

PROPOSED RULEMAKING

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 441]

Access to and Occupancy of Highways by Driveways and Local Roads

The Department of Transportation (department), under section 420 of the State Highway Law (act) (36 P.S. § 670-420), proposes to amend 67 Pa. Code Chapter 441 (relating to access to and occupancy of highways by driveways and local roads) to read as set forth in Annex A.

Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

This rulemaking is proposed under the authority of section 420 of the act. Specifically, section 420(a) of the act provides that “[t]he secretary is empowered to make reasonable rules and regulations governing the use of all State highways. . . .” Furthermore, section 420(b) of the act states that “[t]he secretary may issue permits for the opening of streets and driveways onto State highways and for the opening of the surface and occupancy of State highways on terms and conditions established in department regulations.”

Background and Need for the Amendments

Chapter 441 is an exercise of the department’s statutory authority to promulgate a regulation controlling the safe location, design, construction and maintenance of: driveways; local roads; drainage facilities; structures; means of ingress, egress and access; and other property within the State highway right-of-way. The purpose of this proposed rulemaking is: 1) to amend and clarify the provisions relating to who may apply for and who may be issued a permit to construct or alter driveways; local roads; drainage facilities; structures; means of ingress, egress and access; and other property within the State highway right-of-way; 2) to amend definitions and terminology to make the definitions and terminology consistent with current industry-accepted and department usages; 3) to update sight distance requirements by replacing the values, tables and formulas with a reference to the department’s Design Manual Part 2, Highway Design which uses the American Association of State Highway and Transportation Officials’ Sight Distance standards; 4) to replace driveway design criteria and layout figures with a reference to the department’s Highway Occupancy Permit Operations Manual, which references established engineering standards necessary to ensure that the highway system is operated in an efficient and safe manner; 5) to formally include the Electronic Permitting System; 6) to regulate nonvehicular access to the State highways; 7) to eliminate five indemnification forms and instead provide for automatic indemnification in accordance with current law; 8) to allow the department to remove an unpermitted access that the department determines is unsafe and the property owner or facility owner fails to remove the same after receiving notice; and 9) to ensure that all official documents use gender neutral language consistent with the department’s policy and commitment.

It is important to note that current Chapter 441 incorporates multiple department publications, some of which are no longer in use or applicable. The department is updating references to eliminate publication numbers and instead providing the name of the referenced manuals throughout this proposed rulemaking. The department’s manuals are required to be maintained by the United States Department of Transportation’s Federal Highway Administration (FHWA) as a condition of receipt of Federal funding and provide references to industry-accepted engineering standards that are approved by the FHWA in accordance with the Federal-Aid Highways Stewardship and Oversight Agreement between Pennsylvania and the FHWA. The agreement is intended to ensure efficient and effective management of public funds consistent with Federal law relating to highway funding and it is entered into in accordance with 23 U.S.C. § 106 (relating to project approval and oversight). The agreement can be accessed at <https://www.fhwa.dot.gov/federalaid/stewardship/agreements/pa.pdf>.

The proposed regulatory revisions will ensure that modifications to the highway system brought about by the issuance of highway occupancy permits are implemented in the safest and least disruptive way for the overall efficiency and operation of the highway system and that the modifications comply with Federally accepted standards.

Description of the Proposed Amendments

Significant amendments to the chapter include the following:

Section 441.1

The department proposes to amend § 441.1 (relating to definitions) to delete, modify and add terms as follows based on current industry standards, department practice and the desire to simplify, where possible, the requirements to apply for and obtain a permit.

