

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 facilities structures or if an applicant proposes to connect to existing State highway drainage facilities 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 Design Manual, Part 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, or when new broadband infrastructure is proposed during a PennDOT Federal-aid highway project. See Design Manual, Part 5, Chapter 4, Section 4.1.I.1.g, for additional information. 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, guide rail 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 (eight accidents per 3,000 feet; five 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.

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 use 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.”~~ Permit applications 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: (i) the owner of the property, (ii) a person with an equitable interest in property under a sales agreement or an option to purchase.” 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. ~~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.”~~ 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 provided that the right to access is clearly established in the legal document granting the property interest.”~~ 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-950CFO; or

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.

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

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 or 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 Design Manual, Part 2, (pub. 13M) 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).

2. Permits need to be recorded for an applicant who is a person holding an estate or other legal interest in the property, such as an easement, a lease, or a license for subsurface rights. See 441.4(g)(4). ~~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-950IFO.~~
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-950IG. 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 the property because of granting the permit to the applicant. See 441.3(c.1). A condition will be added to the permit that states:~~

"PERMITTEE INDEMNIFIES THE COMMONWEALTH AGAINST ANY ACTION WHICH [FEE PROPERTY OWNER(S) NAME] MAY BRING AGAINST THE COMMONWEALTH RELATING TO THE PERMIT OR PERMIT APPLICATION."

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. Shared means used by all of the owners, regardless of ownership. The owners of each interest in a property 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 "Design manual Part 2, (Pub 13M)", 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 of 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

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 facilities** 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

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 facilities** 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

441.6(10) – Restoration – Guide Rail

At the end of the workday, distributed traffic control devices and guide rail systems must be replaced. Also, appropriate end treatments must be installed on guide rail systems where existing guide rail 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 installed.

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, guide rail and existing highway drainage **structures facilities**.
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).

- **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.

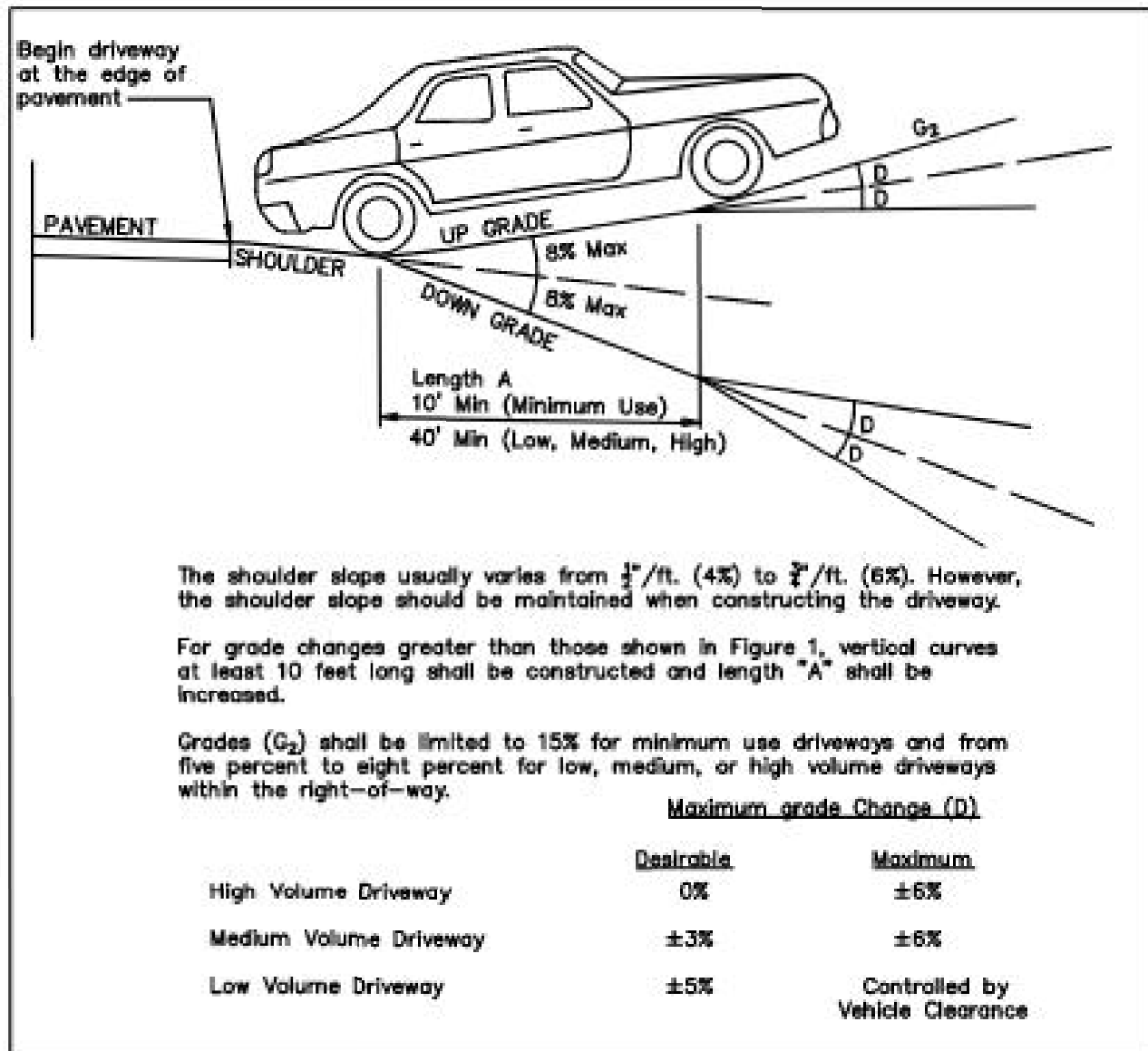
441.6(2)(i)(F) currently stipulates that all work authorized by the permit shall be subject to **all applicable laws, rules, and regulations. ordinances enacted by local municipalities which contain more stringent minimum safety requirements than this chapter (i.e., Chapter 441).** Thus, if a municipality 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:

