only to the extent that PennDOT ultimately will permit. *Ice v. Cross Roads Borough* refines this standard and determines that DOT has not preempted the field of access management.

5. *Brewer v. Department of Transportation*, No. 3109 C.D. 1996, filed May 23, 1997 (Opinion not reported); allowance of appeal denied, No. 730 M.D. Alloc. Dkt. 1997, decided March 11, 1998.

The Appellants' proposal for a minimum use driveway was denied due to inadequate sight distance. The hearing officer upheld this denial, holding that the Department could not allow an applicant to create an unsafe condition. The Appellants argued that the only way to solve the sight distance problem was to lower the speed limit and that the Department's refusal to lower the speed limit was a deprivation of the Appellants' constitutional right to use their property. The Commonwealth Court disagreed and found that there was nothing in the record to indicate that an unsafe condition existed which threatened the traveling public due to the existing speed limit and that it would not compel the Department to lower the speed limit so that the Appellants could obtain enough sight distance for a highway occupancy permit. (36 P.S. §670-420 and 67 Pa. Code §§441.1, 441.7(b), 441.8(a)(1)(i)) Note: This is the only case that states that the Department can completely deny access due to inadequate sight distance.

6. *Department of Transportation v. Longo*, 98 Pa. Commonwealth Ct. 120, 510 A.2d 832 (1986), affirmed, 512 Pa. 639, 518 A.2d 265 (1986).

The Department required Longo to post signs prohibiting left turns into and out of Longo's driveway. Longo objected, arguing that the Department's regulations do not apply to his driveway because the driveway was constructed thirty years before the effective date of the regulations. Commonwealth Court held that the regulations do apply, stating: "the fact that a property's present dangerous condition arises only from past activities does not affect the appropriateness of invoking the police power to dispel that immediately dangerous condition." The court further held that the regulations and enabling law permit the type of restriction that the Department sought and that the restriction was reasonably tailored to address the sight distance problem at the location. (67 Pa. Code §§441.8(h), 441.7(b), 441.2(a))

7. *Popple v. Department of Transportation*, 133 Pa. Commonwealth Ct. 375, 575 A.2d 973 (1990).

The appellant applied for a highway occupancy permit for a high-volume driveway. The owner of a nearby diner and motel objected because the new driveway would interfere with his highway access. After an administrative hearing, it was decided that the HOP application would be approved with the added conditions that the appellant design and pay for a new medium-volume driveway for the objector and traffic signals at both the appellant's and the objector's driveways, because it was the appellant's project that would be causing the impact. The appellant argued that, under the Department's regulations, approval of its permit could not be conditioned upon its payment for the traffic signals and the objector's driveway. Citing *Nardo and Longo*, the Commonwealth Court affirmed the Department's decision, holding that it was a reasonable exercise of the Department's regulatory power. The court also implicitly upheld 67 Pa. Code §441.6(4)(i) as a reasonable regulation which carries out the general purpose of the State Highway Law. This regulation requires that "[t]he permittee shall pay all fees, costs, and expenses incident to or arising from the project, including the cost of related highway improvements which increased traffic or surface drainage may necessitate." (36 P.S. §670-420 and 67 Pa. Code §441.6(4)(i))

POLICE POWER

8. *Breinig et ux. v. Allegheny County et al.*, 332 Pa. 474, 2 A.2d 842 (1938).

The County had issued a driveway permit for access to a grocery store parking lot, but later revoked it and restored the curbs. The issue was the extent to which, and the circumstances under which, the right of vehicular access may be carried on. The court held that the right of access is a Constitutional property right and cannot be taken without compensation, but that it may be regulated under the police power in the interest of safety. The court explained that when land is taken or purchased for public use as a highway, the land owner retains, as an incident to ownership of the remainder of the land, the right of access. The travelling public has the right to reasonably safe passage. A balance must be struck between these public and private rights, and the exercise of police power must not unreasonably intermeddle with the rights of the abutting property owner.

9. *Seitzinger v. Department of Transportation, Court of Common Pleas of Schuylkill County, Civil Action No. S-1522-1991, April 23, 1993.*

The plaintiffs made a claim for consequential damages in this eminent domain case alleging substantial impairment of access to their property because Department highway safety improvements caused traffic to have to travel an additional .75 to 1.5 miles to access their property. The court found that the plaintiff's access was not substantially impaired. It is important to note that a diversion of 7.5 miles was held to be compensable in Commonwealth of Pennsylvania, *Department of Transportation v. Guyette*, 103 Pa. Cmwlth. 402, 520 A.2d 548 (1987). The court's holding was based on the Department's police powers to limit access and control the flow of traffic onto State highways in the interest of public safety. The property owner's unpermitted unrestricted access to the State highway since 1957 does not prevent the Department from later exercising its police power and restricting that access. The existing unrestricted access created a dangerous condition and violated Department regulations. 28 P.S. §1-406(e), 26 P.S. §1-612 and 67 Pa. Code §§441.7(c), 441.8(c)

10. *Hardee's Food Systems, Inc. v. Department of Transportation, 50 Pa. Commonwealth Ct. 331, 413 A.2d 1 (1980), vacated and remanded, 495 Pa. 514, 434 A.2d 1209 (1981).*

The appellant wanted two driveways onto Gettysburg Road, a State highway, for access to a fast-food restaurant. The property was previously residential, and the primary access was to one of the township roads. Access to Gettysburg Road was denied because of the high volume of traffic, and because the property had access to two township roads as an alternative. Citing *Breinig*, the Commonwealth Court affirmed. The Department's action was held to be a reasonable use of police power. (36 P.S. §670-420)

11. *Hardee's Food Systems, Inc. v. Department of Transportation, 495 Pa. 514, 434 A.2d 1209 (1981).*

On appeal, the Commonwealth Court's decision was vacated and the case remanded for further PennDOT proceedings. The court's reasoning was that Hardee's was denied the constitutionally protected right of access to a State highway without a hearing. It is unclear when this hearing should have been held and whether Hardee's had asked for an administrative hearing from PennDOT. Justice Roberts' dissent states that he would have affirmed the dismissal on the ground that Hardee's had failed to exhaust available administrative remedies before seeking judicial review. Note that the holding of *Breinig* that access is a constitutional right still stands.

12. *Wolf v. Department of Highways, 422 Pa. 34, 220 A.2d 868 (1966).*

The Wolfs owned property which bordered on Route 11 and included a gasoline service station, a seven-unit motel, an office and their residence. Access was by means of a driveway opening onto Route 11. The Department of Highways improved Route 11 from three lanes to five lanes and installed medial strips, blocking eastbound traffic from directly accessing the Wolfs' property. Issue: "[W]hether the Commonwealth may regulate the direction of traffic on a highway by the location thereon of medial dividers the result of which location is to so

divert traffic that access to the property of an owner of property abutting the highway is available by a circuitous, rather than a direct, route of travel without becoming liable for the effect of such diversion of traffic on the after value of the abutting owner's property." (Emphasis in original.) Holding: The construction of the highway did not impinge upon the right of the property owners of reasonable and convenient access to their property. "[T]he alleged resultant loss of business is not an element to be considered in determining the after value of the Wolf property." (Emphasis in original.) (36 P.S. §670-420, 26 P.S. §1-612 and Breinig)

EMINENT DOMAIN

24. *Dolan v. Tigard*, 512 U.S. 374 (1994).

The City of Tigard, Oregon required this property owner to dedicate portions of her property for a bicycle pathway and improvement of the storm drainage system as a condition of approval of her building permit to expand her store. This was held to be an uncompensated taking. There must be a relationship, that is a rational nexus, between the nature and extent of the project for which the permit is sought and the project for which the property is dedicated in order for there to be a proper use of police power rather than an improper use of eminent domain power.

25. *Department of Transportation v. Elser (Elser I)*, 152 Pa. Commonwealth Ct. 523, 620 A.2d 67 (1993).

Due to the installation of traffic signals at the intersection of three roads, the Department planned to curb off the Appellees' driveway, thereby preventing access to their driveway. The Appellees had argued below that this was a permanent interference with their right of access and therefore a de facto taking. The lower court used the transcript of the preliminary injunction hearing to rule on this factual issue instead of taking evidence. The Commonwealth Court vacated and remanded for the taking of evidence. (26 P.S. §§1-612, 1-504)

26. *Elser v. Department of Transportation (Elser II)*, 651 A.2d 567 (Pa. Cmwlth. 1994), appeal denied, 540 Pa. 650, 659 A.2d 988 (1995).