The department proposes to amend the definition of “access” to include nonvehicular facilities used to enter or exit the highway that require opening of the surface or occupancy of the highway. The term “street” is proposed to be replaced by the term “local road” as the definition of “local road” includes a street. The department proposes to replace “drainage structures” with the proposed defined term “drainage facilities” to remove ambiguity. The department proposes to remove the phrase “of vehicles” because the department has historically issued permits for drainage facilities, as well as other pedestrian facilities such as sidewalks and ramps, under Chapter 441. The statutory authority to issue permits for these facilities can be found under section 420(b)(2) of the act which states that “no person. . . shall open a driveway onto a State highway or open the surface of or occupy a State highway without a permit.” The additional clarity afforded by this amendment also addresses a problematic result in a recent Commonwealth Court case, *N-Jie v. Dep’t of Transportation*, 300 A.3d 1131 (Pa. Cmwlth. 2023), which considered the department’s removal of a pedestrian bridge occupying the State highway right-of-way without the department’s permission. In *N-Jie*, the court opined that § 441.6(4)(ii) (relating to general conditions) did not authorize the department to remove a pedestrian bridge on which a permit had never been issued. The court held that this subparagraph of the regulation only applies where a highway occupancy permit has been issued. *Id.* at 1140. In a footnote, the

Commonwealth Court noted that § 441.10 (relating to penalties and enforcement) did not authorize the department to remove a pedestrian bridge where the regulation only allowed the department to block “driveways.” *Id.* at FN 9. The Commonwealth Court pointed out that the regulation’s definition of “driveway” did not include a pedestrian bridge. *Id.* The department seeks to amend the definition of “access,” in addition to proposing other amendments, to continue its existing practices of exercising its duty under the act in furtherance of the safety of the traveling public.

The department proposes to add a definition of “authorized agent” to reflect the department’s practice of allowing engineers or other representatives to submit applications on behalf of an applicant.

The department proposes to delete “Central Permit Office” from the definitions as the only section in which the term is used, § 441.5(i) (relating to issuance of permits), is proposed to be deleted.

The department proposes to delete “combination” from the definitions as the only sections in which the term is used, §§ 441.8 and 441.9 (relating to driveway design requirements; and driveway layout illustrations), are proposed to be deleted.

The department proposes to add “department specifications” to the definitions to replace “Form 408”, which is Department Publication 408, with a more general term to eliminate the risk that the current publication number will become obsolete in the future. This publication is amended and updated periodically by a process whereby changes are vetted by appropriate third-party stakeholders and approved by the FHWA.

The department proposes to add “Deputy Secretary” to the definitions to replace the definition of “director,” which is now obsolete as the department believes that the authority that was vested in the director should reside with the Deputy Secretary.

The department proposes to delete “director” from the definitions because it is no longer a title the department uses for officials with authority under Chapter 441. For the same reason, the department proposes to replace the term “director” in the remainder of Chapter 441 with “Deputy Secretary or designee.” In addition, the department’s Bureau of Highway Services, which is currently referenced in the definition of “director,” no longer exists. The director had the authority to waive design requirements, approve requests to remove median divisors and revoke a permit for nonpayment of a fee; this authority now rests with the Deputy Secretary or designee.

The department proposes to add “Design Manual Part 2” a department publication to the definitions to refer applicants to design requirements, criteria and figures found in this publication throughout various sections of Chapter 441. This publication is amended and updated periodically by a process whereby changes are vetted by appropriate third-party stakeholders and approved by the FHWA.

The department proposes to add “drainage facility” to the definitions because § 441.3(a) (relating to permit application procedure) requires a permit for drainage facilities within the State highway right-of-way but there is no definition setting forth what constitutes a “drainage facility.”

The department proposes to add “Electronic Permitting System” or “EPS” to the definitions because since this chapter was last amended, the department has imple-

mented an electronic system to allow for more efficient processing of permit applications. Applicants are required to submit their applications by means of the EPS. The EPS has been operational since 2011.

The department proposes to delete “Form 408” from the definitions in favor of the more general term “department specifications” to eliminate the risk that the current publication number will become obsolete in the future.