Driveway Profiles

Driveways should be graded as described in Design Manual Part 2, Chapter 7, and the figure below. Reference RC-64M (PennDOT Publication 72M) for the use of depressed curb.

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 “Design Manual, Part 2” 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.

As described in Chapter 441.8(d), Except for joint-use driveways, no portion of any access 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 all the affected property owners and notarized on Form M- 950R, and recorded by and at the expense of the applicant, in the County Office of the Recorder of Deeds.

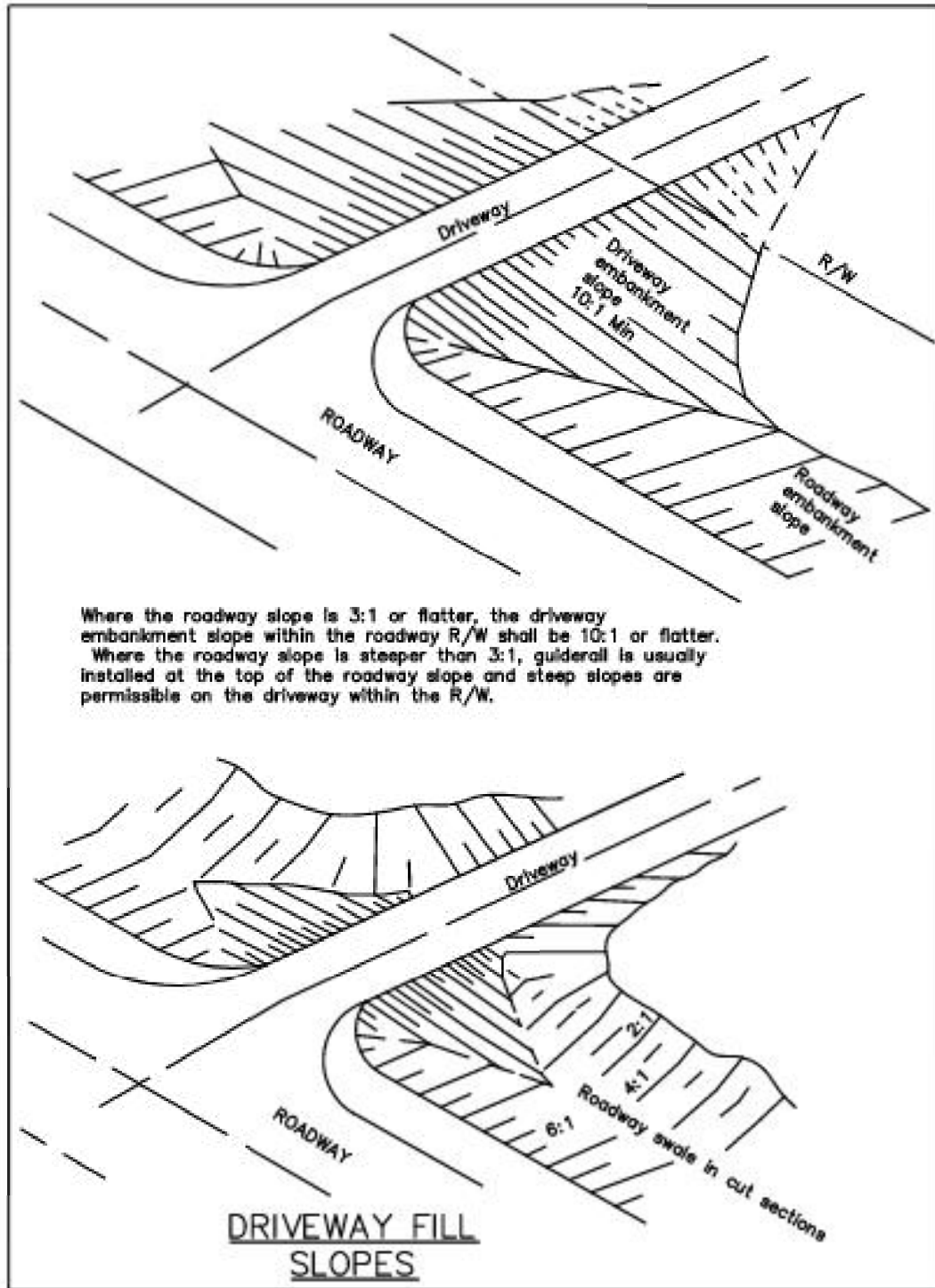
Refer to **Chapter 9 – Use of Forms** for instructions on properly completing Form M-950R.

