

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart B. NONVEHICLE CODE PROVISIONS

ARTICLE III. HIGHWAYS

**CHAPTER 441. ACCESS TO AND OCCUPANCY OF HIGHWAYS BY DRIVEWAYS
AND LOCAL ROADS**

§ 441.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

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Access—A driveway, [street] **local road** or other means of passage [of vehicles] between the highway and abutting property, including acceleration and deceleration lanes and such drainage [structures] **facilities** as may be necessary for the proper construction and maintenance thereof.

Authorized agent—A person who is authorized to act on behalf of an owner.

[*Central Permit Office*—The office for the control of issuance of permits located at:

Department of Transportation

Central Permit Office

400 North Street, 6th Floor

Harrisburg, Pennsylvania 17120-0041

Combination—Two or more vehicles physically interconnected in tandem.]

Commonwealth—The Commonwealth of Pennsylvania.

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Department—The Department of Transportation of the Commonwealth.

Department specifications—A Department publication containing current highway construction requirements, which is available on the Department's website.

Director—The director of the Department's Bureau of Highway Services.]

Deputy Secretary—The Deputy Secretary for the Department's Highway Administration.

Design Manual Part 2—A Department publication containing current highway geometric design criteria and other design and engineering principles for highways, which is available on the Department's website.

District office—Any of the 11 engineering district offices of the Department.

Divided highway—A highway divided into two or more roadways and so constructed as to impede vehicular traffic between the roadways by providing an intervening space, physical barrier[,], or clearly indicated divided highway.

Drainage facility—A facility that conveys water away from the roadway to prevent erosion or damage to the roadway, saturation of the subgrade and standing water or ice on the roadway.

Driveway—Every entrance or exit used by vehicular traffic to or from properties abutting a highway. The term includes proposed streets, lanes, alleys, courts and ways.

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Egress—The exit of vehicular traffic from abutting properties to a highway.

EPS—Electronic Permitting System—The Department's electronic system that accepts, reviews, tracks, issues and stores highway occupancy permits, applications, plans, documents and engineering studies.

Equipment—[All machinery] **Machinery** and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and completion of the work.

[*Form 408*—The latest revision of highway construction specifications issued by the Department.]

Frontage width—The distance along the right-of-way line in front of an abutting property.

High volume driveway—A driveway used or expected to be used by more than [1500] **1,500** vehicles per day.

Highway—A highway or bridge on the system of State highways and bridges, including the entire width between right-of-way lines, over which the Department has assumed or has been legislatively given jurisdiction.

Highway Occupancy Permit Operations Manual— A Department publication providing regulatory and technical knowledge, policy, process and procedure for permitting access to or occupancy of the State system of highways, which is available on the Department's website.

IMPRACTICAL – NOT REALISTIC TO IMPLEMENT DUE TO EXCESSIVE COST, EFFORT OR DISRUPTION RELATIVE TO THE BENEFITS, EVEN IF TECHNICALLY POSSIBLE.

Improved area—The area within the right-of-way which has been constructed for highway purposes, including roadbed, pavement, shoulders, slope, sidewalks, drainage facilities[,] and any other appurtenances.

INFEASIBLE – NOT POSSIBLE TO ACHIEVE DUE TO PHYSICAL, TECHNICAL OR LEGAL CONSTRAINTS THAT CANNOT BE REASONABLY OVERCOME.

Ingress—The entrance of vehicular traffic to abutting properties from a highway.

Inspector—The Department's authorized representative assigned to inspect permit operations.

[Intermediate island—The section of right-of-way between driveways from the pavement edge or curb to the property line.]

Joint-use driveway—A driveway shared by and constructed to provide access to two or three properties.

Limited access highway—A highway to which owners or occupants of abutting lands and other persons have no legal right of access except at points and in the manner determined by the Department.

Local road—Every public highway other than a State highway. The term includes existing or proposed streets, lanes, alleys, courts[,], and ways.

Low volume driveway—A driveway used or expected to be used by more than 25 but [less] **not more** than 750 vehicles per day.

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Medium volume driveway—A driveway used or expected to be used by more than 750 but [less than 1500] **not more than 1,500** vehicles per day.

Minimum use driveway—A residential or other driveway which is used or expected to be used by not more than 25 vehicles per day.

Municipality—A county, city, borough, incorporated town or township.

Owner—A person holding **one of the following rights to access that is clearly established in the legal document granting the property interest:**

- (i) fee title to property, **or**
- (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].

Pavement edge—The edge of the main traveled portion of any highway, exclusive of shoulder.

Permanent curbing—Plain or reinforced cement concrete curb which meets Department standards.

Permit—A highway occupancy permit (~~Form M-945P~~) issued by a district office pursuant to this chapter.

Person—An individual, business entity, association, political subdivision, authority, Federal or Commonwealth agency, or other entity recognized by law.

Plans—Drawings which show the location, character[,] and dimensions of the proposed occupancy and related highway features, including layouts, profiles, cross sections, drainage[,] and other details.

Property line clearance—The distance measured along the pavement edge or curb between the property frontage boundary line and the near edge of the driveway.

[Publication 43—A Department publication, sometimes called "Bulletin 43," containing requirements for the maintenance and protection of traffic on construction projects.

Publication 68—A Department publication containing regulations governing the design, location, and operation of all official traffic signs, signals, and markings on and along highways.

Publication 90—A Department publication containing requirements for work area traffic control during highway maintenance operations and utility work.]

Right-of-way—The area which has been acquired by the Department for highway purposes.

Roadway—That portion of a highway improved, designed[,] or ordinarily used for vehicular travel, exclusive of the sidewalk **[or shoulder]**.

Roadway construction standards—Department **[Publication No. 72]** **publication** containing the Department's **[design]** standards for roadway construction, **which is available on the Department's website.**

Secretary—The Secretary of the Department.

[*Setback*—The lateral distance between the right-of-way line and the roadside building, liquid fuel pump island, display stand, or other object, which will result in space for vehicles to stop or park between such objects and the right-of-way line.]

Shoulder—The portion of the roadway, contiguous to the traffic lanes, for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses and pavements.

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Supplement—An amendment to a highway occupancy permit issued on Department Form M-945S.

[*Traveled way*—The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.]

Traffic control device—Any sign, signal, marking or device placed or erected for the purpose of regulating, warning[,], or guiding vehicular traffic or pedestrians, or both.

