

Regulatory Analysis Form		This space for use by IRRC	
(1) Agency Transportation		2001 SEP 21 PM 3:44 REVENUE COMMISSION	
(2) I.D. Number (Governor's Office Use) # 18-378		IRRC Number:	
(3) Short Title Access to and Occupancy of Highways by Driveways, Local Roads and Structures			
(4) PA Code Cite 67 Pa. Code, Chapter 441		(5) Agency Contacts & Telephone Numbers Primary Contact: Walter L. Knerr, 717-783-6473 Secondary Contact: William J. Laubach 717-787-9787	
(6) Type of Rulemaking (Check One) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and non-technical language. The purpose of Chapter 441 is to regulate the location, design, construction, maintenance and drainage of driveways, local roads and structures within State highway right-of-way, to provide safe and efficient transportation operations and preservation of proper drainage while authorizing safe and reasonable access. The purpose of these amendments is to better reconcile the different needs that exist between normal highway traffic (i.e., thru traffic) and motorists entering or leaving State highway right-of-way via adjacent property (i.e., access traffic).			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. These regulations are promulgated under the authority contained in § 420 of the State Highway Law, Act of June 1, 1945, P.L. 1242, No. 428, as amended (36 P.S. § 670-420). Following are Notes of Decisions currently listed in these regulations:			

Ruch v. City of Philadelphia, 587 A.2d 830 (Pa. Cmwlth. 1991).
Crigler v. City of Philadelphia, 667 A.2d 470 (Pa. Cmwlth. 1995).
Department of Transportation v. Longo, 510 A.2d 832 (Pa. Cmwlth. 1986).
Popple v. Department of Transportation, 575 A.2d 973 (Pa. Cmwlth. 1990).
Shelbourne Square Assocs., L.P. v. Exeter Township, 794 A.2d 946 (Pa. Cmwlth. 2002).

(10) Is the regulation mandated by any federal or state law or court order, or federal regulations? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by federal or state law, court order, or federal regulations. The regulation is a necessary extension of § 420 of the State Highway Law. Also, 75 Pa. C.S. §§ 4908(a)(5)(ii) and 4908.1(a)(5)(ii) rely on authority delegated to municipalities under these amendments.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

These proposed regulatory amendments refine the process by which the Department addresses the inherent conflict between providing reasonable access-traffic to or from a highway and efficient use of the highway by thru-traffic which has already gained access to the highway. The amendments further define what information is needed for the Department to properly evaluate a request for highway access and the impact that access will have on existing traffic flow and highway safety. The amendments incorporate generally accepted traffic engineering and highway design principles and eliminate criteria that have proven to be unworkable.

The amendments to the regulation also address a greater need to evaluate the storm water drainage impact of property being developed which increases storm water flow onto another property or onto the highway.

(12) State the public health, safety, and environmental or general welfare risks associated with non-regulation.

Failure to amend these regulations would retain unworkable criteria and fail to incorporate new standards. In addition, without the amendments, the Department's evaluation of applications for highway access would remain inefficient and incomplete. Failure to fully evaluate and regulate the flow and volume of drainage diverted from a property being developed could subject highway users to less safe highways. Safety, environmental and general welfare risks are associated with non-regulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The millions of motorists and passengers who travel on the State highway system each day will

benefit from the regulation. The hundreds of thousands of persons who own property adjacent to, or downstream from, the State's 40,000 mile highway system or who own property adjacent to property that is being developed will benefit from the regulation. Other highway users, including pedestrians and bicyclists, will also benefit from the amendments to the regulation as they encounter access locations that are properly designed, constructed and maintained. The safety, environmental and general welfare benefits cannot be quantified.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Property owners who propose to gain or change access between a State highway and their property may be adversely affected if the nature of the requested access requires submission of additional information with the permit application. The number of property owners who may incur additional costs than might be incurred under the existing regulation cannot be quantified. Insofar as all applicants will be subject to increased fees associated with processing the permit application, inspecting the permitted work and ensuring the public is accommodated by the access design, construction and maintenance, all applicants will be adversely affected. Following are estimated future annual increased costs for processing permit applications for access permits, based on calendar year 2001 activity: Minimum-use: ~ \$40,000 (+\$10 x 4,000 applications); Low-volume: ~ \$198,000 (+\$220 x 900 applications); Medium-volume: ~ \$41,400 (+\$460 x 90 applications); High-volume: ~ \$30,000 (+\$700 x 40 applications). Following are estimated future increased costs for inspecting work on each permitted access, based on calendar year 2001 activity: Minimum-use: ~ \$60,000 (+\$15 x 4,000); Low-volume: ~ \$207,000 (+\$230 x 900); Medium-volume: ~ \$19,350 (+\$215 x 90); High-volume: ~ \$8,000 (+\$200 x 40). Thus, approximately \$600,000 additional general application processing fees and general inspection fees are anticipated annually under the proposed fee increases and approximately 5,000 access permits will be issued annually.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Property owners who propose to gain or change access between their property and a State highway will be required to comply with the regulation. This would include Federal, State and local agencies, other persons who own property adjacent to a State highway and their consultants and contractors. Following are estimated future annual volumes for access permits, based on calendar year 2001 activity: Minimum-use: ~ 4,000; Low-volume: ~ 900; Medium-volume: ~ 90; High-volume: ~ 40. Thus, approximately 5,000 property owners are expected to make application to the Department for new or modified access each year. Permit volumes have historically fluctuated along with the general economy.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The PA Consulting Engineer's Council (CEC) provided representatives from the Commonwealth's engineering consultant community to participate in a Highway Access Liaison Committee (HALC). The HALC reviewed the proposed regulations in detail. Questions and concerns were identified and discussed and mutually acceptable language was agreed upon and incorporated into the proposed regulation wherever possible. The CEC representatives were provided opportunities to review several proposed draft revisions and recommend changes and clarifications. The CEC representatives were also given an opportunity to review changes requested by the Department's Engineering District staffs prior to the formal rulemaking.