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.

Driveway Fill Slopes

Per 441.8(i)(3) and the figure below, the side slopes for driveway embankments within the right-of-way shall not be steeper than ten to one, unless the roadway slope is steeper than 3:1 and guide rail exists at the top of the roadway slope.



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 or Assessments Related to Highway Occupancy Permits” in Appendix A of this manual.

The final Transportation Impact Study report must 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.

3. CASE 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.

For existing driveways that must be reconstructed or restricted (CASE 3), the applicant will first be required to ask the impacted landowner to obtain a permit for the reconstructed/restricted driveway. This is consistent with 67 Pa. Code §441.3(a), which states that “no driveway...shall be constructed or altered within State highway right-of-way...without first obtaining a permit from the Department.” However, if the impacted landowner is unwilling or unable to obtain a permit and all permit work will occur within the State highway right-of-way, the Department may allow the applicant to construct the alteration consistent with the indemnification procedure described in the following section if it believes the reconstruction/restriction to be reasonable.

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.

During the HOP process, the applicant should explore alternative designs which avoid impacts to adjacent properties, provided the revised design satisfies all mitigation requirements identified in the approved TIS, and safety and operations are not compromised. The District will assess whether the alternative design is feasible; otherwise, the applicant ~~can elect to proceed with the indemnification and/or approval process.~~ proceeds with the approval process or indemnifies the Commonwealth.

Indemnification should not be viewed as a substitute for sound engineering practices in the development and design of traffic mitigation solutions while preserving the access rights of abutting property owners including, but not limited to, relocating an existing access.

Approval / Indemnification Procedures

The permit applicant may choose to secure the approval of the property owner or indemnify the Commonwealth (§441.8(j)(5)), though amicable resolutions with neighboring property owners is encouraged. Whether choosing to obtain approval from impacted property owners or indemnify the Commonwealth, the applicant must first identify 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.)

The District, upon receipt of the HOP plans and Form M-950R1, 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. Similarly, changes to design during the HOP review process may also necessitate further review of properties to be considered.

Impacted Property Owner Approval

Consistent with §441.8(j)(5), the applicant may secure the approval of adjacent property owners by (1) having the property owner submit an HOP application (M-945A or M-950A), as appropriate; (2) obtaining an approval letter from the property owner; or (3) obtaining the property owner's signature on the HOP plan. Refer to the below flow chart for additional guidance.