Traveled way—**The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.**

[Turning radius—The radius of an arc which approximates the turning path of the exterior corner of a vehicle.]

Vehicle—Every device in or by which any person or property is or may be transported or drawn upon a highway. The term includes special mobile equipment as defined in the Vehicle Code.

§ 441.2. Purpose and application.

(a) *General rule.* It is in the public interest to regulate the location, design, construction, maintenance and drainage of [access driveways, local roads,] **accesses** and other property within State highway right-of-way for the purpose of security, economy of maintenance, preservation of proper drainage and safe and reasonable [access] travel and **use**.

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§ 441.3. Permit application procedure.

(a) *General rule.* No [driveway, local road or drainage facility or structure] **access** shall be constructed or altered within State highway right-of-way and no drainage facility of the

Department may be altered or connected onto without first obtaining a permit from the Department. A permit may not be required for maintenance.

(b) *Who may apply for a permit.* Permit applications **[shall be submitted in the name of the owner of the property. If the applicant does not hold fee title to the property, the applicant shall notify the fee title holder that an application has been submitted.] may be submitted by the applicant or by an authorized agent on behalf of the applicant if the application is accompanied by written authorization from the applicant. An applicant shall be one of the following:**

(1) The owner of the property.

(2) A person with an equitable interest in property under a sales agreement or an option to purchase.

(c) *Where to submit application.* Permit applications **[shall be submitted to either the district or county office having jurisdiction over the county in which the proposed work will be performed] must be submitted to the Department's EPS, which can be accessed through the Department's website. The Department may accept, at its discretion, paper applications and supporting documents instead of an electronic submission.**

(c.1) AGREEMENT TO INDEMNIFY. For an applicant who is a person holding an estate or other legal interest in property, such as an easement, a lease, a license or subsurface rights, the applicant agrees to indemnify, save harmless and defend, if requested, the Commonwealth against all suits, damages, claims and demands of any type

**whatsoever by the fee title holder OR THE HOLDER OF AN ESTATE OR OTHER
LEGAL INTEREST IN of the property because of granting the permit to the applicant.**

(d) *When to submit applications.* Permit applications shall be submitted prior to the construction of any building which the proposed [driveway] **access** will serve to assure that the [driveway] **access** can be constructed in accordance with this chapter.

(e) *Application procedure and required information.* Permit applications:

(1) Shall be submitted **to the Department's EPS. At the Department's discretion,**
applications may be submitted in person or by mail on a properly completed
Department [Form M-945A] **application form**.

(2) Shall be [signed] **submitted** by the applicant **or the applicant's authorized agent**.

(3) Shall include [five sets of] plans **in an electronic or other format acceptable to the
Department,** of a quality, **type and content** sufficient for [microfilming] **reproduction,
electronic scanning, storage and recording**, detailing the location and pertinent dimensions of
both the proposed installation and related highway features.

(4) Shall [be accompanied by a check or money order, payable to the
Department,] **include payment** in the appropriate amount, as set forth in § 441.4 (relating to
permit fees).

(5) Shall be submitted to the Department at least 30 days prior to the anticipated start of work.

(6) Shall contain proof that the applicant is an owner **or a person with an equitable interest
in property under a sales agreement or an option to purchase**. The proof shall 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, **or a valid legal agreement for the sale of the property.**

(7) Shall, when submitted by **[an applicant other than a fee title holder] or on behalf of, an owner with an estate or other legal interest in property other than fee title or a person with an equitable interest in property under a sales agreement or an option to purchase,** contain **proof of one of the following:**

(i) **[Proof of one of the following:**

(A) **The fee title holder consents to the application.**

(B) **The applicant provided 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. The Department will not grant or deny the permit application until 30 days after receipt of the written notice by the fee title holder] {Reserved}.**

(ii) **[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 permit] {Reserved}.**

(iii) **[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 purchasers, heirs, assigns or transferees of the property take the**

property subject to the indemnification in subparagraph (ii), unless released by the Department] {Reserved}.

(iv) The fee title holder consents to the application.

(v) The applicant provides 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. 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 shall submit proof of receipt of the notice.

(f) *Traffic control plan.* Submission of the traffic control plan shall be as follows:

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(3) The traffic control plan shall be either:

(i) ~~{A}~~ a A detailed drawing, showing all traffic control devices~~[-]; or~~.

(ii) ~~a~~ **A reference to a [standard drawing found in Publication 43 or Publication 90] specific figure as described in § 212.403 (relating to temporary traffic-control plans)**, provided the referenced [standard drawing] specific figure properly depicts the work area and completely addresses the needed traffic control.

(g) *Drainage control plan for other than minimum use driveways.* Drainage control plan for other than minimum use driveways shall be as follows:

(1) If it can reasonably be anticipated that there will be an increase in the flow of water onto the highway or into highway drainage facilities as a result of action by the applicant, or that there

will be an increase in the flow of water onto the property of some other person as a result of any action authorized by the permit, a drainage control plan **signed and sealed by a professional engineer or other persons authorized by law** shall be submitted with the application. The drainage control plan shall contain the following:

- (i) Source of water.
- (ii) Existing flow in cubic feet per second.
- (iii) Predicted flow in cubic feet per second.
- (iv) Where drainage currently flows.
- (v) Where drainage ultimately outlets.
- (vi) Hydraulic computations showing effect of additional flow on existing highway drainage system.
- (vii) Post construction stormwater management plans, riparian buffer management plans or any other erosion and sediment control measures required under 25 Pa. Code Chapter 102 (relating to erosion and sediment control) for the source property, or a written and signed statement confirming no plans exist.**

(2) Issuance of a permit shall be conditioned upon the Department's approval of the drainage control plan.

(3) A permit will not be issued if any of the documents provided in accordance with subsection (g)(1)(vii) provide for the location of any post construction stormwater

management controls or riparian buffer improvements required by 25 Pa. Code. Chapter 102 within the State route's right-of-way.