The department proposes to add “Highway Occupancy Permit Operations Manual” to the definitions and refer to it in various sections of Chapter 441. The manual is intended for anyone who wishes to obtain guidance or information on the department’s highway occupancy permit program. It includes but is not limited to the following: 1) an overview of the department’s highway occupancy permit program, how it is staffed and how staff collectively administers the program; 2) a detailed walk-through from application submission to application review to permit issuance to construction, inspection and close-out of permitted work; 4) guidance on resolving highway occupancy permit-related disputes and complaints; and 5) guidance on the use of all highway occupancy permit-related department forms. The Highway Occupancy Permit Operation Manual is approved by the FHWA and is required under the Federal-Aid Highways Stewardship and Oversight Agreement between the FHWA and the Commonwealth. The agreement is intended to ensure efficient and effective management of public funds consistent with Federal law relating to highway funding and it is entered into in accordance with 23 U.S.C. § 106. The agreement can be accessed at <https://www.fhwa.dot.gov/federalaid/stewardship/agreements/pa.pdf>.

The department proposes to delete “intermediate island” from the definitions as the term is not used in Chapter 441.

The department proposes to amend “low volume driveway,” which currently includes driveways that are used by up to 749 vehicles per day, to include driveways expected to generate 750 vehicles per day. Due to an oversight, Chapter 441 currently does not include or classify a driveway that generates exactly 750 vehicles per day. This proposed amendment remedies that oversight.

The department proposes to amend “medium volume driveway” to include and classify a driveway that is expected to generate 1,500 vehicles per day as a medium volume driveway. Chapter 441 currently does not include or classify a driveway that generates 1,500 vehicles per day. This proposed amendment remedies that oversight.

The department proposes to add “municipality” to the definitions to clarify what governmental units are considered municipalities. This definition is consistent with the definition of municipality provided in 1 Pa.C.S. § 1991 (relating to definitions) and 53 Pa.C.S. (relating to municipalities generally).

The department proposes to amend “owner” to clarify who may apply for a permit under the permit application procedure provided in § 441.3. The amendment would delete persons with a sales agreement or option to purchase property. Sales agreements for developments are often conditioned on receipt of permits. Those persons with a sales agreement or option to purchase property would still be able to apply for a permit and obtain preliminary permit approval; but would not be issued a permit until title to the property is transferred. Section 441.3(b) currently requires an application to be in the name of an “owner,” which is confusing in light of the definition the department is proposing to change. Pro-

posed § 441.3(b) would allow an application to be submitted by an “owner” and applicants with equitable interests in the property under a sales agreement would be able to apply without (1) the seller (the fee title owner) having to consent to the application, (2) the applicant having to further indemnify the department in accordance with § 441.3(7), and (3) the need to execute and record a covenant running with the land indicating the ongoing indemnification requirement. This would allow developers who condition their sales agreements on permitting to be able to submit applications and work through the review process. This will streamline the permit process for developers by eliminating many of the steps and expense currently necessary for developers operating under a sales agreement to apply for a permit. With 1.1 million small businesses in this Commonwealth, this change will most likely have a large impact on small businesses and other businesses that are not fee owners that are applying for a driveway permit.

The department proposes to delete “Publication 43,” “Publication 68” and “Publication 90” from the definitions because these publications are obsolete.

The department proposes to amend “roadway” to rectify an inconsistency with the definition of “shoulder.” Under the definition of “shoulder,” the shoulder is considered a part of the roadway; under the definition of “roadway,” shoulders are excluded. Shoulders should be considered a part of the roadway. This proposed amendment deletes the exclusion of the shoulder from the definition of “roadway” to make the two terms consistent.

The department proposes to amend “roadway construction standards” by deleting the publication number in case it is changed in the future and to indicate that the publication can be found on the department’s website. This publication is amended and updated periodically by a process whereby changes are vetted by appropriate third-party stakeholders and approved by the FHWA.

The department proposes to delete “setback” from the definitions as the term is not used in Chapter 441.

The department proposes to delete “turning radius” from the definitions as the term is not used in Chapter 441.