Indemnification

Consistent with §441.8(j)(5), for adjacent properties with an auxiliary lane being installed along their property frontage, the applicant can also address the neighboring owner's access rights by indemnifying the Commonwealth. Indemnification will not be ~~accepted-recognized~~ by PennDOT until 30 days after the "Right to Intervene for Impacts to Access of Neighboring Property Owners" letter was received by the impacted property owner by certified mail.

~~For PennDOT to accept indemnification, the Applicant must provide: If approval from the neighboring property owner cannot be obtained, the applicant indemnifies the Commonwealth. .). A condition will be added to the permit that states:~~

~~"PERMITTEE INDEMNIFIES THE COMMONWEALTH AGAINST ANY ACTION WHICH [FEE PROPERTY OWNER(S) NAME] MAY BRING AGAINST THE COMMONWEALTH RELATING TO THE PERMIT OR PERMIT APPLICATION."~~

- ~~a. Proof that they have provided each impacted property owner with a copy of the HOP plan depicting the proposed roadway improvements and explained their rights to petition to intervene or protest the HOP application. The notification letter template included as part of Form M-950 R1 must be used to satisfy this requirement. Additional information on Form M-950R1 can be found in Subchapter 9.2 of this publication.~~
- ~~b. Proof that a public meeting discussing the proposed development with plans depicting the proposed roadway improvements was advertised and held. An advertised public municipal meeting related to the land development approval process satisfies this requirement.~~

~~Once the above requirements have been satisfied, the applicant may request and execute Form M-950IA (Indemnification Access). Refer to Chapter 3, "Indemnification," and Chapter 9, "Use of Forms" for guidance on completing Form M-950IA. A single Form M-950IA can be completed for all~~

~~applicable properties, with all property owners listed and attached to the indemnification as Exhibit A.~~

DRAFT

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 signed and sealed~~ by 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 should be evaluated prior to indemnification. Designing for zero increase in flow is a common alternative that can usually be accomplished by detention or retention of the proposed increase in flow. alternative solutions are to use the Indemnification (Forms M-950ID & M-950IC) 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.

~~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 any 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 any action brought pursuant to the provisions of the Eminent Domain Code, 26 Pa. C.S. § 101 et seq. A condition will be added to the permit. The Condition is as follows:~~

~~“PERMITTEE INDEMNIFIES THE COMMONWEALTH AGAINST ANY ACTION WHICH [AFFECTED PROPERTY OWNER(S) NAME] MAY BRING AGAINST THE COMMONWEALTH RELATING TO THE INCREASE IN THE FLOW OF WATER ONTO HIS/HER/THEIR PROPERTY AS A RESULT OF THE ISSUANCE OF THIS PERMIT.”~~

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. See 67 Pa. Code § 441.5(f).

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).

- 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 facility** 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 “Design Manual, Part 3”, Chapter 3, Section 3.1. EE “HOP Plans” and generally “Design Manual, Part 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 See “Design Manual, Part 3”, section 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

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 “Right-of-Way Manual”, Appendix C, Article 10 “Dedications and Ordainments” and Subsection c above on plans accepting the dedication of right-of-way.

a) 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-950D1 (Deed, Fee Simple) if required right-of-way is being acquired in fee simple and Deed M-950D2 (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.~~

If a design requirement for a driveway/local road cannot be met, the requirement may be waived only if the five conditions mandated by 67 Pa. Code §441.5(e) are met. Those conditions are:

- 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~~ 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. The following permit condition shall apply:

“PERMITTEE INDEMNIFIES THE COMMONWEALTH AGAINST ANY ACTION WHICH MAY BE BROUGHT AGAINST THE COMMONWEALTH RELATING TO THE WAIVER OF DESIGN REQUIREMENTS ASSOCIATED WITH THIS PERMIT AND SHALL CONTINUE IN FULL FORCE AND EFFECT UNTIL THE COMMONWEALTH RELEASES THE PERMITTEE IN WRITING FROM THE OBLIGATION OF THIS INDEMNIFICATION BECAUSE THE SUBJECT FOR WHICH THE PERMIT HAS BEEN ISSUED HAS BEEN REMOVED, CLOSED, OR OTHERWISE EXTINGUISHED IN ACCORDANCE WITH THE THEN EXISTING REGULATIONS OF THE COMMONWEALTH OR THE CONDITION FOR WHICH THE DESIGN WAIVER WAS GRANTED IS CORRECTED TO MEET COMMONWEALTH REQUIREMENTS.”