(h) *Drainage release for other than minimum use driveways.* If it can reasonably be anticipated that there will be an increase in the flow of water onto the property of some other person as a result of action, authorized by the permit, a drainage release shall be submitted with the application. Where possible, drainage releases [~~—Form L-15 or CC-15—~~] **on a form prescribed by the Department, available on the Department's website** will be obtained by and at the expense of the applicant, from all property owners over whose land additional drainage will flow. All drainage releases shall be notarized and recorded, by and at the expense of the applicant, in the County Office of the Recorder of Deeds. If a drainage release cannot be obtained from any affected property owner, the Department may nonetheless issue a permit if it determines that there is no reasonable and prudent alternative available to the applicant **[and the applicant executes an indemnification agreement acceptable to the Department]. If the applicant has not obtained a drainage release, the applicant shall fully indemnify, save harmless and defend (if requested) the Commonwealth, its agents and employees, against an action which the affected property owner may bring against the Commonwealth relating to an increase in the flow of water onto another property as a result of work performed under the permit, including an action brought pursuant to UNDER the provisions OF 26 Pa.C.S. (relating to Eminent Domain Code).**

(i) *Plans for other than minimum use driveways.* The permit application for **[all]** driveways other than those classified as minimum use shall include a plan which illustrates, as a minimum, the following, including dimensions where applicable:

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(j) *Review by municipalities, planning commissions[,], and zoning boards.* Review by municipalities, planning commissions[,], and zoning boards shall comply with the following:

(1) Certain local **[governing bodies]** **governments** wish to review **[driveway]** **State highway access permit** applications within their jurisdictions.

(2) A listing of these municipalities and local agencies is available from the ~~appropriate district office~~ **DEPARTMENT**.

(3) Each application for an access **[driveway]** within one of these jurisdictions must be accompanied by evidence which indicates that the location and type of access **[driveway]** being requested has been reviewed by that municipality or agency.

(4) The Department will consider any comments or recommendations resulting from this review prior to approving the access permit.

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§ 441.4. Permit fees.

(a) *Permit issuance fees.* Issuance fees shall be used to defray costs incurred by the Department in reviewing and processing the application and plan, including the preliminary review of the site location identified in the application, and issuing and processing the permit.

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(2) Supplement fee **for** each **[six-month]** **6-month** time extension or each submitted change **[shall be]**—\$10.

(b) *General permit inspection fees.* General inspection fees shall be used to defray costs incurred by the Department in spot inspection of permitted work or subsequent inspection after the permitted work has been completed, to **[insure]** **ensure** compliance with the permit and this chapter; they shall be as follows:

* * * * *

(d) *Additional inspection fees.* If the Department determines that the permitted work is of sufficient magnitude or importance to warrant assignment of one or more **[employees]** **employees** to inspect the permitted work on a more than spot inspection basis, the permit will so indicate and the permittee shall be charged for all salary, overhead[,], and expenses incurred by the Department for inspection.

(e) *Refunds.* The Department will refund the general permit inspection fees on unused permits. **[In order to]** **To** be eligible to receive such a refund, the permittee shall deliver the request **[with the permittee's copy of the permit]** to the issuing district permit office on or before the permit expiration date.

(1) A refund processing fee of \$10 shall be deducted from the general permit inspection fees.

(2) The permit issuance fee shall not be refundable on unused permits.

(f) *Miscellaneous fees.* The applicant shall pay notary and recording costs including the cost of recording the permit in the County Office of the Recorder of Deeds when required, and the cost of all drainage releases. **[Permits shall be recorded whenever deemed necessary by the Department, including when:**

(1) a permit requires drainage facilities to be installed and maintained;

- (2) a permit authorizes one or more high volume driveways to be constructed; or
- (3) an access covenant (Form CC-14) is executed with the permit as specified in paragraph (16) of § 441.6 of this title (relating to general conditions).]

(g) Recording permits. Permits shall be recorded whenever deemed necessary by the Department, including when:

- (1) A permit requires drainage facilities to be installed and maintained.
- (2) A permit authorizes one or more high volume driveways to be constructed.
- (3) An access covenant on a form prescribed by the Department, available on the Department's website, is executed with the permit as specified in § 441.6(16) (relating to general conditions).
- (4) A permit requires indemnification per § 441.3(c.1) and (h) (relating to permit application procedure), § 441.5(e)(1)(v) (relating to issuance of permits) or § 441.8(j)(5) (relating to driveway design requirements).
- (5) A permit requires a release per § 441.3(h) or § 441.8(d) regarding an increase in the flow of water onto the property of some other person OR § 441.8(d) REGARDING PROPERTY LINE CLEARANCE.
- ~~—(h) Waiver of recording. The Department may waive the recording requirement for permits issued pursuant to § 441.7(g) (relating to general driveway requirements).~~

§ 441.5. Issuance of permits.

(a) *General rule.* Upon application duly made, in accordance with this chapter, a permit will be issued by the appropriate district office, subject to this chapter and the conditions contained on the permit and its attachments and supplements. The permit will be the authority of the applicant to proceed with the work **[and will also serve as a receipt for the fees accompanying the application]**.

(b) *Permit issued only to property owner.* Permits will be issued only to the owners of the property. **Permits for applicants under § 441.3(b)(2) (relating to permit application procedure) may be preliminarily approved but will not be issued until the applicant submits proof of ownership 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.

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(e) *Waiver of design requirements.* Waiver of design requirements shall be as follows:

(1) If any design requirement set forth in this chapter cannot be met, the **[director]** **Deputy Secretary or designee** may waive the requirement if **all of** the following conditions are satisfied:

- (i) **[no]** **No** other reasonable access is available[;].
- (ii) **[the]** **The** applicant has done all that can reasonably be done to satisfy the design requirements[;].
- (iii) **[if]** **If** additional land is required, the applicant provides satisfactory evidence that it cannot be purchased at a reasonable price[;].

(iv) **[no] No** traffic problem will be created[; and].

(v) **[the applicant executes an indemnity agreement satisfactory to the Commonwealth] The applicant indemnifies, saves harmless and defends, if requested, the Commonwealth, its agents and employees against any action which may be brought against the Commonwealth relating to the waiver of design requirements.**

(2) In the case of a temporary access **[for extracting natural resources for a period of no more than one year]**, any design requirement set forth in this chapter which cannot be met may be waived by the district **[engineer] executive**, provided conditions (i), (ii), (iii)[,] and (v) of paragraph (1) of this subsection are satisfied.