Section 441.2

The department proposes to amend subsection (a) to use the proposed amended definitions, remove redundancy and clarify that Chapter 441 applies to both vehicular and non-vehicular access to the highway right-of-way.

Section 441.3

The department proposes to replace the term “driveway, local road or drainage facility or structure” with the term “access” in subsection (a) to clean up the language and avoid redundancy. Because of the Commonwealth Court’s recent discussion of Chapter 441 in *N-Jie*, described previously, the department desires to make clear that non-vehicular accesses, such as pedestrian facilities that require “the opening of the surface and occupancy of the State highway,” are included in its regulations and a permit is required. The proposed amendment will alleviate the problematic result under the *N-Jie* decision’s reasoning and allow the department to remove unauthorized nonvehicular accesses in furtherance of the safety of the traveling public. Without this amendment, unpermitted pedestrian facilities that cause a safety hazard could not be removed without the department bringing an action in trespass and obtaining a court order for its

removal. The department seeks to have the same ability to block, sever or remove these facilities as it currently has to block, sever or remove driveways and drainage facilities constructed without a permit or in violation of the regulations.

The department proposes in subsection (b) to make clear who may apply for a highway occupancy permit. The proposed amendment simplifies the definition of “owner” while still allowing persons with an equitable interest in property under a sales agreement to apply, accommodating the reality that developers will often condition sales agreements on the ability to obtain permits. Applicants for commercial driveways will benefit from the proposed amendment to this section because many developers of commercial driveways have sales agreements with the fee title holder that are contingent upon permit approvals. The proposed definition of “owner” will allow those with a sales agreement, or an option to purchase, to apply for a permit and obtain preliminary approval for the occupancy to close on the purchase of the property, though permits will not be issued until the developer is the fee title owner of the property. With 1.1 million small businesses in this Commonwealth, this change will most likely have a large impact on small businesses and other businesses that are not fee owners that apply for a driveway permit. The current requirement for the applicant to provide notice to the fee title holder has been moved to § 441.3(e)(7).

The department proposes to amend § 441.3(c) to provide for submission of permit applications through the EPS, while still allowing paper applications at the department’s discretion.

The department proposes, in § 441.3(c.1), to require applicants who are not the owner of fee title to property or who will not be the owner of fee title to property prior to permit issuance to indemnify the Commonwealth against actions brought by the fee title holder of the property because of the granting of the permit to the nonfee owner applicant. This is consistent with the current automatic indemnification requirement in § 441.6(13) and will simplify the permitting process by eliminating the necessity to execute a specific form. This addition is proposed to replace the current text in § 441.3(e)(7)(ii) but simplifies that requirement by not having a separate indemnification form to execute and by not requiring a covenant running with land.

Section 441.3(d), regarding when to submit an application, is proposed to be amended by adding the term “access” and deleting the term “driveway” to clarify that permit applications shall be submitted for construction involving any access to the State highway, whether vehicular or nonvehicular.

Section 441.3(e) regarding application procedures and submission of the permit application, is proposed to be amended to accommodate the use of the EPS. In addition, § 441.3(e)(6) and (7) would distinguish between application requirements for fee owners, owners with an estate or other legal interest in property other than fee title and owners and persons with an equitable interest in property under a sales agreement or an option to purchase. Section 441.3(e)(7)(ii) and (iii) are proposed to be deleted as an applicant other than the fee owner will automatically indemnify the Commonwealth against actions brought by the fee title owner of property per proposed addition of § 441.3(c.1). This would simplify the current process and reduce the time required to submit an application by eliminating the need to draft and execute a form. It

would also reduce the time required to review an application by eliminating the need for the department to seek a legal review.

The department proposes to amend § 441.3(f) to delete references to “Publication 43” and “Publication 90” because those publications are obsolete. The amendment references the appropriate regulation governing temporary traffic control, which references the current manual and publication related to temporary traffic control (the Manual on Uniform Traffic Control Devices and Department Publication 213).