1. Field View Procedures

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 cannot 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.

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 units 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 will generally attend the scoping field view. The Review Team will review the submission request and provide the District Executive with a recommendation and all relevant information needed to determine an appropriate action on the request.

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.

2. Design Waiver Submission and Review Process

After the field view, a formal request for a design waiver may be submitted by the applicant. The request shall be a stand-alone document. The applicant shall ensure that the five conditions

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.

Access Indemnification

~~Access Indemnifications (Forms M-950IFO, M-950ID, M-950IDW, M-950IA, and M-950IC) are Applicants automatically indemnify the Commonwealth required under:~~

- ~~1. 441.3(e)(7)(c.1) relating to 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. Refer to Subchapter 2.2, Name of Applicant – Driveways section, for additional information. an applicant other than a fee title holder use Forms M-950IFO and M-950IC.~~
- ~~2. 441.3(h) relating to inability to obtain a drainage release, where a drainage release or satisfactory drainage controls are not feasible. Refer to Applications Requiring a Drainage Release (Form M-947) section of this Subchapter for additional information. use Forms M-950ID and M-950IC.~~
- ~~3. 441.5(e)(1)(v) relating to applicants requesting a waiver of design requirements. Refer to Waiver of Design Requirements that cannot be met for Driveways/Local Roads section of this Subchapter for more information. use Forms M-950IDW and M-950IC.~~
- ~~4. 441.8(j)(5) relating to placing an auxiliary lane in front of another person's property. Refer to Access Approval Procedures – Impacts to Access of Neighboring Owners section of this Subchapter for more information. use Forms M-950IA and M-950IC.~~
- ~~5. 441.6(13) relating to general conditions of the permit, which states: "The permittee shall fully indemnify and save harmless and defend the Commonwealth, its agents and 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, 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."~~

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

Median Openings

Under limited circumstances, median openings may be considered in association with a driveway or local road application along a divided highway to provide access to and from traffic in both directions.

Much like the granting of a design waiver, approving a median opening should be a rare and unusual occurrence. It should be granted only if the District Executive or higher Departmental authority (if necessary) determines that the operating characteristics of the highway system will be improved by such action.

Section 441.8(m) of the regulations allow median openings only if the operating characteristics of the highway system will be improved by the median opening and, where median openings are allowed,

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~~ facilities, 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 Design and Delivery (BODD) 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 BODD 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 BODD will verify with the appropriate District Turnpike Coordinator that the project has been coordinated with the District and the District is satisfied with the project. After receiving confirmation from the District Turnpike Coordinator, the BODD will provide a letter to the PTC indicating the project has been coordinated with the District and is satisfactory along with the approval of the HOP. The approval letter will include:

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 sent to the PTC and copied to the affected District Turnpike Coordinator.

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

Once the PTC receives the BODD approval letter, the PTC will submit a formal application through EPS requesting an HOP for the subject work. Upon receipt of the application, the District permit staff

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."~~

~~The drainage control plan shall contain all post construction stormwater management plans, riparian buffer management plans, or any other erosion and sediment control measures required by 25 Pa. Code Chapter 102 for the source property, or a written and signed statement confirming no such plans exist.~~

~~A permit will not be issued if any of the documents provide for the location of any post construction stormwater management controls (BMPs, e.g., infiltration basins/trenches, rain gardens, sand or organic filters, wet ponds, dry detention ponds, wetlands, underground storage, bioswales, etc.), or riparian buffer improvements within the State highway right-of-way. See 441.3(g).~~

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.

Highway lighting shall be designed and placed consistent with the RC-80 series standards contained in PennDOT Publication No. 72M. See "Design Manual, Part 2", Chapter 2, Section 18 G. and Chapter 5. Highway lighting applications also require review by the District Design Unit and Central Office Highway Lighting section.

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 \$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 may be used to revoke a permit for nonpayment by deleting the highway safety paragraph. See "Form Letters" Folder (posted in the PennDOT "permits shared" folder).

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)

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.

have been satisfactorily answered, the appropriate level of concurrence will determine 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 they 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 driveway**, 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.