(f) *Permit requiring agreement or security*. Where the applicant will be required to perform a substantial amount of work, the Department may require the applicant to execute an agreement or provide security, or both, as a prerequisite to issuance of the permit. **If security is required, it shall be delivered to the Department in a form and amount acceptable to the Department and shall guarantee construction, inspection, indemnification, restoration and maintenance of the highway made necessary by the permitted work and the obligations and conditions of the permit for a period not in excess of 2 years from the Department's acknowledgment of completion of the work.**

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(h) *Work completion notification*. When all permitted work has been completed, the **[self-addressed post card (Form M-945G) which accompanies the permit shall be mailed] permittee shall provide written notification** to the district office.

(i) *[Permanent permit microfilm record.* The permit, together with plans, relevant correspondence, and any supplements issued, will be microfilmed, and the microfilm record will be retained in the central permit office] {Reserved}.

§ 441.6. General conditions.

The following conditions shall apply to permits issued under the provisions of this chapter:

(1) *Scope of permit.* The permit shall be binding upon the permittee, its agents, contractors, successors[,] and assigns.

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(vi) [The permittee shall be the only party in interest in any action against the Department before the Board of Claims involving disputes arising from the permit] {Reserved}.

(vii) [Disputes between the permittee and the Department shall be governed by the appropriate provisions in Form 408] {Reserved}.

(viii) A permit shall be valid only as long as the traffic volume of the driveway does not exceed the approved driveway classification as set forth in § 441.8(a) [of this title] (relating to driveway design requirements). If the actual traffic volume of a driveway exceeds its permit classification, the Department may issue a notice of intent to revoke the permit and provide the permittee 30 calendar days to either apply for the appropriate permit classification or request a hearing in accordance with 2 Pa.C.S. §§ 501—508 (relating to practice and

procedure of Commonwealth agencies) and Chapter 491 (relating to administrative practice and procedure).

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(2) *Additional restrictions.* All work authorized by the permit shall be subject to the following:

(i) All applicable laws, rules[,] and regulations[, **including but not limited to the following:**

(A) **Act of October 26, 1972 (P.L. 1017, No. 247) (53 P.S. § 1611), concerning environmental control measures related to pollution and the preservation of public natural resources.**

(B) **Act of December 10, 1974 (P.L. 852, No. 287) (73 P.S. §§ 176—182), concerning protection of the public health and safety by preventing excavation or demolition work from damaging underground utility facilities.**

(C) **Act of October 5, 1978 (P.L. 1104, No. 260) (72 P.S. §§ 4651-1—4651-10) which provides that the Board of Claims shall have jurisdiction of claims against the Commonwealth arising from contracts.**

(D) **O.S.H.A. construction safety and health regulations, 39 Fed. Reg. 22801 (June 24, 1974) and 29 CFR § 1926.1 et seq.**

(E) **42 U.S.C. § 2000d, as implemented by 49 CFR § 21 and 23 CFR § 230.101 et seq.**

(F) **Ordinances enacted by local municipalities which contain more stringent minimum safety requirements than this chapter].**

(ii) Any rights of any person.

(iii) The conditions, restrictions[, and provisions of the permit.

(2.1) Federal Standards. The Federal Highway Administration, Department of Transportation regulatory provisions in 23 CFR Part 625 (relating to Design Standards for Highways) are incorporated by reference to the extent that these provisions are applicable and not contrary to the law of the Commonwealth. In the event of a conflict between a Federal regulatory provision and a regulation of the Commonwealth, the provision expressly set out in this chapter shall be applied unless the Federal provision is more stringent.

(3) *Work to conform to 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] plans and specifications approved by** the Department **[including, but not limited to, Form 408] consistent with Article IV of the State Highway Law (36 P.S. §§ 670-401—670-425).** If at any time it shall be found by the Department that the work is not being done or has not been properly performed, the permittee upon being notified in writing by the Department shall immediately take the necessary steps, at its own expense, to place the work in condition to conform to such requirements or standards. In case any dispute arises between the permittee and the Department's inspector, the Department's inspector shall have the authority to suspend work until the question at issue can be referred to and be decided by the district office.

(4) *Permittee responsibilities.* Permittee responsibilities shall be as follows:

(i) The 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. The permittee shall reimburse the Department for any and all inspection costs within 30 days after receipt of the Department's invoice.

(ii) In the event of failure or neglect by the permittee to perform and comply with the permit or the provisions of this chapter, the Department may immediately revoke and annul the permit and order and direct the permittee to remove any or all structures, equipment[,] or property belonging to the permittee or its contractors from the legal limits of the right-of-way and to restore the right-of-way to its former condition. In the event the Department determines that such structures, equipment[,] or property pose a threat to the public safety and the permittee fails to remove the same after notice from the Department to do so, the Secretary or **[his attorneys, or any attorney of any court of record shall be authorized to appear for the permittee, and to enter an amicable action of ejectment and confess judgment against the permittee; and the attorney shall be authorized to issue forthwith a writ of possession without leave of court,]** **the Department may authorize its own staff or engage a contractor to remove any or all structures, equipment or property belonging to the permittee or its contractors from the legal limits of the right-of-way and to restore the right-of-way to its former condition** all at the cost of the permittee.

(iii) If work is stopped on a project for any reason, other than at the end of any normal work day, and any ditch or trench, in the opinion of the Department, remains open for an unreasonable period, the permittee, if so directed, shall refill the ditch or trench and work shall not be resumed until the permittee is prepared to proceed immediately with the work to its completion. In the

event the permittee fails to refill the ditch or trench or proceed to completion of the work upon notice from the Department to do so, the Department may perform the necessary and required work and shall be reimbursed for the costs by the permittee within 30 days after receipt of the Department's invoice.

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(9) *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 **[Publication 43 and Publication 90] Department regulations in Chapter 212, Subchapter E (relating to temporary traffic control)**.

[(i) The permittee shall provide and maintain all necessary precautions to prevent injury or damage to persons and property in accordance with instructions furnished by the district office. A traffic control plan shall be submitted to and approved by the district office before closing any portion of a lane to vehicular traffic.

(ii) Traffic control devices shall be provided in accordance with Publication 43 and Publication 90. Any open trench or hole shall be adequately barricaded to prevent possible injury to pedestrians and the motoring public. All traffic control devices shall be of an approved type. Signs shall conform to the requirements of Publication 68.

(iii) Designated employees shall be assigned by the permittee to direct one lane traffic. Flagmen shall be provided as specified in the permit and in accordance with Publication 43 and Publication 90.]