The department proposes to amend § 441.3(g) to indicate that a drainage control plan must be signed and sealed by a professional engineer or other persons authorized by law. Subsection (g)(1)(vii) and (3) are proposed to be added because a facility that uses best management practices (BMP), as defined by 25 Pa. Code Chapter 102 (relating to erosion and sediment control), is prohibited under section 421 of the act (36 P.S. § 670-421) from discharging stormwater onto a highway right-of-way. Chapter 102 of 25 Pa. Code contains the Department of Environmental Protection’s regulations addressing stormwater runoff. Because stormwater runoff is prohibited on the State highway, permit applicants should not be exploiting a highway right-of-way to handle the stormwater runoff generated as a result of constructing a facility that uses BMPs as defined by 25 Pa. Code Chapter 102. Stormwater runoff is limited to runoff from the transportation facilities into the drainage and its facilities, and not from runoff from adjacent properties.

The department proposes to amend § 441.3(h) to require applicants who cannot obtain a drainage release from an affected property owner to automatically indemnify the Commonwealth against actions brought by the fee title holder of the property because of the granting of the permit. This is consistent with the current automatic indemnification requirement in § 441.6(13) and will simplify the permitting process by reducing the time required to submit an application by eliminating the need to draft and execute a form. This would also reduce the time required to review an application by eliminating the need for the department to seek a legal review. The obsolete drainage release form numbers mentioned in this section are being deleted and the language instead directs the applicant to the department’s website for the current form.

The department proposes to amend § 441.3(j) by deleting the word “driveway” to clarify that municipalities, planning commissions and zoning boards shall have the ability to review any access points to State highways within their jurisdictions, whether for vehicles or not, and that applications for access must be accompanied by evidence indicating that the location and type of access requested has been reviewed by that municipality or agency.

Section 441.4

The department proposes to amend subsections (a)—(d) to modernize spelling and grammar. The Department proposes in subsection (e) to eliminate the requirement for a permittee to provide their copy of the permit if requesting a refund. Historically, the permit was a carbon copy form but now is an easily accessible PDF stored in the department’s electronic storage system.

The department proposes to amend subsection (f), relating to miscellaneous fees, to break up the provision regarding permit recording into its own subsection (g). This will enhance the readability of the section. The

department retains the language in the prior subsection (f) and proposes to add subsection (g) with the following additions. In subsection (g), the department proposes to lay out when permits are to be recorded. Proposed changes from the prior subsection (f) include a new reference to the department’s website for a copy of the form. This amendment is being proposed to make the form reference more general so that there is not a risk of the reference becoming obsolete in the future. The department also proposes adding paragraphs (4) and (5) from what was in the prior subsection (f) to add to the list of reasons a permit needs to be recorded at a County Office of the Recorder of Deeds. This includes when the permittee must indemnify the Commonwealth as specified in § 441.3(c.1) and (h) and § 441.5(e)(1)(v) or § 441.8(j)(5), and when a release is executed as specified in §§ 441.3(h) and 441.8(d). This amendment is being proposed because recording allows potential purchasers of properties that have permitted highway occupancies to be on notice of the obligations attached to the permit that are binding on successors and assigns per § 441.6(1). The department proposes, under subsection (h), to provide for a waiver of the recording requirement for temporary access permits.

Section 441.5

The department proposes to amend § 441.5 to reflect modernization of the permitting process, including provisions reflecting the use of the EPS.

Section 441.5(a), regarding the issuance of permits generally, is proposed to be amended to delete the fact that the permit will also serve as a receipt for the fees accompanying the application. The department proposes to delete this because payment of the permit fees is documented in the EPS.

Section 441.5(b), regarding permits only being issued to the property owner, is proposed to be amended to indicate that an applicant with a sales agreement or option to purchase may receive preliminary permit approval but will not be issued a permit until the applicant submits proof of ownership of the property. Developers often indicate that they must obtain the required permits before closing on the property. This addition is intended to assist developers in moving forward with financing prior to the issuance of a permit and closing.