Additionally, the Department included public partners in a Value Added Management (VAM) initiative involving the re-engineering of the access permit application review process. Industry representatives participated in a detailed review of the entire permitting process and the brainstorming of changes to improve the process and reduce process cycles and process duration. One of the subcommittees of the VAM Committee, which included representatives from Weis Markets and McDonald's restaurants, reviewed the current fee structure (in effect since 1980) and concurred that these fees need to be increased to the proposed levels to better reflect current access permit program costs.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting of consulting procedures which may be required.

These regulations will impose an estimated additional application and inspection fee costs on the regulated community of approximately \$600,000.

The Department is unable to determine the extent of additional design, construction or maintenance costs associated with these revisions to existing regulations.

Additional savings are anticipated by these revisions to existing regulations facilitating safer highways, with less injury and property damage, but these savings can not be estimated with any precision.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures that may be required.

These regulations will impose no additional application and inspection fee costs on local governments, who are generally exempt from paying general application and inspection fees. Additional savings to local governments are anticipated by these revisions to existing regulations facilitating safer highways, with less injury and property damage, but these savings can not be precisely estimated.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures that may be required.

These regulations will impose no additional application and inspection fee costs on state government, which is generally exempt from paying general application and inspection fees. Additional savings to state government is anticipated by these revisions to existing regulations facilitating safer highways, with less injury and property damage, but these savings can not be precisely estimated.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY	FY + 1	FY + 2	FY + 3	FY + 4	FY + 5
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community:	None	None	None	None	None	None
Local Government:	None	None	None	None	None	None
State Government:	None	None	None	None	None	None
Total Savings	None	None	None	None	None	None
COSTS:						
Regulated Community	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
Total Costs	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000
REVENUE LOSSES:						
Regulated Community	None	None	None	None	None	None
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
Total Revenue Losses	None	None	None	None	None	None

(20a) Explain how the cost estimates listed above were derived.

These cost estimates were derived from calendar year 2001 permit activity for the four basic driveway classifications: Minimum-use: ~ 4,000; Low-volume: ~ 900; Medium-volume: ~ 90; High-volume: ~ 40. Thus, approximately 5,000 property owners are expected to make application to the Department for new or modified access each year. Permit volumes have

historically fluctuated along with the general economy.

(20b) Provide the three year expenditure history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY
Appropriation 187	\$634,819,000	\$662,750,000	\$666,000,000	\$651,000,000

(21) Using cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Potential costs associated with these amendments are not unreasonable. The measurable costs relate to increased fees which are designed to offset Departmental administrative costs. It would be fiscally irresponsible for the Department to continue with its current fee structure which does not adequately reimburse the Department for its costs in administering the access permit program. Additional costs associated with the preparation of acceptable traffic impact studies and drainage impact reports, may well be offset by time and cost savings resulting from the applicant's better understanding of what information needs to be submitted in support of the application.

Potential benefits associated with these amendments are considered to be essential in terms of maintaining a safe, efficient highway system. More detailed instructions for preparing traffic impact studies and drainage impact reports will enable the Department to more effectively and expeditiously process and evaluate access permit applications, which will ultimately decrease potentially costly delays while, at the same time, ensure the legitimate interests of the Department and the Commonwealth are adequately served.

(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No fully non-regulatory approaches are available because the Department would not have the ability to deny applications for unsafe access locations or designs without regulatory standards. The public costs associated with the Department not being able to prohibit unsafe and inefficient access points would be significant.

(23) Describe alternative regulatory schemes and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were available to the Department.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no provisions that are more stringent than federal standards, which apply primarily to Interstate highways rather than State highways. Access may not be authorized to Interstate highways without concurrence by the Federal Highway Administration. Drainage may not be directed towards or into Interstate highway right-of-way without concurrence by the Federal Highway Administration.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

There is no compendium of State access regulations. However, considerable resources were expended to ensure that these regulations and Department Design Manual Publications are generally consistent with the AASHTO Publication entitled "A Policy on Geometric Design of Highways and Streets" which is adopted by at least two-thirds of the nation's State Transportation Officials.

The regulations will not put Pennsylvania at a competitive disadvantage with other states. The regulations use generally accepted traffic engineering and highway design principles to strike a balance between a property owner's right of reasonable access to a non-limited access highway and the Department's obligation to provide safe and efficient highways for both thru-traffic and access-traffic.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

These regulations will not affect other agency regulations; however, these regulations do contain cross references to existing Chapters 201, 203, 457 and 459. If Chapter 201 provisions are incorporated into a new Chapter 212 as has been proposed, all cross references to Chapter 201 will need to be updated.

(27) Will any public hearings or informal meetings be scheduled? Please provide the dates, times and locations, if available.

These regulations have been the focus of discussion by the Highway Access Liaison Committee over several years and the process governed by these regulations has been reviewed in detail by the Highway Occupancy Permit VAM (i.e., Value Added Management) Committee, which included public sector participants. Additionally, these regulations have been discussed at two Transportation Engineering and Safety Conferences (held in State

College, PA each December), which included public sector participants. These regulations will be submitted for approval at an Independent Regulatory Review Commission public hearing.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

These regulations will not change existing reporting, record keeping or other paperwork requirements. Persons wanting to occupy State highway right of way will continue to be required to submit complete and accurate applications for review, including detailed plans.

(29) Please list any special provisions that have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Provisions relating to the Americans with Disabilities Act (ADA) have been incorporated into the Figures and cross references in these regulations. Elderly perception and reaction times were considered in developing the proposed sight distance requirements. Small businesses and farmers were considered in developing suitable warrants for traffic impact studies and drainage control reports.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The Department requests that these regulations become effective 60 days after publication of the final adoption notice in the Pennsylvania Bulletin. This 60 day delay will allow time to make amended copies of these regulations available to interested persons.

(31) Provide the schedule for continual review of the regulation.

The Department is not establishing a sunset date for these regulations, since these regulation are needed to administer provisions required by the State Highway Law (36 P.S. § 670-420) and the Vehicle Code (75 Pa. C.S. § 4908(a)(5)(ii)).

The Department will continue to closely monitor these regulations for their effectiveness.