After reargument and reconsideration, the Commonwealth Court affirmed the trial court in this matter and found that the trial court had properly concluded that there had been a de facto taking. After the Department dumped two truckloads of stone across the Elsers' driveway, there was no alternative route for ingress or egress except for the Elsers to drive across their lawn. The court therefore found that there was no reasonable alternative access and that damages under Section 502 of the Eminent Domain Code were appropriate. (26 P.S. §§1-502(e), 1-504, 1-612) The issue of permanent interference with access to a property is important to keep in mind. In such cases, the Department may owe damages to the property owner for a de facto taking. Had the Department addressed the issue in a different way, no taking may have been found. The Department could have offered the Elsers an administrative hearing first, before blocking the driveway. At such a hearing, the issue would have been whether the Department's action was an appropriate exercise of police power rather than a de facto taking.

27. *Kratz v. Department of Transportation, Court of Common Pleas of Montgomery County, Civil Action No. 93-02076, May 23, 1994.*

A Department highway improvement project changed the access to the plaintiff's restaurant. Curbs were installed in front of the restaurant, with two curb cuts for access. This resulted in the loss of four parking spaces. Previously, vehicles could pull in directly off the highway and park in front of the restaurant perpendicular to the highway. Vehicles would then have to back out onto the highway in order to exit. The plaintiff alleged a 50% drop in business and sought consequential damages alleging substantial impairment of access. The court found that there was reasonable ingress and egress and therefore no substantial interference with access. The court also held that the plaintiff failed to prove a loss of business. (26 P.S. §1-612)

The cases of Wolf, Kratz, ElserI, ElserII and Seitzinger all illustrate situations where the access to the highway is changed and the property owner seeks consequential damages under Section 612 of the Eminent Domain Code. The courts look for substantial impairment of access. These situations arise with highway improvement projects, including when the installation of a new driveway will necessitate a change in a neighboring property's access or when the applicant for a driveway permit is not able to get the access that he wants. In Elser, access to the property was completely cut off, and the Commonwealth Court found no reasonable alternative access. Therefore, the court awarded damages. In Seitzinger (circuitous route and curbing), Kratz (curbing installation) and Wolf (circuitous route) the courts found that there was still reasonable access to the properties. In circuitous route cases, the extra distance that must be travelled in order to gain access is an important factor in the decision of whether damages will be awarded.

PA MUNICIPALITIES PLANNING CODE

28. *Pitcher v. Heidelberg Township Board of Supervisors*, 161 Pa. Commonwealth Ct. 505, 637 A.2d 715 (1994).

It was acceptable for the Township to condition subdivision plan approval on improvement of roadside property, with the applicant bearing the cost of those improvements. The additional street width requirement was intended to promote conditions favorable to the Township's general health, safety, and welfare. (53 P.S. §10503)

29. *Meixsell v. Ross Township Board of Supervisors*, 154 Pa. Commonwealth Ct. 226, 623 A.2d 429 (1993).

A municipality cannot condition approval of a subdivision plan on the property owner's agreement to grant an easement for possible future right-of-way to widen the road. (53 P.S. §10503)

30. *Dauphin Plaza Associates v. Department of Transportation*, 127 Pa. Commonwealth Ct. 132, 561 A.2d 61 (1989), appeal denied, 525 Pa. 649, 581 A.2d 575 (1990).

The petitioner was developing property as a shopping center and filed an application for a highway occupancy permit for two signalized driveways on May 4, 1988. The Department responded with a letter dated May 11, 1988 stating that it required additional information and that it would not allow signalization at one of the proposed locations. On May 20, 1988, the petitioner filed a petition to intervene in the highway occupancy permit application of another developer which had requested access at the same locations. The petitioner argued that its permit application was deemed approved because the Department did not properly respond to the application within 60 days as required under Section 508(6) of the Pennsylvania Municipalities Planning Code, 53 P.S.

§10508(6). Under Section 508(6), the Department must either approve the application, deny it, return it for additional information, or determine that no permit is required within 60 days of the application date, or the application will be deemed approved. In this case, although the letter to the petitioner was called a request for additional information, the court found that it was actually a denial of the application. The letter requested that the petitioner take additional action, but did not actually request any additional information. The petitioner also argued that a hearing must be held before a permit can be denied, in order for the denial to satisfy Section 508(6) and to avoid deemed approval. The court held that this was not required under the statute. (53 P.S. §10508(6), 36 P.S. §670-420)

ANALOGOUS PERMITS

31. *Middle Paxton Township v. Sweitzer*, 23 Pa. Commonwealth Ct. 59, 350 A.2d 184 (1976).

A property owner who is refused a building permit cannot continue with the construction even if he does have a valid case against the municipality for refusing the permit.

32. *Beiler v. Salisbury Township*, 79 Pa. Commonwealth Ct. 213, 468 A.2d 1189 (1983).

This case involves the interpretation of a local zoning ordinance. The property owner violated the zoning ordinance by building a nonconforming structure without a building permit. The municipality has the authority to order the removal of the nonconforming structure.

The Sweitzer and Beiler cases are analogous to the Department's authority to close a nonconforming access under the highway occupancy permit regulations.

UTILITY OCCUPANCY

33. *Philadelphia Suburban Water Co. v. Pennsylvania Public Utility Commission et al.*, 168 Pa. Super. 360, 78 A.2d 46 (1951).

No damages or compensation are recoverable for the exercise of the police power of the Commonwealth, such as the PUC-ordered removal of water pipes due to the Department's abandonment of a grade crossing. Also, the appellant did not have an HOP, and without a permit, the appellant's occupancy of the highway was unlawful and it secured no rights therein. (36 P.S. §§191, 670-411, 670-412, 66 P.S. §§1179, 1181)

34. *Bell Atlantic -- Pennsylvania, Inc. v. Turnpike Commission*, 703 A.2d 589 (Pa. Cmwlth. 1997).

The Commission is not statutorily required to reimburse a utility for the relocation of its facilities, where those facilities were caused to be relocated from public rights-of-way by the Commission's construction of new roadways. Citing *Philadelphia Suburban Water Co. v. Pennsylvania Public Utility Commission*, the court stated that "the location by a public utility of its facilities within public rights-of-way is merely a privilege, which is by definition revocable and which does not constitute a proprietary interest in the permanent location of those facilities in the public rights-of-way." This case therefore confirms the long-standing rule of the *Philadelphia Suburban Water Co.* case.

35. *South Whitehall Township v. Department of Transportation*, 82 Pa. Commonwealth Ct. 217, 475 A.2d 166 (1984).

67 Pa. Code §459.3(b) requires that the owner of the utility facility apply for the HOP, and 67 Pa. Code §459.7(12) requires that the permittee indemnify the Commonwealth. The Township and Township Authority complain that this "is an unconscionable imposition of vicarious liability contrary to law and public policy" when it is private developers who are actually seeking to expand the utility facilities and need access to the state highway rights-of-way. The court held that the Township did not have standing. (36 P.S. §670-411, 67 Pa. Code §§459.3(b), 459.7(12))

36. *City of Harrisburg v. Department of Transportation, Board of Claims*, Docket No. FC-777-89, July 1, 1991.

This is a sinkhole case with the issue of causation of the subsidence. The depression was actually held to be caused by improper backfill and compaction after repairing a broken city sewer line, which is the City's responsibility, rather than a naturally occurring sinkhole, which would be the Department's responsibility. This is akin to noncompliance with 67 Pa. Code §441.6(3) (work to conform to Department standards).

37. *Columbia Water Company v. Department of Transportation*, No. 954 C.D. 1994, filed June 15, 1995 (Opinion not reported).

This case revolves around the interpretation of the term "not feasible" in 67 Pa. Code §459.8(c). Columbia wanted to put in their water lines under the street instead of under the sidewalk. The court held that there was substantial evidence to support the conclusion that it was feasible to install the water lines outside the state highway. (67 Pa. Code §§459.8(c), 459.12)

UTILITY TORT

38. *Miranda v. City of Philadelphia*, 166 Pa. Commonwealth Ct. 181, 646 A.2d 71 (1994).

Miranda was injured when he fell into an allegedly snow-covered opening or excavation in a State highway. The opening was created by the Philadelphia Gas Works, which was working pursuant to a permit issued by the City of Philadelphia. The Department demurred, alleging that it had no notice of the work or the opening. Miranda admitted that the Department did not have actual notice, but argued that since it owned the street, it had constructive notice. Finding no legal basis for liability based on constructive notice simply by virtue of owning a property, Commonwealth Court held that “13 days was simply too brief a period upon which to conclude that DOT should have had reason to know of the dangerous condition of the street.” The court therefore found that the complaint failed to state a cause of action against the Department. The Commonwealth cannot be held to a higher standard than a private landowner. (42 Pa.C.S. §8522(a),(b)(4), §8521)

39. *Novak v. Kilby*, 167 Pa. Commonwealth Ct. 217, 647 A.2d 687 (1994).