(10) *Restoration.* All disturbed portions of the highway, including slopes and all appurtenances and structures such as **[guard rail or drain] guide rail or drainage** pipes, shall be restored by the permittee to a condition at least equal to that which existed before the start of any work authorized by the permit. This includes providing appropriate end treatments on **[guard] guide** rail systems where existing **[guard] guide** rail is being broken by the driveway.

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(13) *Indemnification.* The permittee shall fully indemnify and save harmless and defend the Commonwealth, its agents and ~~employees~~ **EMPLOYEES**, of and from all liability for damages or injury occurring to any person or persons or property through or in consequence of any act or omission of any contractor, agent, servant, ~~employee~~ **EMPLOYEE**, or person engaged or employed in, about, or upon the work, by, at the instance, or with the approval or consent of the permittee; from any failure of the permittee or any such person to comply with the permit or this chapter; and, for a period of two years after completion of the permitted work, from the failure of the highway in the immediate area of the work performed under the permit where there is no similar failure of the highway beyond the area adjacent to the area of the permitted work.

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(16) *Future additional driveways.* Future additional driveways shall consist of the following:

(i) If the Department anticipates that a property may be **developed**, subdivided **[and that such subdivision will result] or utilized, resulting** in an unacceptable number or arrangement

of driveways, or both, the Department may require the property owner to enter into an access covenant [(Form CC-14)] on a form prescribed by the Department, available on the Department's website, prior to issuance of a permit.

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(17) *Use of highway prohibited.* Prohibited use of the highway shall be as follows:

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(ii) Improvements on private property adjacent to the right-of-way shall be so located that parking, stopping[,] and maneuvering of vehicles on the right-of-way will not be necessary [**in order**] for vehicles or patrons to be served. New liquid fuel pump islands installed in service stations adjacent to the highway shall be located at least 12 feet outside the right-of-way[, **in order**] for a driveway permit to be issued. [See Figure 11 and Figure 12.]

§ 441.7. General driveway requirements.

* * * * *

(b) *General location restrictions.* [**Access driveways**] **Driveways** shall be permitted at locations in which:

- (1) Sight distance is adequate to safely allow each permitted movement to be made into or out of the [**access**] driveway.
- (2) The free movement of normal highway traffic is not impaired.

(3) The driveway will not create a hazard.

(4) The driveway will not create an area of undue traffic congestion on the highway.

(c) *Specific location restrictions.* Specific location restrictions shall include the following:

(1) **[Access driveways]** **Driveways** may not be located at interchanges, ramp areas[,] or locations that would interfere with the placement and proper functioning of highway signs, signals, detectors, lighting or other devices that affect traffic control.

(2) The location of a driveway near a signalized intersection may include a requirement that the permittee provide, in cooperation with the municipality, new or relocated detectors, signal heads, controller and the like, for the control of traffic movements from the driveway.

(3) **[Access to a property]** **A driveway** which abuts two or more intersecting streets or highways may be restricted to only that roadway which can more safely accommodate its traffic.

(4) The Department may require the permittee to locate **[an access]** **a** driveway directly across from **[a highway, local road, or access driveway]** **another access** on the opposite side of the roadway if it is judged that offset driveways will not permit left turns to be made safely or that **[access across]** **crossing** the roadway from one access to the other will create a safety hazard.

(d) **[Local roads. An access]** **Driveways serving more than three properties. A**
driveway intended to serve more than three properties or to act as a connecting link between two or more roadways shall be, for the purpose of this chapter, considered a local road and not a driveway regardless of its ownership. As such, its design must be in accordance with the Department's current standards governing the design of local roads. All other requirements of

this chapter shall be complied with before the local road will be allowed access onto a State highway.

* * * * *

(f) *Approaches to driveways.* Driveway approaches shall conform to the following standards:

(1) The location and angle of **[an access]** a driveway approach in relation to the highway intersection shall be such that a vehicle entering or leaving the driveway may do so in an orderly and safe manner and with a minimum of interference to highway traffic.

(2) Where the **[access]** driveway approach and highway pavement meet, flaring of the approach may be necessary to allow safe, easy turning of vehicular traffic.

(3) Where the highway is curbed, driveway approaches shall be installed 1 1/2 inches above the adjacent highway or gutter grade to maintain proper drainage. **[See Figure 5.]**

~~—(g) *Temporary access.* The Department may authorize, by permit, the temporary occupancy of highway right of way by an access.~~

~~—(1) Applicants may request a temporary permit to accommodate access for any of the following time periods:~~

~~—(i) Up to 1 month (for example, for a single event such as a fair).~~

~~—(ii) Up to 6 months (for example, for a construction project).~~

~~—(iii) Up to 1 year (for example, for extracting natural resources such as timber from private property).~~

~~—(2) The Department may allow coarse aggregate material to be placed on a temporary access surface instead of paving, as long as no material is deposited onto the highway pavement or shoulder and as long as the temporary access is continuously maintained.~~

~~—(3) Prior to the expiration of a temporary permit, the temporary access shall be removed and the highway shall be restored as directed by the Department.~~

§ 441.8 Driveway design requirements.

(a) *General.* General requirements shall be as follows:

(1) 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. This chapter separates driveways into four classifications, based on the amount of traffic they are expected to serve. **[A description of each classification and typical examples of land uses normally associated with each follows]** The following list contains a description of each driveway classification and examples of typical uses associated with the classification when a property is served by one driveway:

(i) Minimum use driveway, **[see Figure 7. A driveway]** normally used by not more than 25 vehicles per day, such as:

(A) ~~single~~**SINGLE** family dwellings, **OR** duplex houses; ~~or.~~

(B) ~~apartments~~**APARTMENTS** with five units or less.

(ii) Low volume driveway, [see **Figure 8. A driveway**] normally used by more than 25 vehicles per day but [less] **not more** than 750 vehicles per day, such as:

(A) ~~office~~-**OFFICE** buildings;.

(B) ~~elementary~~-**ELEMENTARY** and junior high schools; ~~or~~.

(C) ~~car~~-**CAR** washes.

(iii) Medium volume driveway, [see **Figures 9, 11, and 12. A driveway**] normally used by more than 750 vehicles but [less than 1500] **not more than 1,500** vehicles per day, which does not normally require traffic signalization, such as:

(A) ~~motels~~-**MOTELS**;.

(B) ~~fast~~-**FAST** food restaurants; ~~or~~.

(C) ~~service~~-**SERVICE** stations and small shopping centers or plazas.