<p align="center">FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU</p> <p align="center">(Pursuant to Commonwealth Documents Law)</p>		<p align="center">REVIEW CONCLUSION</p> <p align="center">DO NOT WRITE IN THIS SPACE</p>
<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p align="center"><i>Amy M. Elliott</i> (Deputy Attorney General)</p> <p align="center">SEP 15 2004 Date of Approval</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy of below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:</p> <p align="center"><u>Department</u> <u>of</u> <u>Transportation</u> (AGENCY)</p> <p align="center">DOCUMENT/FISCAL NOTE NO. 18378</p> <p>DATE OF ADOPTION _____</p> <p>BY <i>Allen D. Seichla, P.E.</i> Secretary of Transportation</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p align="center">BY <i>Tanya C. Lusk</i></p> <p align="center">8.18.04 Date of Approval</p> <p align="center"><i>Asst.</i> (Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike Inapplicable Title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General Approval or objection within 30 days after submission.</p>

**Notice of Proposed Rulemaking
Bureau of Maintenance and Operations**

**Title 67. Transportation
Part I. Department of Transportation
Subpart B. Non-Vehicle Code Provisions
Article III. Highways
Chapter 441. Access to and Occupancy of Highways by
Driveways, Local Roads and Structures**

Proposed Rulemaking

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

SUBPART B. NON-VEHICLE CODE PROVISIONS

ARTICLE III. HIGHWAYS

CHAPTER 441

ACCESS TO AND OCCUPANCY OF HIGHWAYS BY DRIVEWAYS, LOCAL ROADS AND STRUCTURES

Notice of Proposed Rulemaking

Preamble

The Department of Transportation, Bureau of Maintenance and Operations, pursuant to the authority contained in Section 420 of the State Highway Law, Act of June 1, 1945, P.L. 1242, No. 428, *as amended*, (36 P.S. Section 670-420), proposes to amend 67 Pa. Code Chapter 441, Access to and Occupancy of Highways by Driveways and Local Roads, as set forth in Annex A to this Notice.

Purpose of This Chapter

The purpose of this chapter is to regulate the location, design, construction, and maintenance of driveways, local roads and structures within State highway right-of-way to provide safe and efficient transportation operations, security, economy of maintenance and preservation of proper drainage while authorizing safe and reasonable access to the highway.

Purpose of These Regulations

The purpose of these amendments is to better reconcile the needs of motorists operating in normal highway traffic and motorists entering or leaving State highway

Preamble

67 Pa. Code, Chapter 441

Access to and Occupancy of Highways by
Driveways, Local Roads and Structures

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right-of-way from adjacent property. Except with respect to limited-access highways, owners of property adjacent to State highways have a right of reasonable access. At the same time, the efficiency and safety of a highway is affected by the amount and type of interference caused by accessing traffic. As the number of access points onto a highway increases, the ability of the highway to provide for the unimpeded and reasonably safe movement of traffic is diminished.

These amendments also expand existing regulatory provisions governing when structures, such as a drainage pipe, may be placed within State highway right-of-way. The proposed regulations also replace current *desirable* sight distance values with *minimum* sight distance values derived from an updated mathematical formula. The proposed regulations also allow applicants to request modifications to certain terms or conditions imposed by this chapter and provide instructions for the preparation of a traffic impact study and a drainage impact report when required under these regulations.

Significant Provisions of the Amendments

Significant amendments to the chapter include the following:

- (1) The proposed amendments to Section 441.1 (relating to definitions) include a definition of the term "structure." The construction of driveways frequently involves the construction of structures such as sidewalks, curbs, drainage systems, and other similar items. The addition of this definition will provide necessary clarification and will promote the consistent regulation of both driveways and associated structures, several of which may be authorized under the same permit.

(2) The proposed amendments to Section 441.3 (relating to permit application procedure) will include municipalities authorized to issue permits for the Department under the authority of a municipal permit issuance agreement. These changes are intended to further implement the provisions of the Act of March 7, 1982, P.L. 147, No. 47 (36 P.S. § 670-420) which authorizes the Secretary of Transportation to delegate the authority to issue permits to municipalities who agree to issue permits in compliance with these regulations. Section 441.3 also provides greater detail in delineating the standards and procedures involved in the permit application process. The proposed amendment to this section also provides that a person possessing a valid permit will not be required to obtain an additional permit for maintenance purposes, provided the maintenance does not alter the design of the permitted access or structure or otherwise violate a requirement of the permit or this chapter.

Significant additional amendments to Section 441.3 relate to the requirement of a drainage impact report or traffic impact study. The proposed amendments delete the existing six issues to be addressed in the report and direct the applicant to prepare the drainage control report in accordance with the requirements of new Section 441.3b (relating to preparation of a drainage impact report). Similarly, the proposed amendments direct that, if a traffic impact study is warranted, the applicant is to prepare the traffic impact study in accordance with the directives contained in Section 441.3a (relating to preparation of a traffic impact study). The traffic impact study must be submitted along with the permit

application, but may be submitted before the permit application if the applicant wishes to have a preliminary project “scoping” meeting.

Proposed amendment to Section 441.3 will also inform permit applicants that they will be held accountable for the truth and accuracy of any and all information submitted to the Department in conjunction with their permit application under the provisions of Section 4904 of the Crimes Code, 18 Pa. C.S. Section 4904 (relating to unsworn falsification to authorities). The Section also delineates the rights of an applicant or other aggrieved person to appeal a Departmental determination consistent with the provisions of the Administrative Agency Law, 2 Pa. C.S. Sections 501--508 and 701--704.

Finally, proposed amendments to this section provide that the Department may suspend or prohibit an individual from participating in future permit-related activity for a variety of past permit or regulation violations.

(3) Proposed new Sections 441.3a (relating to preparation of a traffic impact study) and 441.3b (relating to preparation of a drainage impact report) add detailed instructions which will assist permit applicants in preparing a standardized and comprehensive analysis of the potential effects of their permitted activities. The information required in traffic impact studies and drainage impact reports will assist the Department in making informed, knowledgeable determinations, based on an understanding of relevant factors associated with the proposed activity.

Both 441.3a and 441.3b begin by informing permit applicants that it is their responsibility to assess impacts on traffic or drainage that would be

attributable to their permitted activity. Both sections require detailed information concerning the development site, existing and proposed uses, existing and proposed conditions, and recommended remedies and technical information, such as hydraulic computations in the case of a drainage impact report.