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.

HIGHWAY OCCUPANCY PERMIT OPERATIONS MANUAL

Chapter9 – Use of Forms

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-945I, Indemnification (Utility)
M-945K, Highway Restoration & Maintenance Bond (Utility)
M-945L, Irrevocable Letter of Credit (Utility)
M-945R, Resolution
M-945RC, HOP Recording Copy
M-946, Access Covenant
M-947, Drainage Release
M-950CFO, Consent of Fee Owner
M-950D1, Deed, Fee Simple M-950
M-950D2, Deed of Easement
~~M-950IA, Indemnification (relating to lane in front of property) M-~~
~~950IC, Declaration of Covenant~~
~~M-950ID, Indemnification (relating to drainage)~~
~~M-950IDW, Indemnification (relating to design waiver)~~
~~M-950IFO, Indemnification (relating to non-fee owner applicants)~~
M-950K, HOP Obligation Bond (Access)
M-950K1, HOP “Blanket” Bond (Access)
M-950L, Irrevocable Letter of Credit (Access)

The following forms may be submitted in EPS as digital images of original signatures:

M-906A, Application for Bridge Occupancy License
M-945A, HOP Application
M-945H, Acknowledgment – Reimbursement Obligation for Application Review (Utility Permit)
M-945U, Acknowledgement-Permittee’s Restoration Obligations
M-945Y, Notice of Dispute
M-945Y2, Notice of Dispute – HOP Applicant
M-948, Assignment of Permit/License
M-950A, Application for Minimum Use Driveway
M-950AA, Applicant’s Authorization for Agent to Apply for Highway Occupancy Permit,
M-950H, Acknowledgment – Reimbursement Obligation for Access Application Review
M-950MPC, Land Use Questionnaire

HIGHWAY OCCUPANCY PERMIT OPERATIONS MANUAL

Chapter9 – Use of Forms

Indemnifications; ~~Form M-950IFO; Form M-950IDW; Form M-950ID; Form M-950IA; & Covenant Form M-950IC~~

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(h), relating to drainage—use Forms M-950ID & M-950IC.~~

~~67 PA Code, Section 441.5(e)(1)(v), relating to waiver—use Forms M-950IDW & M-950IC.~~

~~67 PA Code, Section 441.8(j)(5), relating to lane in front of another property—use Forms M-950IA & M-950IC.~~

~~These forms are designed to be used for additional indemnification under these Chapter 441 sections only. (Use Forms M-945I & M-950IC for additional indemnification under Chapter 459)~~

~~See PennDOT “permits shared” folder for Form M-950IDW and Form M-950ID.~~

General

~~Indemnification cannot be accepted by PennDOT unless the required prerequisites are met. See 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 Operations (BOO) 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, Form M-950IFO is intended to protect PennDOT from liability for issuing a permit to a non-fee holder of the property; Form M-950IDW is intended to protect PennDOT from liability arising from the condition(s) for which a design~~

HIGHWAY OCCUPANCY PERMIT OPERATIONS MANUAL

Chapter9 – Use of Forms

~~waiver is being granted; Form M-950IA is intended to protect PennDOT from liability for access impacts on other properties arising from the permit work; and Form M-950ID is intended to protect PennDOT from liability for drainage impacts on other properties arising from the permit work.~~

~~When using the design waiver indemnification (Form M-950IDW), 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 (Form M-950IA), 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 (Form M-950ID) 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 Forms M-950IA and M-950ID to the six-year statute of limitations period for lawsuits under the Eminent Domain Code. The indemnification provided under Form M-950IDW 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-950IA, 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 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. See Form M-950IC. 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-950IFO 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 BOO 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. In the case where the tenant of a lease is the applicant (a supermarket or convenience store, etc.), both the tenant and the landlord must sign the indemnification.~~
- ~~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-945RC for generic recording procedures in this chapter.~~

Agreement of Release; Form M-950R

Purpose

This form documents the agreement of a property owner adjacent to a proposed highway occupancy permit access or improvement and releases the Commonwealth of Pennsylvania and Pennsylvania Department of Transportation (PennDOT) from claims associated with the permitted construction that extends beyond the permittee's property frontage boundary line. The form serves as evidence that the adjoining property owner has acknowledged and accepted the proposed improvements and has released PennDOT from future claims arising from the permitted work.