The department proposes to amend § 441.5(e)(1)(v), regarding indemnification for the waiver of design requirements, to replace the phrase found in the existing regulation, “an indemnity agreement satisfactory to the Commonwealth,” with language that automatically indemnifies the Department. This is consistent with the current automatic indemnification requirement in § 441.6(13) and will simplify the permitting process by reducing the time required to submit an application by eliminating the need to draft and execute a form and reducing the time required to review an application by eliminating the need for the department to seek a legal review.

The department proposes in § 441.5(e)(2) to delete “for extracting natural resources for a period of no more than one year” to encompass more situations where temporary access may be permitted, and to replace district “engineer” with district “executive” to be consistent with current terminology.

In § 441.5(f), regarding permits requiring agreements, the department proposes to require the permittee to provide security when the permittee is performing a substantial amount of work, as authorized under section 420 of the act.

In § 441.5(h), regarding work completion notifications, the department proposes to replace the need for the permittee to mail a self-addressed post card (Form M-945G) with written notification to the district office when the permitted work is complete.

The department proposes to delete § 441.5(i) because the Department no longer uses microfilm as permanent record of the permit. Instead, the permit is stored electronically in the department's electronic document storage system.

Section 441.6

The department proposes to delete § 441.6(1)(vi) and (vii), regarding scope of permit, because the information is inaccurate. Disputes arising from the permit are not within the jurisdiction of the Board of Claims. Disputes between the permittee and the department are governed by 2 Pa.C.S. §§ 501—508 (relating to practice and procedure of Commonwealth agencies) and 67 Pa. Code Chapter 491 (relating to administrative practice and procedure), rather than Form 408.

The department proposes to amend § 441.6(1)(viii) to allow the department to provide notice of intent to revoke a permit and to provide the permittee 30 calendar days to either apply for the appropriate permit classification or request a hearing if the actual traffic volume of a driveway exceeds its permit classification.

Paragraph (2) is proposed to be amended to delete outdated statutory references.

The department proposes to add paragraph (2.1) to incorporate applicable Federal standards because the department must comply with those standards to receive Federal highway funds. Therefore, the department must ensure that any work done in the right-of-way under a permit also complies with those standards.

The department proposes to amend § 441.6(3), regarding work to conform to department standards, to update the applicable reference of what work must conform to because the reference currently in the section is obsolete.

The department proposes to amend § 441.6(4) to permit the department to delete structures, equipment or property belonging to a permittee from the highway right-of-way and to restore the right-of-way to its former condition. This provision is statutorily authorized by sections 401 and 407 of the act (36 P.S. §§ 670-401 and 670-407).

In § 441.6(9), regarding traffic protection and maintenance, the department proposes to update the applicable reference regarding maintenance and protection of traffic to department regulations in Chapter 212, Subchapter E (relating to temporary traffic control). The department proposes to rescind subparagraphs (i)—(iii) as these provisions are covered in Subchapter E.

The department proposes to amend § 441.6(10) to provide proper terminology for guide rail and drainage pipes.

The department proposes to amend § 441.6(16)(i), regarding future additional driveways and access covenants, to further clarify when the department may consider restricting access and deletes and replaces the referenced form (Form CC-14) that is no longer in use with a form available on the department's website.

The department proposes to amend § 441.6(17), regarding use of highway prohibited, to delete the referenced figures from subsection (ii), as proposed amendments remove all figures from § 441.9. The figures are outdated

and are no longer used when designing land uses with fuel pumps. Land use has changed considerably by the expansion of the convenience stores, the amount of fuel pumps and the amount of traffic generated.

Section 441.7

The department proposes to amend § 441.7(b), (c), (d) and (f) (relating to general driveway requirements) to make the terminology consistent with the intent of the department in promulgating this rulemaking. The department proposes to add subsection (g) to allow for the issuance of temporary access permits for temporary driveways or local roads related to activities such as fairs, construction projects, extraction of natural resources or other activities for which the property owner does not need to have permanent access. In these cases, this proposed amendment would allow the department to permit coarse aggregate material to be placed on a temporary access surface instead of paving, thereby reducing the property owner's costs without inconveniencing the public or adversely affecting the highway infrastructure.