Novak suffered injuries when he lost control of his car, crossed a two-lane road, crashed into a guiderail and a telephone pole directly behind the guiderail. Novak sued the telephone company, alleging that the pole, which was located on a curve only five and one-half feet from the edge of the pavement, was a foreseeable and unreasonable risk to users of the highway. Moreover, Novak asserted that the pole did not comply with the Department design manual which recommends that poles in the right-of-way be at least thirty feet from the edge of the pavement. Commonwealth Court held that the pole was not the proximate cause of Novak’s injuries, finding that the “causal connection between the location of the pole and Novak’s injuries is too remote for liability to attach.” The pole had existed without incident for almost 50 years and the pole’s location did not contribute to Novak’s loss of control of the car and leaving the roadway. The court noted that the Department design manual is merely advisory in nature and has no regulatory effect; therefore it did not create a duty on the telephone company to move the pole.

40. *Talarico v. Bonham*, 168 Pa. Commonwealth Ct. 467, 650 A.2d 1192 (1994).

Talarico was injured when she lost control of her car, crossed the road, and struck a PP&L electric pole located eight feet from the edge of the pavement. Talarico sued PP&L, alleging that it was negligent in placing the pole too close to the road, in failing to conform to the Department’s safety guidelines, and in failing to warn motorists of the close proximity of the pole. Commonwealth Court reversed the trial court’s nonsuit, which was based on the trial court’s finding that the proximity of the pole was not the proximate cause of Talarico’s injuries. Commonwealth Court held that a jury could reasonably find that PP&L created or increased the risk of Talarico’s injuries by placing the pole in the middle of the right-of-way, instead of at the far edge of the right-of-way as required by Department regulations and standards. The general rule is that utility poles must be placed so as to avoid unreasonable danger to motorists. The question is for a jury to decide based on the circumstances. (67 Pa.Code §459.9(b)(1)(i))

41. *Chacko v. Department of Transportation*, 148 Pa. Commonwealth Ct. 494, 611 A.2d 1346 (1992).

The plaintiff passengers were injured when the diabetic driver of the car in which they were riding lost consciousness, left the roadway and struck a utility pole owned by PECO. They argued that the City of Philadelphia was negligent because it negligently designed the roadway, failed to post proper traffic warning and speed limit signs, and allowed PECO to place the utility pole too close to the roadway, in violation of a city ordinance. The driver’s loss of consciousness was found to be a superseding cause of the injuries. (42 Pa.C.S. §§8542(a), (b), 8541)

42. *Caldwell v. Department of Transportation*, 120 Pa. Commonwealth Ct. 358, 548 A.2d 1284 (1988).

The plaintiff was a passenger in a vehicle that left the roadway after swerving to avoid a deer and eventually hit a telephone pole located eight feet from the highway. The court held that the pole's location was not the proximate cause of the injuries. These events were not reasonably foreseeable.

43. *Nelson v. Duquesne Light Co. et al.*, 338 Pa. 37, 12 A.2d 299 (1940).

The plaintiff's husband was the passenger in a car that hit a wooden light pole located on the highway. Reasonable care must be taken in placing a utility pole in order to avoid needless danger. A curve in the road in this case made this a dangerous situation. A new trial was ordered to consider the question of the liability of the light company.

TORTS

44. *Estate of Robert W. Hepler v. Department of Transportation, Court of Common Pleas of Schuylkill County, Civil Action No. S-1234-1995, January 11, 1996. (Opinion not reported).*

The plaintiff's decedent exited a Department-permitted access onto a state highway and was struck by another vehicle. The Department is immune from suit for "...damages for any injury to persons or property arising out of the issuance or denial of a driveway permit...." The court also ruled that the Department's failure to inspect or monitor traffic was not a dangerous condition of the highway under 42 Pa.C.S. §8522(b)(4). (53 P.S. §4104(b), 42 Pa.C.S. §8522(b)(4))

45. *Rothermel v. Department of Transportation*, 672 A.2d 837 (Pa. Cmwlth. 1996).

The decedent was a passenger in a car that lost control on a patch of ice, veered off the road and struck a stand of trees. The plaintiff sued the Department for permitting the accumulation of snow and ice on the highway and for failure to provide and maintain a clear zone beyond the right-of-way and failure to provide and maintain a guiderail along the highway. Because there was no causal connection between the lack of a guiderail and the accident, the court granted summary judgment on that issue. The case was remanded on the issue of whether the ice constituted a dangerous condition. In order to meet the real estate exception, the dangerous condition must be one of the Commonwealth realty and the condition must be related causally to the accident. These are issues of law for the court to decide.

46. *Wallace v. Department of Transportation*, 701 A.2d 307 (Pa. Cmwlth. 1997).

The plaintiff alleged a dangerous condition of the highway because the Department did not install a guiderail as a barrier to prevent vehicles from leaving the road. The court found that the Department did not have any duty to do so under Sections 521 and 522 of the State Highway Law, 36 P.S. §§670-521, 670-522. Negligence at common law must still be established even if the cause of the accident falls within the real estate exception to sovereign immunity. The responsibility of the Department is limited to the maintenance of the base and surface courses from curb to curb. (36 P.S. §§670-521, 670-522, 42 Pa.C.S. §8522(b)(4))

47. *Bendas v. Township of White Deer*, 531 Pa. 180, 611 A.2d 1184 (1992).

Bendas was driving on Township Road 532 and Perry was driving on L.R. 475 when they collided at the intersection of those two roads. There were no signs or traffic control devices on either road. Both drivers sued the Department alleging a dangerous condition. The court held that the question of what constitutes a dangerous condition is a question of fact. The court also held that the Department has a duty to make its highways safe for their intended purpose. To be liable, the breach of the duty owed must also coincide with an exception to the Sovereign Immunity Act. (42 Pa.C.S. §8522(b)(4), 42 Pa.C.S. §8521 et seq.)

48. *Finn v. City of Philadelphia*, 541 Pa. 596, 664 A.2d 1342 (1995).

The appellant fell on a grease-covered city sidewalk. The Commonwealth Court held that an accumulation of grease on the sidewalk was not “a dangerous condition of sidewalks” under 42 Pa.C.S. §8542(b)(7) and did not pierce the city’s immunity under the Political Subdivision Tort Claims Act, 42 Pa.C.S. §§8541-8564. The exceptions to immunity must be strictly construed. In order to pierce governmental immunity, there must be proof of a defect of the sidewalk itself, such as an improperly designed sidewalk, an improperly constructed sidewalk, or a badly maintained, deteriorating crumbling sidewalk. (42 Pa.C.S. §8542(b)(7), 42 Pa.C.S. §§8541- 8564)

49. *Braxton v. Department of Transportation*, 160 Pa. Commonwealth Ct. 32, 634 A.2d 1150 (1993), appeal denied, 539 Pa. 682, 652 A.2d 1326 (1994).

Braxton was a passenger in a car that failed to negotiate a curve, veered off a state highway and struck a stone pillar 10.5 feet off of the highway at the entrance to the Rubins’ unpermitted driveway. The court found that the Rubins had no duty to the traveling public. The court also held that the Rubins’ failure to obtain a driveway permit did not constitute negligence per se because the regulation requiring a permit is not intended as a protection against this type of accident.

50. *Allen v. Mellinger*, 156 Pa. Commonwealth Ct. 113, 625 A.2d 1326 (1993), appeal denied, 537 Pa. 653, 644 A.2d 738 (1994).

While making a left turn from a state highway into a store parking lot, the appellant’s vehicle collided with a truck traveling in the opposite direction. There was limited visibility at this location, because it was at the crest of a hill. The parking lot was completely open, with no curbing and no lines or markings indicating where to enter or exit. The highway, however, was marked with a broken double yellow center line in front of the store where the appellant was making her turn. The appellant sued the store owner alleging breach of a duty of care by failing to warn of a dangerous condition or to mark where it was safe to turn in to the parking lot. The store owner was held to have no duty to the appellant because the accident actually took place on the highway, not on store property. The Department has the exclusive ownership, possession and control of state highways and the duty to maintain and repair state highways. (Note: The store property owners did not have permitted access to the highway.)

51. *Cruet v. Certain-Teed Corporation*, 432 Pa.Super. 554, 639 A.2d 478 (1994), appeal denied, 541 Pa. 639, 663 A.2d 691 (1995).