Preparation

This form is to be completed and executed by the owner(s) of the property adjacent to the access or improvement being constructed under the referenced Highway Occupancy Permit application. Complete the following information on the form:

- County where the project is located.
- Municipality where the project is located.
- State Route (SR), Segment, and Offset associated with the proposed access or improvement.
- Application/Permit Number.
- Name of the Applicant/Permittee.
- Date the Agreement of Release is executed.
- Full name of the adjacent property owner(s) granting the release.
- Description of the affected property by reference to Exhibit A.
- Deed date conveying title to the adjacent property owner.
- County in which the deed is recorded.
- Deed Book and Page reference information documenting ownership of the property.
- Ensure Exhibit A is attached and contains an adequate description of the property subject to the release.
- Review the release language with the owner(s) to verify understanding that the agreement releases the Commonwealth, its agents, employees, and representatives from claims associated with the permitted access or improvement as described in the document.
- Obtain the signature(s) of all property owner(s) having an ownership interest in the property.

Section 2 – Plan Presentation (Continued)

C N S

- ☐ ☐ ☐ (4) Show the distance from each existing and proposed driveway to (*check all*):
 - ☐ (a) The nearest intersecting street, road, and highway (**67 Pa. Code §441.3(i)(5)**)
 - ☐ (b) The nearest driveway on adjacent properties (**67 Pa. Code §441.3(i)(5)**)
 - ☐ (c) The street, road, highway, or driveways opposite the site (**67 Pa. Code §441.3(i)(5)**)
 - ☐ (d) The relevant property lines and property lines extended to the roadway (**67 Pa. Code §441.3(i)(5)**)
 - ☐ (e) The building and business appurtenances on the site (**67 Pa. Code §441.3(i)(5)**)
- ☐ ☐ ☐ (5) Show the posted speed limit for the state highway (**Pub. 14M**)
- ☐ ☐ ☐ (6) Show required and available sight distances in each direction from each proposed driveway using the Point of View of the driver sitting in the driveway (**67 Pa. Code §441.3(i)(6)**, **Pub. 13M, Ch. 2.17 & AASHTO Green Book, Ch. 3 & Ch. 9**)
- ☐ ☐ ☐ (7) Show the number of vehicles per day which are expected to utilize each proposed driveway. (**67 Pa. Code §441.3(i)(7)**)
- ☐ ☐ ☐ (8) Ensure plans/reports are signed and sealed by PE/PLS/RLA (**49 Pa. Code, §37.59**)
- ☐ ☐ ☐ (9) Return red-lined plans with corresponding comment-response form (**Pub. 282, Ch. 3**)

Section 3 – Driveway/Access Configuration

C N S

- ☐ ☐ ☐ (1) Ensure the number of driveways are acceptable (**67 Pa. Code §441.7(e)**)
- ☐ ☐ ☐ (2) Provide justification if additional driveways are required (**67 Pa. Code §441.7(e)**)
- ☐ ☐ ☐ (3) Ensure the driveway angle to SR centerline is as close to 90 degrees as possible (**67 Pa. Code §441.8(b)(1)**)
- ☐ ☐ ☐ (4) Ensure **access driveway** aligns with driveways/roads/lanes across the highway if offset **access driveway** will present a safety hazard (**67 Pa. Code §441.7(c)(4)**)
- ☐ ☐ ☐ (5) Ensure driveways will not encroach on adjacent property frontage (**67 Pa. Code §441.8(d)**)
- ☐ ☐ ☐ (6) Ensure access is classified correctly as local road or driveway according to **67 Pa. Code §441.7(d)**
- ☐ ☐ ☐ (7) Ensure permanent curbing when distance between multiple driveways are less than 50' (**67 Pa. Code §441.8(e)**)
- ☐ ☐ ☐ (8) Ensure min. (*check all that apply*):
 - ☐ (a) 20' between driveways serving the same property (**67 Pa. Code §441.8(e)**)
 - ☐ (b) 50' distance between driveways and ramp or it's speed change lane (**67 Pa. Code §441.8(l)**)
 - ☐ (c) 10' tangent distance between intersection radius and first driveway radius (**67 Pa. Code §441.8(c)(1)**)
 - ☐ (d) 20' tangent distance in curbed area between driveway radius & edge of pavement of intersecting highway (**67 Pa. Code §441.8(c)(2)**)
 - ☐ (e) 30' tangent distance in uncurbed area between driveway radius & edge of pavement of intersecting highway (**67 Pa. Code §441.8(c)(2)**)
- ☐ ☐ ☐ (9) Ensure driveway width and radius returns in accordance with **67 Pa. Code §441.9 Fig. 7 thru 12 (Pub 282, Ch. 2)**