(iv) High volume driveway, [see **Figure 10. A driveway**] normally used by more than [1500] **1,500** vehicles per day, which often requires traffic signalization, such as:

(A) ~~large~~-**LARGE** shopping centers; ~~or~~.

(B) ~~multi~~-**MULTI**-building apartment or office complexes.

(2) The design features described in this section and illustrated in the [attendant figures] **Department's Design Manual Part 2 and the Department's Highway Occupancy Permit Operations Manual** are to be used by the applicant [in designing the driveway plans which accompany the application. Dimensions shall be selected from the range of values

shown on the appropriate figure], unless site conditions warrant a deviation. The Department may require design details which are more stringent than those specified in this chapter to ~~[insure]~~ **ensure** the safe and efficient operation of any proposed driveway.

(3) [Figures 7, 8, and 9 show two sets of design values. The applicant shall design his driveway using the values appropriate for the posted speed of the roadway being accessed] {Reserved}.

(b) *Angle of [access] driveway approach.* ~~[Angle of access]~~ **The angle of access of the** driveway approach shall ~~[include the following]~~ **be as follows:**

(1) ~~[Access driveway]~~ **Driveway** approaches used for two-way operation shall be positioned at right angles, that is, 90 degrees, to the highway or as near thereto as site conditions permit[, **except as authorized in Figure 11].**

(2) When two ~~[access]~~ driveways are constructed on the same property frontage and used for one-way operation, each of these driveways may be placed at an angle less than a right angle, but not less than 45 degrees to the highway[, **except that along divided highways where no openings are allowed in the median the minimum angle of an exit driveway may be 30 degrees, as shown in Figure 12].**

* * * * *

(d) *Property line clearance.* Except for joint-use driveways, no portion of any driveway shall be located outside of the property frontage boundary line **unless a release is submitted with the application. The release shall be from the affected property owner and shall release the Commonwealth from any liability resulting from the issuance of the permit. Releases must**

be obtained, by and at the expense of the applicant, from the affected property owners on a form prescribed by the Department, available on the Department's website. The releases must be notarized and recorded, by and at the expense of the applicant, in the County Office of the Recorder of Deeds.

(e) *Multiple driveways.* Multiple driveways serving the same property must be separated by a minimum **tangential** distance of 15 feet measured along the right-of-way line and 20 feet measured along the shoulder, ditch line[,] or curb. When the **tangential** distance between multiple driveways is 50 feet or less measured along the shoulder or ditch line, the **Department may require the** area between **[shall] to** be clearly defined by permanent curbing. This curb shall be placed in line with existing curb or **[two] 2** feet back of the shoulder or ditch line on uncurbed highways. It shall be extended around the driveway radii to the right-of-way line.

(f) *Site requirements.* Site requirements shall be as follows:

(1) **[All nonresidential] Nonresidential** buildings shall be located a sufficient distance from the right-of-way line to provide ample driving area and parking off the right-of-way to prevent storage of vehicles on the **[access]** driveways and to prevent the back-up and turning of vehicles on the highway pavement.

* * * * *

(h) *Sight distance.* **[Conditions for sight distance shall be as follows:**

(1) Access driveways shall be located at a point within the property frontage limits which provides at least the minimum sight distance listed in the appropriate following table:

Table 1—Safe Sight Distance for passenger cars and single unit trucks exiting from driveways onto two-lane roads.

Posted Safe Sight		Safe Sight
Speed Distance—Left ¹		Distance—Right ¹
(mph)	(feet)	(feet)
25	250	195
35	440	350
45	635	570
55	845	875

¹ Measured from a vehicle ten feet back of the pavement edge.

Table 2—Safe Sight Distance for buses and combinations exiting from driveways onto two-lane roads.

Posted Safe Sight		Safe Sight
Speed Distance—Left ¹		Distance—Right ¹
(mph)	(feet)	(feet)
25	400	300
35	675	625
45	1225	1225

55 2050 2050

¹ Measured from a vehicle ten feet back of the pavement edge.

Table 3—Safe Sight Distance for passenger cars and single unit trucks exiting from driveways onto four and six-lane roads.

Posted Safe Sight		Safe Sight
Speed Distance—Left ¹		Distance—Right ²
(mph)	(feet)	(feet)
25	175	195
35	300	350
45	500	570
55	785	875

¹ Measured from a vehicle ten feet back of the pavement edge to a vehicle approaching in the outside lane.

² Measured from a vehicle ten feet back of the pavement edge to a vehicle approaching in the median lane.

Table 4—Safe Sight Distance for buses and combinations exiting from driveways onto four and six-lane roads.

Posted Safe Sight	Safe Sight
Speed Distance—Left¹	Distance—Right²
(mph) (feet)	(feet)
25	300
35	625
45	1225
55	2050

¹ Measured from a vehicle ten feet back of the pavement edge to a vehicle approaching in the outside lane.

² Measured from a vehicle ten feet back of the pavement edge to a vehicle approaching in the median lane.

Table 5—Safe Sight Distance for passenger cars and single unit trucks entering driveways by left turns.

Posted Speed Safe Sight Distance in Feet¹

(mph)	2-Lane	4-Lane	6-Lane
25	190	205	220
35	300	320	345
45	445	470	500

55 610 645 680

¹ Measured from the point where a left-turning vehicle stops to a vehicle in the outside lane.

Table 6—Safe Sight Distance for buses and combinations entering driveways by left turns.

Posted Speed Safe Sight Distance in Feet¹

(mph)	2-Lane	4-Lane	6-Lane
25	330	360	390
35	485	530	575
45	690	750	810
55	905	990	1075

¹ Measured from the point where a left-turning vehicle stops for a vehicle in the outside lane.

(2) In using Tables 1 through 6 the following additional requirements shall apply:

(i) Tables 2, 4, and 6 shall be used in lieu of Tables 1, 3, and 5 only when combination traffic exceeds 5.0% of the total traffic using the proposed driveway.

(ii) Posted speeds shall be used unless operating speeds vary from the posted speed by more than ten miles per hour, in which case the Department may require that operating speeds be used.

(iii) The sight distances in Tables 1 through 4 apply only when highway grades are zero to 3.0%, either up or down.

(A) When the highway grade in the section to be used for acceleration, after leaving the driveway, ascends at 3.0—5.0%, the sight distance in the direction of approaching ascending traffic may be increased by a factor of 1.4.