(4) Proposed amendment to Section 441.4 (relating to permit fees and costs) will provide that fees will be assessable with the application for a permit. The current regulations do not assess a fee unless the permit is issued. Under the proposed amendment, application fees will be retained by the Department regardless of whether the application is approved or denied. The proposed amendment also adjusts the fee schedule, which has been in effect since April 1980, to reflect current processing costs. Even the proposed increased fees will not fully reimburse the Department for its current cost of administering the access permit program. Property owners who are eliminating an existing access or structure are exempt from application and general permit inspection fees. The proposed amendment to this section also provides for additional application and inspection fees should the Department anticipate that the cost of reviewing the application, or of inspecting the permitted work, will exceed the standard fees by a significant amount.

(5) Proposed amendment to Section 441.5 (relating to issuance of permits) will delete the existing provisions of subsection (e) (relating to waiver of design requirements) in favor of proposed Section 441.11 (relating to modification of terms and conditions). The current waiver provisions of Section 441.5(e) contain criteria that have proven impractical in day-to-day application.

Conditions, such as the requirement in Section 441.5(e)(1)(iv) that no traffic problem be created, have proven to be unworkable and an impediment to the maintenance of a balance between the rights of individuals to reasonable access to and from their properties and the right of the public to a safe and efficient highway system. The Department has determined it is unwise to create or continue in the regulation special exceptions for particular situations. Under the proposed amendments to the regulation, requests for deviation from the terms and conditions of this chapter should be addressed on a case by case basis.

The proposed amendment to Section 441.5 also requires that individuals performing permitted work display a placard, when furnished with the issued permit, in much the same manner as a building permit is required to be displayed by most municipalities. The availability of the information contained on the placard will facilitate further inquiries that a citizen might have regarding the work.

The proposed amendment to Section 441.5 also allow for the issuance of temporary permits for 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 in lieu of paving, reducing the property owner's costs without inconveniencing the public or adversely affecting the highway infrastructure.

Proposed amendments to Section 441.5 require the permittee to furnish photodocumentation of the preconstruction condition of any roadway which will

be opened for more than 150 linear feet. Photodocumentation is necessary and desirable to quickly settle disputes between the permittee, its consultants, its contractor and the Department over what roadway restoration will be necessary to return the pavement and shoulders to a condition at least equal to that which existed prior to the start of work.

(6) Proposed amendments to Section 441.6 (relating to general conditions) require the permittee to have the Commonwealth added as an additional insured party to the permittee's or its contractor's insurance policies in order to secure the permittee's indemnification obligation. Further, the proposed amendments to Section 441.6(13) make it clear that the permittee's obligations to indemnify the Department and secure insurance are separate from its obligation under Section 441.6(15) to restore the highway and obtain restoration security.

(7) Proposed amendments to Section 441.8 (relating to driveway design requirements) delete existing *desirable* sight distance values in Tables 1 through 6. In practice, these desirable values have often been found to be unattainable. The proposed regulations contain an updated mathematical formula, based on the most current standards contained in the AASHTO Publication *A Policy on Geometric Design of Highways and Streets*, Fourth Edition, which will effectively calculate the minimum required sight distances at a proposed driveway. The existing safe stopping sight distance formula incorporates a wet friction of pavement component, with an average value of 0.30, that is no longer used to calculate sight distance in the AASHTO Publication. This wet friction component is being eliminated from the proposed formula sight distance in favor

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of a new deceleration rate component, with a value of 11.2 feet per second squared, divided by the gravitational constant of 32.2 feet per second squared. The proposed regulations also supply the criteria for measuring the actual sight distances at a proposed driveway. Formula sight distances for selected speeds and grades are provided in Table 8-1 of the proposed regulations.

Diagrams currently found throughout the text of the regulation have been relocated and renumbered to reflect the section to which they relate. The deletion of diagrams at their current location is indicated with an editor's note and the renumbered diagrams appear in the Annex at the end of the appropriate section.

(8) Proposed amendment of Section 441.9 (relating to typical access layout figures) reflects minor modifications of existing figures, and the deletion of Figures 11 and 12. The revised drawings include current design and traffic engineering principles concerning access and also provide information on traffic control signing that would typically be required for each type driveway.

(9) The language of proposed Section 441.11 (relating to modification of conditions) will identify when the Department will issue a permit for a driveway or structure that is not in full conformance with the terms and conditions of this chapter. The general rule requires that any request for modification be made in writing. The request must also include satisfactory evidence that the applicant has complied with the requirements of Section 441.11(a), paragraphs (1) through (5). Applicants must provide evidence that they have done all that is reasonably possible in an attempt to comply with the terms and conditions of this chapter. They also must show, when appropriate, that there is no other available

access to the property. The proposed modification must satisfy the intent of the term or condition to be modified and it must represent the minimum feasible deviation. Mere economic benefit to the applicant is not sufficient to warrant modification.

The sight distance requirements of Section 441.8(h) are not subject to this section since the sight distances derived from the formula contained in Section 441.8(h) are the minimum necessary to protect the motoring public. Also, Section 441.8(h) already identifies remedies available to applicants when sight distance is insufficient.

Proposed amendment to Section 441.11(b) reserves the right of the Department to deny modification of the terms or conditions of this chapter. It further requires that the granting of a modification will be predicated on the applicant's complying with any conditions or limitations placed on the permit. Unless excused in writing, the applicant must execute an acceptable indemnification agreement under Section 441.6(13) (relating to general conditions) and must obtain satisfactory security which would guarantee highway restoration and maintenance costs under Section 441.6(15). The applicant must also obtain public liability insurance, on behalf of the Department, for personal injury or property loss, unless excused.

Section 441.11(c) requires that municipalities issuing permits may grant modifications of the terms and conditions of this chapter only upon the written approval of the District Executive for their District. The proposed requirement will help to ensure a consistent application of the determinative criteria associated

with the granting or denial of a request for modification. The municipality will also be required to indemnify the Department regarding claims arising through the municipality's negligence in issuing the permit.