Section 3 – Driveway/Access Configuration (Continued)

C N S

- ☐ ☐ ☐ (10) Ensure local road width and radius returns in accordance with **Pub. 13M**
- ☐ ☐ ☐ (11) Ensure returns offset meet (at minimum) 3R criteria (**Pub. 13M, Ch. 1.2**)
- ☐ ☐ ☐ (12) Ensure radius returns extend full quadrant (**Pub. 282, Ch. 2.4**)
- ☐ ☐ ☐ (13) Ensure driveway is designed to discourage wrong way movements (**67 Pa. Code §441.8(a)(2)**)
- ☐ ☐ ☐ (14) Ensure radius return design is sufficient for trucks/large vehicles/anticipated traffic (minimum of 5')
~~(67 Pa. Code §441.9 & (Pub. 282, Ch. 2)~~
- ☐ ☐ ☐ (15) Ensure 14' min. lane width if channelization island (**Pub. 282, Ch. 2**)
- ☐ ☐ ☐ (16) Ensure driveway throat length min. (*check all that apply*):
 - ☐ (a) 50' for low volume driveways (**Pub. 574 IB.1**)
 - ☐ (b) 120' for medium volume driveways (**Pub. 574 IB.1**)
 - ☐ (c) 150' for high volume driveways (**Pub. 574 IB.1**)
- ☐ ☐ ☐ (17) Identify and dimension PC/PT/PCC break points (**Pub. 14M, Ch. 2**)
- ☐ ☐ ☐ (18) Provide spot elevations along radii at 10' intervals (**Pub. 13M, Ch. 7**)
- ☐ ☐ (19) Ensure driveway design accommodates bikes and peds (**Pub. 13M, Ch. 7, Pub. 13, Ch. 14**)
- ☐ ☐ ☐ (20) ~~Ensure corrugated concrete is used where applicable (Pub. 282, Ch. 2.5)~~

Section 4 – Driveway/Access Profile

C N S

- ☐ ☐ ☐ (1) Maintain State Route travel lane and shoulder cross slope when designing/constructing the driveway (**67 Pa. Code §441.8(i)(4) & Fig. 1**)
- ☐ ☐ ☐ (2) Ensure difference between cross slope of roadway shoulder and grade of driveway does not exceed 8% (**67 Pa. Code §441.8(i)(5)**)
- ☐ ☐ ☐ (3) Ensure maximum grade of driveway within the right of way does not exceed $\pm$ (5% to 8%) for low, medium, or high volume driveways (**67 Pa. Code §441.8 Fig. 1**)
- ☐ ☐ ☐ (4) Show vertical curvature – AASHTO criteria (PVI Station, Elevation, VC, MO, SSD/HLSD, PVC, PVT) (**Pub. 14M, Ch. 2.6**)

Section 5 – Sight Distance for Driveway

C N S

- ☐ ☐ ☐ (1) Ensure ~~safe stopping intersection~~ sight distance (~~SSDISD~~) minimums from (**67 Pa. Code §441.8(h), Pub. 282, Ch. 3, Design Manual, Part 2, AASHTO Green Book, Sight Distance Tool**) ~~Tables 1-6 in 67 Pa. Code §441.8(h)(1-2) using the posted speeds unless operating speeds vary more than 10 mph from the posted speed~~
- ☐ ☐ ☐ (2) ~~Provide justification for sight distance values that are less than the SSD values in~~ If intersection sight distance (ISD) is infeasible or impractical, ensure stopping sight distance (SSD) minimums from (~~Tables 1-6 of~~ **67 Pa. Code §441.8(h), Pub. 282, Ch. 3, AASHTO Green Book, Sight Distance Tool**) ~~(2)(iv)~~

- ~~☐☐☐ (3) Ensure driveway location meets min. safe stopping sight distance (SSSD) value computed from the formula (67 Pa. Code §441.8(h)(2)(iv)).~~