Two vehicles collided on a New Jersey highway as one was pulling out onto the highway from an access that apparently had inadequate sight distance. The issue decided was whether a commercial property owner has a duty to warn motorists on the highway that vehicles may be entering the highway from the abutting commercial property. The court held that it does not and that the dangerous condition was not caused by the commercial property owner, but by the contours of the highway maintained by a public authority and by pine trees growing on the land of a neighboring property owner. The court further held that the state or local government has the duty to warn motorists of dangerous conditions, not the owners of lands abutting the highway. (Cites *Allen v. Mellinger*.)

What responsibility does PennDOT have to make private driveways safe? A general rule is that the Department has the responsibility to make the highways safe for their intended purpose. Failure to do so creates an unsafe condition of the highway within the real estate exception to the Sovereign Immunity Act. Section 8522 (b)(4) of the Judicial Code, 42 Pa.C.S. §8522(b)(4) (sovereign immunity waived when damages caused by a dangerous condition of Commonwealth agency real estate and sidewalks). In order to be successful in a claim involving the real estate exception, the dangerous condition must be of the real estate and must be a proximate cause of the accident. On Act 615 highways, the Department may only have

responsibility for defects of state highways from curb to curb.

If a driveway is involved in the accident, the failure of the driveway owner to follow PennDOT regulations should be a factor in the driveway owner's liability. Bendas and Rothermel, however, do not provide a basis to insulate PennDOT from responsibility, but 53 P.S. §§4104 (building permits) and 10508 (subdivision plans) may provide such protection since they appear to reimpose sovereign immunity by providing that PennDOT will not be liable for damages to persons or property arising from the regulation or failure to regulate any driveway. Of course, municipalities must have adopted such ordinances. Should PennDOT have such protection? Possibly, since the right to access is a constitutional one. Hardee's.

For utilities, Department regulatory and design standards will often provide a "standard of care" which may impact on a trial court's factual determination of the duty owed by a utility to the traveling public to safely locate a utility pole. Failure to meet a regulatory standard may be negligence per se, and may provide a basis to avoid summary judgment in a "struck-pole" case where both PennDOT and the utility are defendants. This is because the issue often focuses on a utility's ability to foresee the potential for injury. If a regulatory design standard has been breached, it may be apparent that the type of harm or injury that occurred was exactly the type that the regulation was designed to prevent. cf. Braxton.

This same reasoning may be applied in situations where an accident occurred as a result of an unpermitted or improperly designed driveway that has insufficient sight distance. Department regulations are not advisory, they have the effect of law. *Fumo v. Insurance Department*, 58 Pa. Commonwealth Ct. 392, 427 A.2d 1259 (1981). This was not raised as an issue in *Allen and Cruet*. Also, 53 P.S. §10508 should be a factor in absolving PennDOT of liability in driveway cases. PennDOT should not have liability for issuing, or failure to issue, a driveway permit. Braxton may help to establish that failure to comply with a PennDOT access regulation constitutes negligence per se in a proper case.

52. *White v. City of Philadelphia*, 712 A.2d 345 (Pa. Cmwlth. 1998).

The appellant alleged that she fell due to a defective condition of the sidewalk of the city of Philadelphia Visitors Center, located at or near the intersection of two state highways. The trial court granted judgment on the pleadings in favor of the City based on its finding that the sidewalk was not within rights-of-way owned by the local agency and therefore did not fall under the exception to governmental immunity provided in Section 8542(b)(7) of the Judicial Code, 42 Pa.C.S. §8542(b)(7). The Commonwealth Court reversed and remanded to the trial court for further proceedings. The Commonwealth Court held that the Commonwealth is not responsible for maintenance of sidewalks abutting streets in first and second class cities that have been designated and taken over as state highways.

The court reasoned that designation and taking over of a city street as a state highway under Section 542 of the State Highway Law, Act of June 1, 1945, P.L. 1242, as amended, 36 P.S. §670-542, does not constitute vesting of ownership of the street or the sidewalk with the Commonwealth. The court further reasoned that the Commonwealth only took control of the cartway, not the sidewalk. The court then held that ownership and control of the sidewalk remained with the City and that 'sidewalks within the rights of way of streets owned by local agency' in Section 8542(b)(7) includes sidewalks in a city of the first class that are owned by the city and that abut a state highway. (42 Pa.C.S. §8542(a),(b)(7) and §8522(b)(4); 36 P.S. §670-542)

The White opinion follows the general rule that liability in tort often flows from ownership of the highway and, therefore, the duty to control it and make it safe for the travelling public. Bendas. By finding that the "takeover" provisions of the State Highway Law do not necessarily vest ownership in the Commonwealth of the entire highway from right-of-way line to right-of-way line, the court takes a new course. Previous case law often focuses on the Department's duty (or lack of duty) to maintain takeover highways beyond curblines, rather than ownership. Thus, the sovereign immunity of the abutting municipality remained intact, leaving PennDOT to face the music. Cf. *Phillips v. City of Philadelphia*, 610 A.2d 509 (Pa. Cmwlth. 1992). White also seems to contradict the Department's HOP regulations, which provide for the issuance of permits between right-of-way lines on

"takeover" highways. 67 Pa.Code §§459.1 and 441.1 (definition of "highway"); cf. opinion dated April 23, 1992 by Thomas R. Haist, "Department Responsibility Beyond Curb Lines".

COMMONWEALTH DOCUMENTS LAW

53. *Department of Environmental Resources v. Rushton Mining Company*, 139 Pa. Commonwealth Ct. 648, 591 A.2d 1168 (1991), appeal denied, 529 Pa. 626, 600 A.2d 541 (1991).

DER was requiring standard permit conditions as a matter of policy. The court ruled that the standard permit conditions had the effect of regulation, but had not been promulgated in accordance with the Commonwealth Documents Law. The conditions were being applied uniformly state-wide and the agency personnel did not have any discretion in applying the conditions to any individual case. The conditions therefore met the binding norm test and were deemed by the court to be unpromulgated regulations. (45 P.S. §1201)

In Title 67 of the Pa. Code, Chapter 441, PennDOT has standard permit conditions. These have been promulgated as regulations, which is the correct way of handling this situation. Other conditions that we impose are done on a case-by-case basis depending on the facts in a particular situation and are done by agreement. This is because extra-regulatory conditions may be agreed upon by a permittee and PennDOT, but may not be imposed by PennDOT. An example might be a requirement that a prequalified contractor be used by a permittee for off-site improvements. This is not a regulatory requirement for a variety of reasons.

TRANSPORTATION ROUTE OR PROGRAM

54. *Snelling v. Department of Transportation*, 27 Pa. Commonwealth Ct. 276, 366 A.2d 1298 (1976).

An HOP improvements project was held not to be a "transportation route or program" under Section 2002(b) of the Administrative Code, 71 P.S. §512(b). Therefore, it did not have to meet the public hearing requirements. The improvements project involved cutting an opening in a median barrier and adding left-turn lanes and traffic signals to improve access to a mall and off-site improvements including installation of additional traffic signals further along the state highway, modification of existing traffic signals on nearby roads, and the widening of a road that intersected with the state highway. (71 P.S. §512(b))

BONDING

55. *Al Hamilton Contracting Co. v. Department of Environmental Protection*, 680 A.2d 1209 (Pa. Cmwlth. 1996).

DEP required bonds for both the Surface Mining Permit and the Mining Activities Permit. Each of these permits were separate and distinct instruments serving separate and distinct functions, and the court held that this was not double-bonding.

This is akin to the situation where a municipality will require a plat-approval bond under 53 P.S. §10503(2) to cover an HOP improvement project and PennDOT also requires an HOP Restoration and Maintenance Bond. The bonds required by the municipality serve a different purpose than those required by PennDOT, so this is not double-bonding. In addition, if PennDOT were merely named as an additional obligee on the municipality's bond, then PennDOT would have to agree to complete the work on that bond, which is beyond PennDOT's authority.

ADA COMPLIANCE

56. *Kinney v. Yerusalim*, 812 F.Supp. 547 (E.D.Pa. 1993), affirmed, 9 F.3d 1067 (3d Cir. Pa. 1993).

The issue was whether street resurfacing was an "alteration" triggering the ADA requirement to install curb

ramps or slopes or whether the street could still be treated as an “existing facility.” The court held that resurfacing is an “alteration” triggering the ADA requirement of installation of curb ramps or slopes. This requirement applies to all contracts for which bids were let after January 26, 1992.

MAINTENANCE RESPONSIBILITY

57. *Crigler v. City of Philadelphia*, 667 A.2d 470 (Pa. Cmwlth. 1995).