Persons and Entities Affected

These regulations affect property owners, including municipalities, who propose to create an access to a State highway or to significantly change the design, operation or location of an existing access. These regulations also affect persons who propose to occupy a State highway with a structure, such as a drainage facility. The affected persons will be required to submit to the Department an application and plans for a permit which detail the particulars of the proposed occupancy, in accordance with these regulations.

Fiscal Impact

It is estimated that these regulations will not increase costs for the Commonwealth or local governments. Permit issuance and inspection fees are being increased, increasing costs to the entities subject to this chapter but are being increased to help offset permit program costs. Issuance fees are being amended to become nonrefundable application fees. Applicants for driveways with higher traffic volumes will continue to incur costs in preparing a traffic impact study, which is the only reliable method of determining the impact of the access on nearby roadways as well as associated improvements, such as additional lanes or signals, that will be necessary to maintain efficient traffic operations. These studies are currently required by the Commonwealth and most municipalities for major developments.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act, the Act of June 25, 1982 (P.L. 633, No. 181), *as amended*, 71 P.S. § 745.5(a), the agency submitted a copy of these proposed regulations, on September 21, 2004 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Transportation Committees. In addition to submitting the regulations, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form. 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 regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of comments recommendation, or objections.

Sunset Provisions

The Department is not establishing a sunset date for these regulations since these regulations are needed to administer provisions required under Section 420 of the State Highway Law (36 P.S. Section 670-420). The Department, however, will continue to closely monitor these regulations for their effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Robert M. Peda, Director, Bureau of

Maintenance and Operations, Pennsylvania Department of Transportation,
Commonwealth Keystone Building, 400 North Street, P.O. Box 2047, Harrisburg,
Pennsylvania 17120-0041, within 30 days of publication of this notice in the
Pennsylvania Bulletin.

Contact Person

The contact person for this regulation is Daniel R. Smyser, P.E.,
Bureau of Maintenance and Operations, Commonwealth Keystone Building, 400 North
Street, P.O. Box 8210, Harrisburg, Pennsylvania 17105-8210; Telephone: (717) 787-
7445.

Allen D. Biehler, P.E.

Secretary of Transportation

ANNEX A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

SUBPART B. NON-VEHICLE CODE PROVISIONS

ARTICLE III. HIGHWAYS

**CHAPTER 441. ACCESS TO AND OCCUPANCY OF
HIGHWAYS BY DRIVEWAYS [AND], LOCAL ROADS
AND STRUCTURES**

§ 441.1. Definitions.

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

AASHTO—The American Association of State Highway and Transportation Officials, currently located in Washington, D.C.

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

Acknowledgment of completion—The date on which the Department records that permitted work appears to be completed under the permit and this chapter.

Auxiliary lane--The portion of the roadway adjoining the traveled way that is used for parking, speed change, turning, storage for turning, transition tapers, weaving, truck climbing and other purposes supplementary to through-traffic movement.

ADT—Average daily traffic—The total volume of vehicle trips expected on a highway or access during a specified period of time in whole days—more than 1 day and less than 1 year—divided by the number of whole days in that time period. One vehicle entering and exiting a property constitutes two trips.

Average grade—The total change in elevation divided by the total distance along the highway or access, multiplied by 100.

Central Permit Office—The Department office [for the control of issuance of permits] which administers this chapter, located at:

Pennsylvania Department of Transportation

[Bureau of Highway Services

Central Permit Office

Transportation & Safety Building]

Commonwealth Keystone Building

400 North Street

Harrisburg, Pennsylvania 17120-0041.

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County office—[Any] One of the [various] maintenance district offices of the Department.

Curb—A plain cement concrete structure placed consistent with Publication 72M,

Publication 408 and Design Manual, Part 2.

[*Curbline*—A line formed by the face of the existing curb or in its absence the outer edge of the shoulder, along which curbing is or may be located.]

Curb reveal—The vertical distance from the abutting pavement surface to the top of curb.

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Depressed curb—A structure designed with a curb reveal low enough to allow ingress and egress but high enough to maintain drainage along the highway, placed consistent with Publication 72M, Publication 408 and Design Manual, Part 2.

Design Manual, Part 1—Department Publication No. 10, including Part 1A, Department Publication No. 10A, containing current policy relating to highway design studies,

including design review procedures, corridor location studies, design location studies and final design.

Design Manual, Part 2—Department Publication No. 13M, containing current policy for highway design, including design elements and design controls, at-grade intersections, grade separations and interchanges, lighting, pedestrian facilities, driveways, landscape planting design, safety rest areas and welcome centers, drainage design and related procedures, pavement design, guiderail and median barrier and roadside safety devices, erosion and sediment pollution control, guidelines for design of local roads and streets, cost estimating, bicycle facilities and emergency escape ramps.

Design Manual, Part 3—Department Publication No. 14M, containing current policy on the general format and presentation of right-of-way plans and roadway construction plans.

Design Manual, Part 5—Department Publication No. 16M, containing current utility relocation and accommodation policies.

Detention—An active storage mechanism for storm water management consisting of an inflow rate, a storage volume, and a regulated outflow rate.

Development—A tract of land, with or without buildings, which is or may be improved or subdivided into two or more lots, tracts, parcels or other divisions of land and which has or may have access to a highway or local road.

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

District executive—The engineer or administrator in charge of a district office.

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

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Drainage impact report—An engineering study which evaluates the effect that drainage generated by proposed development would have on drainage in the surrounding area and determines the improvements required to existing drainage systems to accommodate future drainage both inside the right-of-way and outside the right-of-way.

Driveway—[Every] An existing or proposed entrance or exit, including an access other than a local road, used by vehicular traffic [to or from properties abutting a highway. The term includes proposed streets, lanes, alleys, courts, and ways].

* * * * *

85th percentile speed—The velocity, in miles per hour, which is exceeded by only 15% of the drivers traveling on a section of highway, in accordance with the *Manual of Transportation Engineering Studies*, Institute of Transportation Engineers, current edition, and 67 Pa. Code, § 201.6(17)(ii).

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

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Grade—The up or down slope, in the longitudinal direction, of the highway or access expressed as a percentage, which is the number of units of change in elevation per 100 units of horizontal distance. An upward direction from a given point on the slope is a positive grade; a downward direction from a given point on the slope is a negative grade.