(B) When the highway grade ascends at greater than 5.0%, sight distance may be increased by a factor of 1.7.

(C) When the highway grade in the section to be used for acceleration after leaving the driveway descends at 3.0—5.0%, sight distance in the direction of approaching descending highway traffic may be reduced by a factor of 0.6.

(D) When the road descends at greater than 5.0%, sight distance may be reduced by a factor of 0.5.

(iv) The sight distance values in Tables 1 through 6 are desirable for safe operation of the driveway. Sight distance values less than desirable will be accepted only if it is impossible to achieve the desirable value by locating the driveway at any point within the property frontage boundaries. The minimum acceptable sight distance values shall be computed from the following formula:

$$\text{SSSD} = 1.47 V_t \frac{V^2}{30 (f+g)}$$

SSSD = Minimum safe stopping sight distance (feet).

V = Velocity of vehicle (miles per hour).

t = Perception time of motorist (average = 2.5 seconds).

f = Wet friction of pavement (average = 0.30).

g = Percent grade of roadway divided by 100.

(3) If sight distance requirements as specified in this chapter cannot be met, the Department may:

- (i) prohibit left turns by exiting vehicles;**
- (ii) restrict turning movements to right turns in and out of a driveway;**
- (iii) require installation of a right turn acceleration lane or deceleration lane;**
- (iv) require installation of a separate left turn standby lane;**
- (v) alter the horizontal or vertical geometry of the roadway; or**
- (vi) deny access to the highway.]**

Achieving optimal sight distance along the property frontage must be considered when determining the location of the driveway. The following shall apply:

(1) For intersection sight distance, a driveway must be located at a point within the property frontage limits which provides at least the minimum intersection sight distance as required by 23 CFR 625.4 (relating to standards, policies, and standard specifications), and as set forth in the Department's Design Manual Part 2.

(2) For stopping sight distance, the stopping sight distance formula, as required by 23 CFR 625.4 and as set forth in the Department's Design Manual Part 2, may be used to determine the minimum acceptable sight distance values for a driveway only if it is impractical or infeasible to achieve intersection sight distance values by locating the driveway at any point within the property frontage boundaries. IF IT IS IMPRACTICAL OR INFEASIBLE TO ACHIEVE INTERSECTION SIGHT DISTANCE VALUES BY LOCATING THE DRIVEWAY AT ANY POINT WITHIN THE PROPERTY FRONTAGE BOUNDARIES, THE STOPPING SIGHT DISTANCE FORMULA, AS REQUIRED BY 23 CFR § 625.4 AND AS SET FORTH IN THE DEPARTMENT'S DESIGN MANUAL PART 2, MAY BE USED TO DETERMINE THE MINIMUM ACCEPTABLE SIGHT DISTANCE VALUES FOR A DRIVEWAY. **For the purpose of measuring the available sight distance, the driver's eye, when exiting from the driveway, should be assumed to be a minimum 10 feet back from the near edge of the traveled way.**

(3) IF SIGHT DISTANCE REQUIREMENTS AS SPECIFIED IN THIS CHAPTER CANNOT BE MET, THE DEPARTMENT MAY DO ANY OF THE FOLLOWING:

- (i) PROHIBIT LEFT TURNS BY EXITING VEHICLES.**
- (ii) RESTRICT TURNING MOVEMENTS TO RIGHT TURNS IN AND OUT OF A DRIVEWAY.**
- (iii) REQUIRE INSTALLATION OF A RIGHT TURN ACCELERATION LANE OR DECELERATION LANE.**

(iv) REQUIRE INSTALLATION OF A SEPARATE LEFT TURN STANDBY LANE.

(v) ACCEPT ENGINEERED PLANS THAT DEPICT GRADING OR MODIFICATIONS REQUIRED TO ACHIEVE SIGHT DISTANCE REQUIREMENTS.

(vi) ALTER THE HORIZONTAL OR VERTICAL GEOMETRY OF THE ROADWAY.

(vii) DENY ACCESS TO THE HIGHWAY.

(i) *Grade of [access] driveway.* [Grade of access] The grade of the driveway shall be constructed in the following manner:

* * * * *

(2) Where a drainage ditch or swale exists, the permittee shall maintain an adequate swale across the driveway or install an adequate pipe under the driveway in accordance with [Form 408] the Department's Design Manual Part 2 and the Department's specifications. Drainage pipe installed under driveways shall be at least 15 inches in diameter.

(3) The side slopes for driveway embankments within the right-of-way shall not be steeper than [ten to one. See Figure 6] 10:1, unless the roadway slope is steeper than 3:1 and guide rail exists at the top of the roadway slope.

(4) Grade requirements in uncurbed shoulders within the right-of-way shall conform to [Figure 1] **criteria identified in the Department's Design Manual Part 2** HIGHWAY OCCUPANCY PERMIT OPERATIONS MANUAL.

(Editor's Note: Figure 1 is proposed to be deleted, serial page (216133).)

(5) Grade requirements where curbs and sidewalks are present **shall conform to criteria identified in the Department's Design Manual Part 2.**

[i] The driveway approaches shall be installed 1 1/2 inches above the adjacent roadway or the gutter grade to maintain proper drainage. See Figure 5.

[ii] The difference between the cross slope of the roadway and the upward grade of the driveway approach shall not exceed 8.0%.

[iii] When a planted area exists in front of the sidewalk, one of the following three cases shall apply:

(A) When the grass strip between the curb and the sidewalk is wide enough to maintain an 8.0% maximum driveway approach grade, construct the driveway as shown in Figure 2.

(B) If the driveway grade would exceed 8.0%, depress the outer edge of the sidewalk and maintain a maximum sidewalk cross slope of 6.0%. This will enable the driveway slope to stay within the 8.0% slope limit. See Figure 3.

(C) If the sidewalk cross slope would exceed 6.0%, as indicated in clause (B) of this subparagraph, depress the entire sidewalk. The amount of depression shall not exceed 1 1/2

inches at the inner edge of the sidewalk. The longitudinal slope of the sidewalk shall not exceed two inches per foot. See Figure 3.