Under Section 204 of the State Highway Act of 1961, 36 P.S. §1758-204, PennDOT’s maintenance responsibility for highways that it has taken (Act 615 Highways) is limited to the area between curb lines. The court clarified its holding in *Ruch v. City of Philadelphia*, 138 Pa.Cmwlth. 68, 587 A.2d 830 (1991), petition for allowance of appeal denied, 529 Pa. 660, 604 A.2d 251 (1992). “Absent an agreement on maintenance at an intersection of a City street and a State highway, the State is responsible for maintaining only that portion of the vehicular intersection between actual or extended curb lines of its highway, without any reference to sidewalks; the City is responsible for maintaining crosswalks and other areas up to the actual or extended curb lines of the State highway at the vehicular intersection.” (36 P.S. §1758-204)

ADDITIONAL CASES

MUNICIPAL APPROVALS

58. *Township of Middle Smithfield v. Kessler*, 882 A.2d 17 (Pa. Cmwlth Ct. 2005), *Petition for Allowance of Appeal Denied*, 903 A.2d 539 (2006).

Although DOT must approve the satisfactory completion of the roadwork authorized by its permit, the regulations confer no authority upon DOT to permit a landowner to open and operate a new land use without final municipal approval of the associated land development and issuance of the required certificate of occupancy.

HOP TORT IMMUNITY

59. *Ling v. PennDOT*, PICS Case No. 13-2736 (Pa. Cmwlth. July 18, 2013 reported Sept. 30, 2013) *McCullough, J.; Friedman, S.J., concurring, Petition for Allowance of Appeal Denied, December 18, No. 392 WAL 2013.*

The Construction Code Act contains a driveway immunity provision immunizing PennDOT from liability. Ling was injured in a motor vehicle accident and filed a law suit based on an improper sight line for a private driveway.

On June 30, 2006, Daniel Ling stopped his car at the edge of a private driveway, preparing to make a left-hand turn onto State Route 60 in Robinson Township, Allegheny County, Pa., and was seriously injured when a pickup collided with his vehicle.

Ling filed a complaint against appellees Pennsylvania Department of Transportation (PennDOT) and the driver of the pick-up truck. Appellants alleged that PennDOT was negligent and breached the standard of care by allowing the private driveway to enter onto State Route 60 with an improper sight distance; failing to prohibit left- hand turns from the driveway; failing to warn motorists of the driveway's existence; failing to increase the sight distance; and failing to correct the unpermitted and unlicensed driveway that created a dangerous condition.

The Court determined that the driveway immunity provision was not limited to instances where PennDOT issued or denied a driveway permit. The provision broadly immunizes PennDOT from liability for any injury

occurring including where PennDOT does not regulate an unpermitted driveway.

PennDOT, owed a duty of care to maintain the highway, i.e., the paved cartway and adjacent berm, in a safe condition. The duty did not extend to hazards not located on the highway. The driveway immunity provision explicitly cloaked PennDOT with immunity from Ling's negligence action.

EMINENT DOMAIN

60. *Koontz v. St. Johns River Water Management District*, 133 S. Ct 2586 (2013)

Further see: Molly Cohen and Rachel Proctor May, *Revolutionary or Routine? Koontz v. St. Johns River Water Management District*, 38 Harv. Envtl. L. Rev. 245 (2014).

In 1994, Koontz, the property owner and developer, wanted to develop 4 acres of a 15 acre tract of land in Florida. State regulations required him to obtain wetlands permits from the Water Management District. The developer offered to offset the impact on the wetlands with a conservation easement. The District rejected the proposal, and stated that it would not approve construction unless the project were scaled back, and an easement covering the remaining 75% of the property be deeded to the District and the developer pay for improvements on wetlands several miles away. The District denied Koontz's application. Koontz did not appeal. Instead, he sued in State court. The court found the District's denial was a regulatory taking and sent the case back to the District, who agreed to issue the permit with the original conservation easement offered by the developer. In a second trial, Koontz won \$376,154 in damages for the temporary taking of his property by the District's denial from 1994-2005.

In administering highway occupancy permits under Chapter 441 and authority under the State Highway Law, Department permitting staff should understand how the regulations could be misapplied.

In the recent decision of *Koontz v. St. Johns River Water Management District*, the U.S. Supreme Court addressed this issue again. The Court has long held since the seminal 1987 *Nolan* and 1994 *Dolan* cases that when a government agency conditions approval of a development permit on the dedication of some property interest, that condition must have a direct connection and rough proportionality with the impacts of the development that the agency asks the developer to mitigate.

This is important because the Department routinely conditions permits on the construction of on and off site highway improvements, and the HOP regulations require permittees to pay "all fee, costs, and expenses arising from the project, including the cost of related highway improvements which increased traffic or surface drainage may necessitate." See 67 Pa. Code section 441.6.

The regulations simply require that fees and costs "arise" from the project, and that required highway improvements be made "necessitated" by increased traffic. When Department staff applies the regulations to approve, deny or conditioning a Traffic Impact Study or an HOP, the *Nolan-Dolan-Koontz* test requires more. That is, *if a new development will increase traffic to and from a site, a permit condition requiring on and off-site highway improvements must have an essential connection to the traffic impacts and the condition must be proportionate to the impact.*

The *Koontz* case did not change the *Nolan-Dolan* litmus test, but it did extend it to permit denials and agency requirements for monetary payments. The decision affirms that taxes and user fees are not considered monetary exactions. The *Nolan-Dolan* test applies to demands for property related to permit approval, even if the demand is rejected and no permit issued. The test also applies to demands for money related to permit approvals, as well as demands for conveyance of right-of-way. When taking action to approve, deny or condition a TIS or HOP, as long as Department staff provides at least one option that would satisfy *Nolan-Dolan*, the applicant does not have a claim of unconstitutional conditions.

APPENDIX "E" SERIES – INTERAGENCY GUIDANCE

APPENDIX E1 – PROJECTS PERFORMED BY ENTITIES OTHER THAN PENNDOT ON PROPERTY UNDER PENNDOT'S JURISDICTION

APPENDIX E2 – MOU BETWEEN PHMC AND PENNDOT – CONSULTATION ON STATE- FUNDED TRANSPORTATION PROJECTS IN PENNSYLVANIA

The Interagency guidance included in this Appendix are used to develop the policies that PennDOT follows related to HOPs.

**APPENDIX E1 – PROJECTS PERFORMED BY ENTITIES OTHER THAN PENNDOT ON
PROPERTY UNDER PENNDOT’S JURISDICTION**

The following pages are considered a standalone document, but are included in the Appendices for documentation purposes.



DATE: July 12, 2011

SUBJECT: Joint Agency Guidance for Permitting Projects Performed by Entities Other than PennDOT on Property under PennDOT's Jurisdiction.

TO: PennDOT District Executives and PADEP Program Managers

FROM: Daryl St. Clair
Acting Director
PennDOT Bureau of Highway Safety
and Traffic Engineering

Glenn Rider
Director
PA DEP Bureau of Watershed Management

The Pennsylvania Department of Transportation (PennDOT) and the Department of Environmental Protection (PA DEP) have worked jointly to develop the *Joint Agency Guidance for Permitting Projects Performed by Entities Other than PennDOT on Property under PennDOT's Jurisdiction*. The guidance document has been developed by representatives from PennDOT Bureaus of Maintenance and Operations and Project Delivery and PA DEP Central and Regional Offices.

The purpose of this document is to provide guidance on who should apply for a permit issued by PADEP for activities within right of way owned by PennDOT that are being performed or controlled by a municipality, developer, adjacent property owner, watershed group or some other group. Attached is a copy of the Joint Guidance document dated April 18, 2011. For PennDOT, the guidance will become part of the Highway Occupancy Permit Guidelines (Pub. 282) in the next updates. For PA DEP, this document will be available online in the Chapter 105 Online Guidance Manual and will be part of PA DEP's desk manual for review of permit applications.

The guidance is available for immediate use. If you have any questions, please contact Glenn Rowe at PennDOT at 717-783-6479 or Jeff Means at PA DEP at 717-772-5643.

Attachment

cc: R. Scott Christie, PE Reading File
Highway Administration Bureau Directors
Glenn Rowe
Gary Fawver, PE
PennDOT District ADEs
PennDOT District Permit Managers
Sid Freyermuth, PA DEP
Ken Murin, PA DEP
Jeffrey Means, PA DEP
PA DEP T-21 Staff



**JOINT AGENCY GUIDANCE FOR PERMITTING
PROJECTS PERFORMED BY ENTITIES OTHER THAN PENNDOT
ON PROPERTY UNDER PENNDOT'S JURISDICTION**

July 12, 2011

I. INTRODUCTION

This document provides guidance on who should apply for a permit issued by the Department of Environmental Protection (PaDEP) for activities within right of way owned by the Pennsylvania Department of Transportation (PennDOT) that are being performed or controlled by a municipality, developer, adjacent property owner, watershed group or some other group (hereinafter referred to collectively as “developer”). This guidance will be applicable to situations involving highway occupancy permits (HOP) where the developer or municipality must make improvements to the existing roadway network to accommodate the traffic generated by the new development and when a stream enhancement or mitigation project is being performed by an entity other than PennDOT. Under both of these scenarios, the proposed activity in part is occurring on property owned or under the jurisdiction of PennDOT. In the past, there has been some question over whether PennDOT is required to obtain the Chapter 105 and/or NPDES permits or whether the entity proposing the activity obtains these permits. The intent of this guidance is to achieve consistency throughout the state.