High volume driveway—[A driveway used or expected to be used by more than 1500 vehicles per day] An access which the applicant or the Department determines to have an ADT of 3,000 or more.

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Island—A defined area between traffic lanes which is used for control of vehicular movements, for pedestrian refuge or for placement of traffic control devices.

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

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Local road—[Every] A public highway other than a State highway [The term includes] , including existing or proposed streets, lanes, avenues, drives, boulevards, alleys, courts, and ways. The term includes an access for which the owner intends to transfer or dedicate ownership to a governmental body after completion of the permitted work.

Low volume driveway—[A driveway used or expected to be used by] An access which the applicant or the Department determines to have an ADT of more than [25] 50 but less than [750 vehicles per day] 1,500.

* * * * *

Medium volume driveway—[A driveway used or expected to be used by] An access which the applicant or the Department determines to have an ADT of [more than 750] 1,500 or more, but less than [1500 vehicles per day] 3,000.

Minimum use driveway—[A residential or other driveway] An access which [is used or expected to be used by] the applicant or the Department determines to have an ADT of not more than [25] 50 [vehicles per day].

[*Own*—To hold title to land or a building or be a tenant in a lease that will not terminate within 15 years of the permit issuance date.]

Owner—A person who holds fee title to land or a person who holds an estate or other legal interest in property, such as an easement, a lease, a license, subsurface rights, or an equitable interest under a sales agreement or option to purchase.

Pavement—The combination of subbase, base course and surface course placed on a subgrade to support the traffic load or distribute it to the roadbed, or both. The term includes the traveled way and auxiliary lanes, and normally extends to the face of the curb in a curbed section. The term does not include shoulders.

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

Permit—

(i) A highway occupancy permit (Form M-945P) issued by a district office
[pursuant to] under this chapter.

(ii) A highway occupancy permit issued to a property owner by a municipality
which has entered into a municipal permit issuance agreement with the
Department.

* * * * *

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

* * * * *

[*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.]

Publication 70M—A Department publication containing current policy for design of local roads and streets.

Publication 72M—A Department publication containing current policy for roadway construction.

Publication 111M—A Department publication containing current policy for construction of traffic signing.

Publication 148—A Department publication containing current policy for construction of traffic signals.

Publication 149—A Department publication containing current policy for the design and operation of traffic signals.

Publication 236M—A Department publication containing current policy for approved signs.

Publication 282—A Department publication containing current policy for submitting permit applications.

Publication 408—A Department publication containing current highway construction contract specifications.

Retention—A passive storage mechanism for storm water management consisting of an inflow rate and a storage volume, in which evaporation and surface infiltration control dissipation rates.

* * * * *

Right-of-way plan—A drawing that is prepared consistent with Design Manual, Part 3 plan format requirements, where applicable.

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

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Safe-running speed—The maximum velocity, in miles per hour, at which drivers may safely operate their vehicles on a section of highway during favorable weather conditions and prevailing traffic conditions, as determined under 67 Pa. Code, § 201.6(17)(iii).

* * * * *

Speed limit—The maximum velocity, in miles per hour, that traffic may legally travel on a section of highway as determined under 67 Pa. Code, §§ 201.6(17) and 201.31--201.35, and in accordance with 75 Pa. C.S. §§ 3361--3365.

[Stabilized material—Any aggregate such as aggregate cement, aggregate bituminous or lime pozzolan, placed in such a manner as to provide a smooth, stable, all-weather surface not subject to undue raveling.

Stopping sight distance—The distance required by a driver traveling at a given speed to stop the vehicle after an object on the roadway becomes visible to the driver.]

Structure—A facility that is constructed by or for a permittee to accommodate traffic, pedestrians, the highway, drainage, the permittee's development or affected property owners, including: curbs, sidewalks, drainage facilities, pipes, traffic control device supports, retaining walls, traffic islands, guiderail, earthwork, core borings, through lanes, pedestrian walkways, subways, or other types of facilities authorized under the permit or

this chapter. The term does not include transit shelters, newspaper receptacles or mail boxes, or utility facilities regulated under Chapter 459 (relating to occupancy of highways by utilities).

* * * * *

[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.

TCP—Traffic control plan—A plan for maintaining traffic in or around a work zone area.

Traffic impact study—An engineering study which evaluates the effect that traffic generated by proposed development would have on roadway operations in the surrounding area and determines the improvements to the existing transportation system required to accommodate that traffic.

TRB—The Transportation Research Board, National Research Council, currently located in Washington, D.C.

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

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Vehicle—[Every] A device in, upon or by which [any] a 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.] does not include devices used exclusively upon rails or tracks, devices propelled by human or animal power, bicycles, golf carts, snowmobiles and all-terrain vehicles.

VPH—vehicles per hour—The existing or estimated future total volume of traffic which the applicant determines with the concurrence of the Department, or which the Department determines, will use a highway or access during a one-hour period.

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§ 441.3. Permit application procedure.

(a) *General rule.* No [driveway, local road or drainage facility] existing or proposed access or structure [shall] may occupy a State highway, or be constructed, altered, repaired, maintained, or used, [or altered] within State highway right-of-way [and no drainage facility of the Department] without first obtaining a permit from the Department. No State highway or

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

(b) Authorization of local governments to issue permits. The Department may enter into agreements with local governments to issue permits in accordance with this chapter.

(1) Permit applications submitted to authorized local governments shall meet all the requirements of this chapter.

(2) For permits issued by authorized local governments, the powers and duties attributed to the Department in this chapter shall be the powers and duties of the authorized local government.

(3) The place for submission of applications for permits to be issued by an authorized local government shall be the municipal office designated by the authorized local government.

(c) Maintenance of permitted access or structure. If a valid permit has been issued for an access or structure, another permit will not be required for maintenance, provided the maintenance does not alter the design of the permitted access or structure or otherwise violate a requirement of the permit, Chapter 203, this chapter, or applicable State and Federal laws and regulations including the Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12101—12213) and 28 C.F.R. Part 35.