Section 441.8

In general, proposed amendments to § 441.8 clarify design requirements to reflect current engineering standards, delete outdated figures and instead reference figures in the department's Highway Occupancy Permit Operations Manual.

Subsection (a) is proposed to be amended to clarify that the examples are most applicable when one driveway serves the property. Subsection (d), regarding property line clearance, is proposed to be amended to allow a portion of the proposed access to be outside of the applicant's property frontage boundary line if a release is obtained from the affected property owner and submitted with the application.

The department proposes to amend subsection (e) to add the term "tangential" to eliminate any confusion of where to measure from. Adding the term clearly describes that the distance is measured between the ends of the radii of both driveways. A tangent is a straight line or plane that touches a curve. Additionally, the section is proposed to be amended to provide the department discretion in requiring permanent curbing between driveways if less than 50 feet apart. There are instances where it does not make sense to place permanent curbing, such as in rural areas where curbing is not expected.

The department proposes to amend subsection (h) to delete the existing "desirable" sight distance values in Tables 1 through 6 and the "minimum acceptable sight distance" formula, and to establish a general rule that "optimal driveway sight distance" must be considered. In addition, the amendment allows the use of the stopping sight distance formula in cases where it is impractical or infeasible to achieve intersection sight distance. Both formulas are identified in the department's Design Manual Part 2, Highway Design.

The department proposes to amend subsection (i) to provide department discretion regarding the need for a pipe under the driveway in paragraph (2). Additionally, in paragraph (2), the form reference is proposed to be deleted. In paragraph (3), reference to Figure 6 is being deleted as the figure is being deleted. Also, additional wording is proposed to be added to describe when a maximum 10:1 driveway embankment slope is not needed.

The department proposes to amend subsection (j), relating to auxiliary lanes, to update obsolete references and

to require automatic indemnification if the permittee is unsuccessful in securing the other property owner's approval for a lane in front of the other property. This is consistent with the current automatic indemnification requirement in § 441.6(13) and will simplify the permitting process by reducing the time required to submit an application by eliminating the need to draft and execute a form. It will also reduce the time required to review an application by eliminating the need for the department to seek a legal review.

The department proposes to amend subsection (k) to clarify the difference between a driveway and an access. The reference to Form 408 is also replaced with a more general term to eliminate the risk that the current publication number will become obsolete in the future.

The department similarly proposes to amend subsection (l) to clarify the difference between an access and a driveway. An editorial change is also made to correct a spelling error.

The department proposes to amend subsection (m), as the Deputy Secretary is replacing the director with the authority to approve requests to remove median divisors.

The department proposes to amend subsection (o)(2) to eliminate the traffic signal permit form number and rather refer to department approval of a traffic signal. The department proposes replacing "municipality" with "local authority" to be consistent with 75 Pa.C.S. § 6122 (relating to authority to erect traffic-control devices). Lastly, this section is proposed to be amended to acknowledge that this section will not apply to department-managed signals under 74 Pa.C.S. § 9202(i) (relating to maintenance agreement) regarding department-managed signals.

Section 441.9

The department proposes to delete this section, removing the driveway layout illustrations. Although the illustrations provide a range of dimensions based on types of vehicles and roadway speed, strict adherence to the dimensions is not always achievable due to site constraints, the size of certain vehicles and consideration of other roadway users such as bicyclists and pedestrians. Today, driveways are often designed using commercially available, vehicle turning-template software which provides dimensions for the driveway to function safely and efficiently as an integral component of the highway system. The illustrations are located in the department's Highway Occupancy Permit Operations Manual with additional guidance provided regarding the geometric designs of the various classifications of driveways.