II. IMPROVEMENTS REQUIRED FOR HOP

Developers requesting a HOP permit from PennDOT are required to submit traffic information which documents that the existing roadways can handle the traffic generated by the proposed commercial and/or residential development. Many times the existing roadways cannot handle the additional traffic and the developer must make changes to the existing road network to accommodate the vehicular and pedestrian traffic that the proposed development is predicted to generate. These improvements may trigger the need for a permit under the Dam Safety and Encroachment Act (a Chapter 105 permit) due to impacts to streams or wetlands and/or a NPDES permit to address stormwater runoff issues.

1. Chapter 105 Permits

Although countless different scenarios of roadway improvements that may be required exist, for purposes of illustration, a common example is the need to add turning lanes to the existing road to add capacity to the intersection for it to operate at an acceptable level of service. The addition of turning lanes either (1) may require the extension of existing bridge, culvert, or pipe or (2) may impact a wetland or other water of the Commonwealth located adjacent to the roadway. These activities would require a Chapter 105 permit approval prior to construction. Under each of these scenarios, the developer, not PennDOT, would be the applicant for purposes of the Chapter 105 permit process which is consistent with 25 Pa. Code §105.13(g)&(c).

a. Bridge, Culvert, or Pipe Extensions

For activities that involve the extension of an existing bridge, culvert, or pipe owned and maintained by PennDOT, the Chapter 105 permit will be issued to the developer. The developer will be responsible for constructing the proposed roadway improvements consistent with the permit. The developer will also be responsible for any maintenance required under 25 Pa. Code §105.171 for two years following construction. This is known as the two year guarantee period under the HOP permit. *See* 67 Pa. Code §441.6(15). When an existing bridge, culvert, or pipe conveying a water of the Commonwealth is extended by a developer a permit condition similar to the following should be added to the HOP permit:

This Highway Occupancy Permit authorizes the modification of an existing [bridge, culvert, or pipe] within PennDOT's right of way to address traffic impacts caused by the proposed development. Applicant or his agent assumes responsibility for all environmental clearances, including a Chapter 105 permit, associated with this project. When two years from PennDOT's written acknowledgement to the permittee that all work authorized under the referenced Highway Occupancy Permit, and any supplements thereto, is completed and accepted, permittee will transfer the Chapter 105 permit obtained for the modification of the existing [bridge, culvert, or pipe] to PennDOT. The HOP permittee is responsible for any maintenance required for the existing and modified sections of the [bridge, culvert, or pipe] under 25 Pa. Code §105.171, regardless of who holds the Chapter 105 permit.

Any violations of the permit or maintenance responsibilities under the Chapter 105 regulations during the construction and the two year guarantee period will be the sole responsibility of the developer as the permit holder.

After construction is complete and the two year guarantee period expires under the HOP permit, the permit will be transferred to PennDOT. In agreeing to this transfer, PennDOT is not in any way waiving any of the provisions contained in the HOP regulations (67 Pa.Code §441.6(12)) with regard to the developer's maintenance responsibilities. However, from the DEP's point of view, PennDOT is the point person if future maintenance issues arise within the right of way. It is PennDOT's responsibility to have the developer fix the problem if PennDOT feels under its HOP regulations that it is the developer's responsibility.

b. Impacts to Waters of the Commonwealth Not Requiring Extensions of Existing Bridges, Culverts, or Pipes.

For activities within PennDOT's right of way that (1) involve the placement of fill material in wetlands or other waters of the Commonwealth and/or (2) involve the construction of a new bridge, culvert, or pipe within a water of the Commonwealth, the Chapter 105 permit will be issued to the developer. The developer will be responsible for constructing the proposed roadway improvements consistent with the permit. The developer will also be responsible for any required mitigation under the permit and any maintenance required under 25 Pa. Code §105.171 following construction.

2. NPDES permits

For any activities proposed by an entity other than PennDOT within PennDOT's right of way regardless of whether or not the activity involves the extension of an existing bridge, culvert, or pipe, the entity proposing or completing the activity (usually the developer or its contractor) will be the permittee for purposes of the NPDES permit process. PennDOT does not have to be a co-permittee on the developer's NPDES permit even if construction is required within PennDOT's right of way.

III. STREAM ENHANCEMENTS OR OTHER MITIGATION PROJECTS

Situations arise where a municipality, other resource agency, watershed group, adjacent property owner, and other interest group (hereinafter "project sponsor") has proposed a stream enhancement or other mitigation project that requires construction within PennDOT's right of way. The project sponsor would have primary responsibility over the completion of the project. For these types of projects, if PennDOT is willing to have the project sponsor complete the proposed project within PennDOT's right of way, PennDOT and the project sponsor would enter into a Right of Entry Agreement. The Right of Entry Agreement (ROE Agreement) would include language indemnifying PennDOT from any liability resulting from the proposed project. If the project sponsor is another resource agency, either an Intergovernmental Agreement (IGA)(for a non-state agency – Federal, local or county conservation district), an Interagency Agreement (IA) (for an independent state agency - e.g. commissions), or a Memorandum of Understanding (MOU)(for an agency under the Governor's jurisdiction) would be executed rather than a ROE Agreement.¹ The ROE or other agreement would give the project sponsor permission to complete the project described therein.

The project sponsor would be responsible for applying for and obtaining all environmental permits including Chapter 105 and NPDES permits, if applicable. The ROE Agreement, MOA, or MOU will be attached to the permit application as proof that PennDOT has been consulted and is allowing the construction of the project within its right of way if permitted by DEP. If the permit application requirements are satisfied, the environmental permits will be issued to the project sponsor. The project sponsor will be responsible for constructing the proposed project consistent with the permit. The project sponsor will also be responsible for any required mitigation under the permit and any monitoring and maintenance required by the permit(s) or the applicable regulations (such as 25 Pa. Code §105.171) following construction.

¹ The PennDOT District should contact the Contract and Legal Services Section of the Office of Chief Counsel for guidance on the use of IGAs, IAs, and MOUs.

APPENDIX E2 – MOU BETWEEN PHMC AND PENNDOT – CONSULTATION ON STATE-FUNDED TRANSPORTATION PROJECTS IN PENNSYLVANIA

The following pages are considered a standalone document, but are included in the Appendices for documentation purposes.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER
AND THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
REGARDING CONSULTATION ON STATE-FUNDED
TRANSPORTATION PROJECTS IN PENNSYLVANIA**

WHEREAS, the Pennsylvania Department of Transportation (PennDOT) is responsible for construction and maintenance of Commonwealth-owned roads and bridges; and

WHEREAS, state-funded, licensed, and permitted transportation projects and activities may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places; and

WHEREAS, under the Pennsylvania History Code (37 Pa C.S.A. §§ 507- 510), PennDOT is required to consult with the Pennsylvania Historical and Museum Commission (PHMC) when projects may affect properties eligible for the Pennsylvania Register of Historic Places; and

WHEREAS, Section 501 and 502 of the Administrative Code of 1929, as amended, (71 P.S. §§ 181 and 182) require Commonwealth departments and agencies to coordinate their work and activities with other Commonwealth departments and agencies; and,

WHEREAS, the National Register of Historic Places and the Pennsylvania Register of Historic Places are considered equivalent with regard to eligible properties in Pennsylvania, and the term National Register will be used throughout this MOU; and

WHEREAS, PennDOT and the PHMC have signed a *Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania (March 18, 2010)* (Federal PA) under Section 106 of the National Historic Preservation Act (NHPA) 16 U.S.C. § 470 (Attachment 1); and

WHEREAS, PennDOT intends to fulfill its obligations under the Pennsylvania History Code by utilizing similar processes and procedures specified in the Federal PA for considering the effects of state- funded transportation projects on historic properties; and

WHEREAS, historic properties, as defined in 36 CFR 800.16(l), will apply to this MOU; and

WHEREAS, any state-funded transportation project that requires a permit from the United States Army Corps of Engineers (USACE), U.S. Coast Guard, or any other federal agency, will follow the requirements of Section 106 of the NHPA; and