(iv) When the sidewalk is directly against the back of the curb and the sidewalk is at least five feet wide, the curb shall be sloped as shown in Figure 5 of this subsection. This will eliminate the need for depressing the back edge of the sidewalk. For sidewalks narrower than five feet, the curb will be sloped and the back edge of the sidewalk will be depressed (maximum 1 1/2 inches) to maintain an 8.0% maximum grade on the driveway. The longitudinal grade of the sidewalk shall not exceed two inches per foot.]

(*Editor's Note:* Figures 2 through 6 are proposed to be deleted, serial pages (216134) through (216136).)

(j) *Auxiliary lanes.* Auxiliary lanes shall **[consist of] be subject to** the following:

* * * * *

(4) *Cost.* When required, auxiliary lanes shall be constructed, at no cost to the Department, in accordance with the **Department's** Roadway Construction Standards and **[Form 408] the Department's specifications.**

(5) *Lane in front of another property.* If an auxiliary lane must be located in front of property of another person, the applicant shall be required to **make reasonable efforts to** secure the approval of the other person **[or]. If approval of the other person is not obtained, the applicant agrees to indemnify, save harmless and defend, if requested,** the Commonwealth against any action which the other person may bring against the Commonwealth **under the Eminent Domain Code.**

(k) [*Access driveway pavement. Access driveways*] **Driveway pavement. Driveways** shall be appropriately surfaced with a stabilized material between the traveled way and the right-of-way line unless a higher type material is specified by the permit. Low, medium[,] and high volume driveways which provide access to paved highways shall be paved within the right-of-way. Materials used in the construction of driveways shall meet the requirements of **[Form 408] the Department's specifications**. The driveway pavement shall be at least **[four] 4** inches thick within the right-of-way.

(l) *Driveways relative to ramps*. Ramps are intended to provide access from one roadway or roadway system to another with a minimum amount of conflict or interference from other traffic. To ~~[insure]~~ **ensure** the integrity of this intended function, no ~~[access]~~ driveway will be permitted on a ramp or within 50 feet of the intersection of the edge of pavement of the ramp or its speed change lane with the edge of pavement of the intersecting roadway. Exceptions will be considered only if the enforcement of this subsection would result in the prohibition of reasonable access from the adjacent property to the highway system.

(m) *Median openings*. Median openings shall ~~[consist of]~~ **be subject to** the following:

* * * * *

(3) Requests for removal of a median divisor will not be granted without the approval of the ~~[director]~~ **Deputy Secretary or designee**.

* * * * *

(o) *Traffic control devices*. Requirements for traffic control devices shall be as follows:

(1) *Nonelectrically powered devices.* The permittee shall, at **[his] the permittee's** own expense, install and maintain all nonelectrically powered traffic control devices, as specified in the permit, which are required to provide for the safe and orderly movement of vehicular or pedestrian traffic, or both. These devices shall include, but not be limited to, any required regulatory, warning or guide signs, delineators[,] and pavement markings.

(2) *Electrically powered devices.* Electrically powered devices shall consist of the following:

(i) When power operated devices, including traffic signals, are required for proper traffic control, **[a traffic signal permit (Form TE 964) shall be obtained in addition to the occupancy permit. The permit to own and operate a traffic control device] Departmental approval shall be obtained for the traffic signal in addition to a highway occupancy permit. Except for Department-managed signals under 74 Pa.C.S. § 9202(i) (relating to maintenance agreement) regarding Department-managed signals, the traffic signal** shall be requested by and **Departmental approval** issued to only the appropriate **[municipality] local authority, in accordance with 75 Pa.C.S. § 6122 (relating to authority to erect traffic-control devices) and Chapter 212 (relating to official traffic-control devices).**

* * * * *

§ 441.9. **[Driveway layout illustrations] {Reserved}.**

[Figures 7 through 12 illustrate and supplement the minimum design requirements described in this chapter. Although site conditions may not allow strict adherence to the

dimensions shown in these illustrations, every effort shall be made to design and construct the safest and most efficient access onto the State highway.]

(Editor's Note: Figures 7 through 12 are proposed to be deleted, serial pages (216139) through (216144).)

§ 441.10. Penalties and enforcement.

(a) *General rule.* **[A violation] Failure to obtain the required permit, violating any provision** of this chapter or **violating** the permit requirements **or conditions** shall constitute grounds for imposition of any or all of the following penalties:

(1) Upon receipt of oral or written notice of a violation from the authorized representative of the Department or a police officer **[whose jurisdiction includes the permitted work area, the permittee] with jurisdiction, the violator** shall cease **using an unpermitted access or cease** to perform further work in the **[permitted area] State highway right-of-way** except to restore the area to a safe condition. Further work may not commence **[in the permitted area] within the State highway right-of-way** until the violation has been remedied. If the **violator or** permittee has received oral notice of the violation, written notice shall be sent to the permittee within 10 days of receipt of the oral notice.

(2) Confiscation of the applicant's permit by a police officer or authorized representative of the Department.

(3) Revocation of the applicant's permit by the Department.

(4) The Department may block **[driveways] an access** or sever, remove or block drainage facilities constructed without a permit or in violation of this chapter.

(5) **[The fines, imprisonment or other penalties as are provided by law.] Where a property owner has constructed an access without a permit and the Department determines that the access, facilities, structures, equipment or property pose a threat to the public safety and the property owner or facility owner fails to remove the same after notice from the Department to do so, the Secretary or Department may authorize its own staff or engage a contractor to remove any or all unpermitted accesses, structures, equipment or property from the legal limits of the right-of-way and to restore the right-of-way to its former condition all at the cost of the ~~permittee~~ PROPERTY OWNER.**

(6) **[The other action as may be deemed necessary or proper after consultation with the Office of Chief Counsel] The Department may bring any other action and seek any other penalties as permitted by law.**

(b) *Additional grounds for revocation.* Additional grounds for revocation shall be as follows:

(1) The Secretary may revoke a permit whenever **[he] the Secretary** determines that the driveway or approaches or their use constitute a hazard to traffic or interferes with the proper use of the highway by the Department or the public.

(2) The **[director] Deputy Secretary or designee** may revoke a permit for nonpayment of a fee specified in § 441.4 (relating to permit fees) including default of a check submitted for the payment.

(c) *Revocation procedure.* Prior to revocation of a permit except for nonpayment as specified in paragraph (2), the applicant shall be given an opportunity for a hearing in accordance with 2 Pa.C.S. §§ 501—508 (relating to practice and procedure of Commonwealth agencies) **and** **Chapter 491 (relating to administrative practice and procedure).**