Section 441.10

Proposed amendments to § 441.10 would expand a violation to include failure to obtain a required permit and failure to comply with permit conditions. In subsection (a)(4), the department proposes to replace the term "driveway" with the term "access," as a driveway is included in the definition of "access." This proposed amendment is in consideration of the *N-Jie* case, which noted that a pedestrian bridge could not be blocked under Chapter 441 as the definition of "driveway" did not include nonvehicular traffic. Proposed subsection (a)(5) would allow the department to remove any or all unpermitted accesses, structures or equipment, or property from the legal limits of the right-of-way and to restore the right-of-way to its former condition after the department determines that there is a threat to public safety and after notice to the property or facility owner. Current language in subsection (a)(5) is proposed to be

deleted because the department is already granted authority to do what is provided by the language.

Persons and Entities Affected

This proposed rulemaking will affect all applicants for highway occupancy permits who intend to create an access point, drainage facility or structure within the State highway or to change the design, operation or location of existing access points, drainage facilities or structures within the State highway right-of-way. These applicants include municipalities and owners of properties who require access to exercise their property rights, such as easement holders and mineral estate holders, as well as fee title holders. In some cases, the regulations can affect neighboring property owners.

Fiscal Impact

This proposed rulemaking is revenue neutral because the department's current resources are already being used to administer this program. This proposed rulemaking only modernizes, clarifies and implements what the department is already doing.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on December 11, 2024, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the chairperson of the Transportation Committee of the Senate and the chairperson of the Transportation Committee of the House of Representatives. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking by the department, the General Assembly and the Governor.

Sunset Date

The department is not establishing a sunset date for these regulations because these regulations are needed to administer provisions required under section 420 of the act. The department, however, will continue to closely monitor these regulations for their effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggested edits or objections regarding this proposed rulemaking to Victoria P. Edwards, Regulatory Counsel, Office of Chief Counsel, Department of Transportation, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120-8212, victoredwa@pa.gov, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

Contact Person

The contact person for this regulation is Michael J. Dzurko, Highway Occupancy Permit Program Manager, Department of Transportation, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120-8212, (717) 783-6080, mdzurko@pa.gov.

MICHAEL CARROLL,
Secretary

Fiscal Note: 18-481. No fiscal impact; recommends adoption.

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.

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.

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 a 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) (Editor's Note: Addition of subsection heading recommended.) 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 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 applica-

tion 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 detailed drawing, showing all traffic control devices [.] ; or

(ii) 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 the provisions 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.

(3) Each application for an access **[driveway]** within one of these jurisdictions must be accompanied by evi-

dence 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:

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(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 **[employes] 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.

(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).

* * * * *

(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 employes 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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(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:

* * * * *

(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.

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(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 family dwellings, duplex houses; or
- (B) 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 buildings;
- (B) elementary and junior high schools; or
- (C) 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;
- (B) fast food restaurants; or
- (C) 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 shopping centers; or
- (B) 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 opera-

tion, 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 Speed (mph)	Safe Sight Distance—Left ¹ (feet)	Safe Sight Distance—Right ¹ (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.

<i>Posted Safe Sight Speed Distance—Left¹</i> <i>(mph) (feet)</i>	<i>Safe Sight Distance—Right¹</i> <i>(feet)</i>
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.

<i>Posted Safe Sight Speed Distance—Left¹</i> <i>(mph) (feet)</i>	<i>Safe Sight Distance—Right²</i> <i>(feet)</i>
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.

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

<i>Posted Speed Safe Sight Distance in Feet¹</i>			
<i>(mph)</i>	<i>2-Lane</i>	<i>4-Lane</i>	<i>6-Lane</i>
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.

<i>Posted Speed Safe Sight Distance in Feet¹</i>			
<i>(mph)</i>	<i>2-Lane</i>	<i>4-Lane</i>	<i>6-Lane</i>
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:

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

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. 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.

(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.

(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.

(1) *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 [municipal-ity] 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.

(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).**

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