WHEREAS, PennDOT maintains cultural resource staff and consultants meeting the Secretary of Interior's Professional Qualification standards (36 CFR 61) in the fields of archaeology and architectural history, or related fields;

NOW, THEREFORE, the parties to this Memorandum set forth the following as the terms and conditions of their understanding:

Stipulations

PennDOT shall ensure that the following measures are carried out:

I. Responsibilities and General Requirements

- A. PennDOT shall employ professionally qualified personnel sufficient to implement this MOU. PennDOT personnel, hereafter referred to as Cultural Resource Professionals (CRP), are Pennsylvania State Employees and will meet the Secretary of the Interior's Standards for Professional Qualifications (36 CFR 61) in the fields of archaeology or architectural history.
- B. The current Historic Bridge Inventory and Evaluation will provide individual determinations of eligibility for bridges 20 ft. and greater except where new information is brought forward to cause a reconsideration of this determination. With the exception of covered bridges, stone arch bridges, and closed spandrel concrete arch bridges, all other bridges or culverts less than 20 ft. in length are considered not individually eligible for the National Register except where new information is brought forward to cause an evaluation of a particular bridge in one of these categories. Consideration of whether or not a bridge contributes to an historic district will be made at the time of a project.

II. Project Review

- A. PennDOT will follow the process described in Stipulations III-IX and Appendix C of the Federal PA (excluding involvement by the Federal Highway Administration (FHWA) and the Advisory Council on Historic Preservation), and the procedures in its *Cultural Resources Handbook* (Publication 689) for review of state-funded projects.
- B. PennDOT will observe the following requirements for maintenance projects.

State-funded maintenance projects are subject to the Pennsylvania History Code and may have an effect on historic properties. Most maintenance projects will be considered exempt from any additional review and documentation except for the

following specified projects and activities. The PennDOT Maintenance Manager, District Bridge Engineer, or Project Manager will contact the District Environmental Manager when any of the following projects or activities will be completed by PennDOT maintenance forces:

- a) replacement, rehabilitation, or maintenance/preservation of bridges that are over 50 years old, unless the structure is categorically not eligible per Stipulation I.B, or was previously determined not eligible for the National Register;
- b) maintenance activities that could affect stone retaining walls, old tree rows, or building ruins including foundations or other features.

The District CRP may exempt any of these maintenance projects or activities from further review if the conditions of Appendix C in the Federal PA are met; otherwise, the CRP will follow the process in the Federal PA outlined in II.A above.

C. Procedure for Resolving Adverse Effects

If the District CRP determines that a project will have an adverse effect on historic properties, the CRP will issue a finding of Adverse Effect. The CRP will consult with the PHMC, and other consulting parties, to evaluate the Adverse Effect finding and/or discuss options that would avoid or minimize adverse effects. All involved parties will have 30 days to provide comment.

If PennDOT and the PHMC agree on how adverse effects will be resolved, they will execute a Letter of Understanding (LOU) that stipulates any measures undertaken to mitigate adverse effects. The LOU will be signed by duly authorized signatories of PennDOT and the PHMC or their designees and be reviewed and approved by the Office of Chief Counsel.

If agreement on the resolution of adverse effects is not reached, the CRP may request a legal opinion from PennDOT's Office of Chief Counsel on how to proceed. The PHMC may also request an opinion from its legal counsel.

D. Emergency Procedures

When an event, disaster, or occurrence produces an immediate threat to life or property, PennDOT will follow the emergency procedures in Chapter XIII of the Cultural Resources Handbook (Pub. 689).

III. Highway Occupancy Permits

- A. The following process applies to Highway Occupancy Permit (HOP) applications submitted to PennDOT in accordance with Title 67 Chapter 441 of the Pennsylvania Code, in regards to access and occupancy of State highways by driveways and local roads. Other sections of this MOU do not apply to the HOP process.

- B. The applicant or PennDOT shall determine whether the permitted work will include construction of an auxiliary lane or other widening of the improved area or whether additional right-of-way will be required by PennDOT. If so, PennDOT will request the applicant to submit information to PHMC for its review. The submittal should specifically identify the proposed access location and provide the PHMC a United States Geological Survey (USGS) 7.5 minute topographic quadrangle map specifically identifying the property as well as copies of plans of both proposed and existing conditions. The cover letter should include narrative that describes the project in detail. The PHMC will provide a written response to the applicant within 15 days of this initial notification and copy the appropriate PennDOT district.
- C. If an existing archaeological site or a location having high potential for an archaeological site will be affected by the project's area of ground disturbance, an archaeological survey may be required of the applicant. If a site is located in the area of ground disturbance, additional requirements may include a significance evaluation of the site and avoidance, minimization or mitigation efforts if the site proves significant in terms of National Register criteria. If a historic building, site, structure or district will be affected, and the effect is adverse, additional consultation will be necessary to avoid, minimize or mitigate that effect. The PHMC will respond within 30 day time frames to all of the applicant's submittals beyond the initial notification. PennDOT will be copied on all correspondence and invited to participate in any consultation to resolve adverse effects.

IV. Review and Monitoring of the MOU

- A. The PHMC may monitor activities carried out pursuant to this MOU to ensure compliance with the Pennsylvania History Code. PennDOT shall cooperate with the PHMC in carrying out the monitoring effort. The PHMC may coordinate its monitoring in conjunction with any FHWA reviews of projects completed under the Federal PA.
- B. On a periodic basis and at a time mutually agreed upon, PennDOT will meet with the PHMC to review the implementation of the MOU, to discuss projects, or to suggest improvements.
- C. If at any time the Federal PA is modified or amended, PennDOT will consult with the PHMC to determine if changes are warranted to this MOU. PennDOT and PHMC will amend the MOU as necessary.
- D. If at any time the Federal PA is terminated, PennDOT will consult with the PHMC to determine whether this MOU should be terminated or amended. If the MOU is terminated, PennDOT will consult with the PHMC on a process or procedure for fulfilling its obligations under the Pennsylvania History Code.

V. Dispute Resolution

- A. Except as provided in Stipulation V. B (below), should the PHMC object within 30 days to any actions proposed or findings submitted for review, PennDOT and the PHMC shall consult to resolve the objection. If PennDOT determines that such objection(s) cannot be resolved, PennDOT and PHMC shall submit the dispute to the Office of General Counsel for final resolution.
- B. If the PHMC objects to a National Register eligibility determination made by PennDOT and that objection cannot be resolved through consultation, PennDOT or the PHMC may obtain a determination of eligibility from the Keeper of the National Register.

VI. Amendment

PennDOT or the PHMC may request that this MOU be amended, whereupon these parties shall consult to consider such amendment. Any changes, corrections or additions to this Memorandum will be in writing in the form of a letter from either PennDOT or the PHMC to the other setting forth therein the proposed change, correction or addition, approved by endorsement of the duly authorized signatories of PennDOT and the PHMC. The terminology and provision of such letter must conform to the requirements of the Office of General Counsel pertaining to Memoranda of Understanding. In addition, such letter must provide that the terms and conditions of this Memorandum of Understanding that are not modified thereby remain in full force and effect. Such letter shall become a modification to this Memorandum by mutual agreement signed by the parties.

VII. Termination

PennDOT or the PHMC may terminate this MOU by providing thirty (30) days written notice to the other party, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other action that would avoid termination. In the event of termination, PennDOT will consult with the PHMC on a process or procedure for fulfilling its obligations under the Pennsylvania History Code.

VIII. Duration


PennDOT, and the PHMC will review this MOU every ten (10) years from the date of execution for modifications or termination. If no changes are proposed and no party objects, the term of the MOU will be extended automatically for another ten years without re-execution.

IX. Contractual Rights and Obligations

This Memorandum is not intended to and does not create any contractual rights or obligations with respect to the signatory agencies or any other parties.

Execution and implementation of this MOU evidences that the PennDOT has satisfied its responsibilities under the Pennsylvania History Code for state funded projects.


PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER



Jean Cutler, Director
Bureau for Historic Preservation

9/20/2011
Date

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION



R. Scott Christie, PE
Deputy Secretary for Highway Administration

9/30/11
Date

OFFICE OF COMPTROLLER OPERATIONS



10/12/11
Date

Approved as to Legality and Form

BY		<u>9/22/11</u>
	for Chief Counsel	Date <i>JMM 9/21/2011</i>
BY		<u>9/23/11</u>
	Deputy General Counsel	Date
BY		_____
	Deputy Attorney General	Date <u>10/4/11</u>

APPENDIX F – ACRONYMS AND ABBREVIATIONS

The following acronyms and abbreviations are referenced in this manual:

AASHTO – American Association of State Highway Transportation Officials	LTPP – Long Term Pavement Performance
ADA – Americans with Disabilities Act	MFC – Maintenance Functional Class
ADT – Average Daily Traffic	MPC – Municipalities Planning Code
BOL – Bridge Occupancy License	MOU – Memorandum of Understanding
BOMO – Bureau of Maintenance and Operations	MPT – Maintenance and Protection of Traffic
BOPD – Bureau of Project Delivery	MUTCD – Manual on Uniform Traffic Control Devices
CPO – Central Permit Office	NEPA – National Environmental Policy Act
CFR – Code of Federal Regulations	NESC – National Electrical Safety Code
DHV – Design Hourly Volume	NJUNS – National Joint Utilities Notification System
DM-5 – PennDOT Design Manual, Part 5	OCC – Office of Chief Counsel
DM-3 – PennDOT Design Manual, Part 3	PennDOT – Pennsylvania Department of Transportation
DM-2 – PennDOT Design Manual, Part 2	PHMC – Pennsylvania Historic and Museum Commission
DM-1 – PennDOT Design Manual, Part 1	PROWAG – Public Right-of-way Accessibility Guidelines
ECMS – Engineering and Construction Management System	PSA – Project Site Activity Report
EDMS – Electronic Document Management System	PTC – Pennsylvania Turnpike Commission
EPC – Emergency Permit Card/Certificate	RTKL – Right to Know Law
EPS – Electronic Permitting System	SHRP – Strategic Highway Research Program
FHWA – Federal Highway Administration	SR – State Route
FID – Field Inspector’s Diary	SRL – Skid Resistance Level
FOIA – Freedom of Information Act	STAMPP – Systematic Techniques to Analyze and Manage Pennsylvania Pavements
HLSD – Headlight Sight Distance	TIA – Transportation Impact Assessment
HOP – Highway Occupancy Permit	TIS – Transportation Impact Study
IRRC – Independent Regulatory Review Commission	TMC – Traffic Management Center
ITE – Institute of Transportation Engineers	TRB – Transportation Research Board
LGP – Local Government Partner	USGS – United States Geological Survey
LOC – Letter of credit	WZTC – Work Zone Traffic Control
LOS – Level of service	

APPENDIX G – APPROVED PROVISIONAL TECHNOLOGIES

Flowable Backfill

Flowable backfill is a mixture of coarse aggregate, fine aggregate, water and air entraining agents, either cement or pozzolans, or a combination of both, and may or may not include bottom ash, or other admixtures.

While “flowable fill” was not an approved backfill material when Chapter 459 was amended in 1989, “flowable fill” is now acceptable backfill material which can preclude subsidence and minimize lane closure durations (see Publication 408, Section 220). A compaction plan is not required for “flowable fill” to be authorized. The Indemnification requirement from 459.12(b)(1) is not required.

Flowable fill for utility trenches was approved initially by Special Provision to Publication 408 and is now included in Publication 408, Section 220, consistent with the following Permit requirements:

1. Flowable fill may be authorized for all Utility trench backfill in lieu of or in conjunction with 459.8(g).
2. Flowable fill may be used in trenches up to subgrade elevation, and in small utility openings (less than 36 square feet) to the top of the sub-base.
3. The one-foot cutback that is required for *pavement* openings and all other requirements of 459.8 (h) & (i) still apply, unless a modification is granted. Applicants for a highway occupancy permit for a utility cut who will be using flowable fill for backfilling the trench can request a modification of conditions in accordance with 459.12. The request must be submitted in writing along with the application, indicate that flowable fill will be used to backfill the excavation and specifically request a modification to the one foot pavement cutback requirement contained in 459.8(h). Districts which receive a request containing the information outlined above are to include a condition on the permit that waives the one foot cutback requirement contained in 459.8(h). This technique satisfies the intent of the regulation, and, indemnification contemplated in 459.12(b) (1) of the regulation need not be required.
4. Outlet base drains may be required by the District to provide drainage of the embankment or sub-base as necessary.
5. Utility owners whose facilities have been identified prior to excavation and exposed during the excavation of the trench should be notified by the Permittee and given the opportunity to polywrap or otherwise insulate their facilities.

Include Condition Code 340 on each Permit authorizing flowable fill.

Fiber Wrap

Specific fiber wrap systems have been approved, subject to the following:

1. The application identifies the fiberglass restoration system.
2. The pole wrap system is only to be used for *deteriorated* poles. A fiberglass pole wrap system may not be approved for an accident-damaged pole.
3. The pole to be wrapped is placed consistent with the Americans with Disabilities Act (ADA).

Include Condition Code 364 on each Permit authorizing fiber wrap. Use Condition Code series 852, 862, 872, or 892, as appropriate.

Core Bore/Vacuum/Flowable Backfill Process

A specific core bore process has been approved, subject to the following:

Process. The “Core Bore Process” is demonstrated in a PowerPoint document (posted on the PennDOT P: drive) and involves the following steps – which combine several technologies into one process:

1. Pavement is saw cut full depth, with a bit ranging from 10” to 18” in diameter; resulting in a “core”.
2. The core is removed and saved for reuse (if structurally sound).
3. A protective steel ring is placed to protect the edge of opening from damage.
4. Vacuum equipment is used to excavate compacted material from bottom of base course down to beneath utility facility.
5. Utility work is performed (e.g., leak repair, service connection).
6. Utility facility is protected with fine material.
7. Self-mixing flowable fill material is placed from top of fine material to bottom of base course (backfill is designed to be traffic-bearing in 90 minutes).
8. Non-shrink grout is placed (grout is designed to be traffic-bearing in about 90 minutes).
9. The removed core (or a generic equivalent replacement core) is placed in the remaining opening (original alignment and orientation is maintained if removed core is used) forcing the grout to the surface to fill the annular space and core extraction hole.
10. The restored opening is sealed.

Benefits. There are several benefits to this process compared to traditional utility opening and highway restoration methods:

1. Overall process (repair and restoration) time reduced
2. Less time to excavate roadway surface and base
3. Less inconvenience to vehicular traffic during work (e.g., typically only one lane is closed)
4. Reduced exposure time of workers and traveling public within work zone
5. Controlled size of opening (by bit diameter)
6. Elimination of callbacks due to trench subsidence
7. Technologically advanced tools and equipment lower chance of collateral damage to roadway
8. Road openings are smaller in size
9. Circular hole prevents stress cracks due to elimination of corners
10. A more controlled operation, with less variability in the materials and the overall process
11. No excavation settlement due to non-shrink characteristics of flowable fill
12. No cutback necessary due to prevention of excavation settlement and collateral damage.
13. Less intrusive due to the involvement of less equipment and personnel in the process
14. Existing material (original core) placed back in bore hole whenever feasible

Modifications. Several Chapter 459 regulatory requirements that apply to traditional utility opening restorations are not necessary for this new process and may be modified upon request, as discussed below.

1. Pavement cutback. Because (1) a steel ring is used to protect the edge of the opening, (2) material is excavated using vacuum technology, and (3) the opening is restored with flowable fill, it is reasonable to waive the regulatory requirement for the pavement to be cut back one foot, under authority of 459.12, when the “Core Bore Process” uses a core bit larger than 10” (c.f., 459.8(h) & (i)). When a 10” bit is used, the opening is a “test hole” by definition and a one foot cutback may already be eliminated under 459.8(g)(6).
2. Bituminous pavement overlay. Because of the benefits associated with the “Core Bore Process” compared to traditional restoration methods, it is reasonable to waive the regulatory requirement for a bituminous pavement less than five years old to be overlaid if there are four or more emergency openings within 100 linear feet (cf., 459.8(n)(2)). If the pavement is older than five years, District staffs should continue to exercise their discretion and not require an overlay, under 459.8(n)(3).
3. Extending opening to pavement joint. Because of the benefits associated with the “Core Bore Process” compared to traditional restoration methods, it may be reasonable to waive the regulatory requirement for the opening to be extended up to three feet to a bituminous concrete pavement joint (459.8(n)(5)). This determination will be made by District staff on a case-by-case basis (considering age and condition of pavement).

Applicability. The approved “Core Bore Process” may be used by any Utility that requests to use this process on its Permit application, including applications for emergency work.

Any Utility may propose another non-propriety restoration process utilizing other technology, provided it agrees to participate in a pilot to demonstrate to PennDOT’s satisfaction that both the public safety and the highway infrastructure will be improved.

Include Condition Codes 340 (relating to flowable fill) and 440 (relating to Core Bore Process) on each Permit authorizing the “Core Bore” process.