[(b) *Who may execute applications*] (d) Persons authorized to apply for a permit. Permit applications shall be submitted in the name of, and executed by, the owner or, where applicable, the owners of the property.

[(c) *Where to submit application*] (e) Submission of a completed 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, or to the municipality in which the proposed work will be performed, provided the municipality has executed a municipal permit issuance agreement with the Department.

[(d) *When to submit applications*] (f) Time for submission of an application. Permit applications shall be submitted at least 60 days prior to the anticipated start of work on the structure or access.

[(e)] (g) Application procedure and required information. [Permit applications:] A permit application:

(1) Shall be submitted in person or by mail on a properly completed Department Form M-945A or, in the case of a minimum use driveway, on a properly completed Form M-950A.

An application may also be submitted in an electronic format authorized by the Central Permit Office.

(2) Shall be signed by the applicant and any consulting engineer performing work related to the application.

(3) Shall include [five sets of] plans[, of a quality sufficient for microfilming,] detailing the location and pertinent dimensions of [both the proposed installation] each existing and proposed access, structure and related highway features.

(i) If paper plans are submitted, at least four paper sets of plans not larger than 24 inches by 36 inches shall be submitted and shall be of a quality sufficient for recording by scanning.

(ii) If electronic plans are submitted, one set of plans shall be submitted in an electronic format authorized by the Central Permit Office.

(iii) Color coded plans or pencil notations will not be accepted.

(iv) Drawings shall be prepared consistent with plan format requirements in Design Manual, Part 3, where applicable.

(v) Except for applications for minimum use driveways, the application shall include plan details of specific highway location, right-of-way lines, adjacent property boundary lines, easements, adjacent intersections and driveways, traffic control devices, construction materials, access grades, access angles, access widths, access radii, highway drainage, sight distance measurements, average highway grades, speed limits, structures, the extent of limited access where applicable and required signage if any portion of the property is or will be reserved for a person with a disability or a severely disabled veteran.

(4) Shall be accompanied by a check or money order, payable to the Department, in the appropriate amount[,] as set forth in § 441.4 (relating to permit fees) unless the applicant participates in the permit monthly billing system.

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

(6)] Shall [contain proof of ownership] include a copy of the deed and deed book reference showing ownership, or other verification of an estate or interest in the property acceptable to the Department.

(i) If the applicant does not have a fee interest or a leasehold interest, the applicant shall, at the applicant's expense:

(A) secure the signature on the application of the holder of the fee interest and lessee, if any, of the property, or

(B) submit a release executed by the holder of the fee interest and lessee, if any, of the property, in favor of the Department and in a form acceptable to the Department.

(ii) If the applicant demonstrates that a release cannot be reasonably obtained from the fee title holder and lessee, if any, that the applicant holds a legitimate estate or other legal interest in the property, and that written notice has been given to the fee title holder and lessee, if any, of the pendency of the application and of the right to appeal under subsection (v), the Department will recognize the applicant as an owner conditioned upon execution of an indemnification agreement in favor of the Department and in a form acceptable to the Department. If it recognizes the applicant as an owner, the Department may also require the applicant to provide additional security in a form and amount acceptable to the Department.

(6) Shall identify consulting engineers performing work related to the application.

(7) Except in an application for a minimum use driveway, shall include a properly completed Form M-950MPC consistent with the Municipalities Planning Code, 53 P.S. §§ 10101-11202.

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

(1) When the applicant anticipates that it will be necessary to close a portion of a lane to vehicular traffic in order to perform the permitted work, the applicant shall submit a traffic control plan with the application.

(2) The district office may require the applicant to submit a traffic control plan if it is anticipated that a potential hazard or interference to vehicular or pedestrian traffic will result from performance of the work.

(3) The traffic control plan shall be either:

(i) A detailed drawing, showing all traffic control devices.

(ii) a reference to a standard drawing found in Publication 43 or Publication 90, provided the referenced standard drawing properly depicts the work area and completely addresses the needed traffic control.]

Unless excused in writing by the Department, an applicant shall submit a traffic control plan with the application.

(1) The traffic control plan shall comply with Chapter 203 (relating to work zone traffic control) and shall clearly indicate how the work area and vehicular and pedestrian traffic will be protected, maintained and controlled.

(2) The traffic control plan shall consist of one of the following:

(i) A reference to specific figures in Chapter 203 if the referenced figures properly depict actual site conditions and address the necessary traffic control requirements for the specific project.

(ii) At least four paper copies or one authorized electronic copy of specific figures from Chapter 203 which have been modified to delete the figure number and depict actual site conditions and necessary traffic control requirements for the specific project.

(iii) At least four paper copies or one authorized electronic copy of a detailed drawing, showing actual site conditions and the necessary traffic control requirements for the specific project.

[(g)] (i) Drainage [control plan] impact report for properties served by 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] If the applicant or the Department determines that there [will] may be an increase in the flow rate or flow velocity of water onto the highway or into highway drainage facilities as a result of action [by the applicant] authorized by the permit, or that there [will] may be an increase in the flow rate or flow velocity of water onto [the property of some other person] adjacent properties as a result of [any] action authorized by the permit, a drainage [control plan] impact report shall be submitted with the application.
The drainage [control plan] impact report 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.

(2)] be prepared consistent with § 441.3b, (relating to preparation of a drainage impact report).

Issuance of a permit shall be conditioned upon the Department's approval of the drainage [control plan] impact report.

[(h)] (j) *Drainage release for other than minimum use driveways.* [If it can reasonably be anticipated that] If the applicant or the Department determines that there [will] may be an increase in the flow rate or flow velocity of water onto [the property of some other person] one or more adjacent properties as a result of action[,] authorized by the permit, a drainage release shall be submitted with the application. [Where possible, drainage] Drainage releases—Form [L-15 or CC-15] M-947—[will] shall be obtained[,] by and at the expense of the applicant, [from all] and shall be executed by each adjacent property [owners] owner over whose land increased [additional] drainage [will] flow rate or flow velocity will occur. [All drainage] 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] every 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] the applicant shall design either a drainage detention system having a zero increase in flow rate or a drainage retention system.

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

(1) Existing and proposed highway pavement, shoulders, ditches, structures, [right-of-way and relevant] rights-of-way, property boundary lines, highway [appurtenances, utilities, and medians] ADT and other highway features which may include medians and auxiliary lanes.

(2) Existing and proposed [building] buildings, including canopies, loading docks, vehicle entrances and exits, and a description of present and proposed use of buildings.

* * * * *

(4) Design features of existing and proposed driveways, local roads, curbs, tapers, pavement markings, [acceleration, and deceleration] and auxiliary lanes [including]. These design features shall include the following:

* * * * *

(iii) Driveway grades or profile view of [drive] the access.

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(vi) [Driveway surface material] Type and thickness of construction materials for the access and [traffic island] materials used in other structures authorized under the permit.

* * * * *

(6) Sight distance measurements in each direction from each existing and proposed [driveway] access to the property, corresponding average grades on each approach to each access, and speed limits on each approach to each access.

(7) The [number of vehicles per day] ADT which [are] is expected to utilize each existing and proposed [driveway] access to the property.

(8) Highway appurtenances and utilities at both their existing and proposed locations.

(9) If the property will provide drive-in service, the amount of vehicle storage provided between the service facility and the right-of-way, the number of service operations during peak hours, and the hours and days of operation.

(10) Depiction of adjacent property and other property, including the name of the property owner and the property boundaries, whose structure or access to the State highway may be interfered with or which may suffer consequential damage as a result of the proposed structure, access or work.

(l) *Scale and legibility.* Plans depicting highway details shall have a horizontal scale of one inch equal to no more than 50 feet. Plans depicting access details shall have a horizontal scale of one inch equal to no more than 25 feet. Illegible drawings will not be accepted.

(m) *Impact on other property owners.*

(1) If it is determined by the applicant or the Department that another property owner's existing structure or access may be interfered with or suffer consequential damage by the proposed structure, access or work authorized by the permit, the applicant, at the expense of the applicant, shall obtain a release executed by each affected property owner in favor of the Department and in a form acceptable to the Department.

(2) If the applicant demonstrates that a release cannot be reasonably obtained from each affected property owner, and includes proof of written notice to each affected property owner of the submission of the application to the Department and of the right to appeal under subsection (v), the Department may agree to accept an indemnification agreement in favor of the Department and in a form acceptable to the Department, if there is no operationally sound alternative available to the applicant.

(3) The Department may require the applicant to provide additional security in a form and amount acceptable to the Department.

(n) Impact on sensitive or unique property. The applicant or the Department shall determine whether construction of an access will be assisted in part by the Commonwealth or whether the permitted work will include construction of an auxiliary lane or other widening of the improved area. The applicant or the Department shall determine whether additional right-of-way will be required from a recreation area, wildlife refuge, waterfowl refuge, historic site, wilderness area, public park, state forest land, state game land or other environmentally sensitive or unique area. Under 71 P.S. § 512(a)(15) (relating to powers and duties of the Department), the access shall be planned, designed and constructed to minimize harm to these areas. If any condition in this subsection is applicable, the application shall include a written statement certifying that state and Federal environmental requirements have been met. Upon request, the applicant shall also submit documentation, as well as reports and studies, demonstrating that the applicant has no feasible and prudent alternative to the use of these areas for access.

[(j)] (o) Review by [municipalities, planning commissions, and zoning boards] governmental bodies. [Review by municipalities, planning commissions, and zoning boards shall comply with the following:] Application review by governmental bodies, including municipalities and their political subdivisions, may be required for other than minimum use driveways under the following provisions:

(1) [Certain local governing bodies wish to] A governmental body wishing to review driveway applications may submit to the district office a written request for notification of applications filed within their jurisdictions.

(2) A [list] listing of [these municipalities and local agencies] governmental bodies that have submitted a written request for notification of applications filed within their jurisdictions is available [from] for review in the appropriate district office.

(3) [Each] An application for [an access] a low, medium or high volume driveway or local road within one of these listed jurisdictions [must be accompanied by evidence which indicates that the location and type of] shall include written evidence from the governmental body verifying the access being requested has already been reviewed by that [municipality or agency] governmental body.

(4) The Department will consider [any] written comments [or recommendations resulting from this review] which are consistent with this chapter if received from a governmental body prior to [approving the access] issuance of the permit.

(5) If a governmental body has submitted to the district office a written request for review of a particular application, the application will be returned and the applicant will be notified to provide written evidence to the Department verifying the access being requested has been reviewed by that governmental body.

(6) Additionally, consistent with the Municipalities Planning Code, Act of July 31, 1968, No. 247, P.L. 805, as reenacted and amended, 53 P.S. §§ 10101-11202, the Department will consider and may rely upon local comprehensive plans and zoning ordinances when reviewing permit applications.

(p) Impact on archeological and historic property. The applicant or the Department shall determine whether the permitted work will include construction of an auxiliary lane or other widening of the improved area or whether additional right-of-way will be required by the

Department. If so, the application shall include a copy of the applicant's cover letter to the Pennsylvania Historical and Museum Commission, dated at least 60 days prior to submission of the application, stating whether or not the proposed access location affects an archaeological site or a historic district, site or building listed or eligible to be listed on the National Register of Historic Places, in accordance with the requirements of the Historic Preservation Act (37 P.S. §§ 501--512.) The cover letter shall specifically identify the proposed access location. The applicant shall also provide the Pennsylvania Historical and Museum Commission a U.S. Geological Survey (USGS) 7.5-minute topographic quadrangle map specifically identifying the property.

[(k)] (q) *Authority to reject application.* The Department will examine and determine the genuineness, regularity, and legality of every application, and may reject any application if not satisfied of its genuineness, regularity or legality, or the truth of any statement contained in the application. The Department may also make such investigations and require such additional information as it deems necessary.

[(l) *Penalty for falsifying application.* Information provided in applications must be accurate. Section 4904 of the Crimes Code, (18 Pa. C.S. § 4904), makes it a misdemeanor for a person to mislead a public servant in performing an official function by making any written false statement which the person does not believe to be true.]

[(m)] r) *Newspaper or mail receptacles.* Permits are not required for the placing of newspaper receptacles or mail boxes, although their location is subject to the maintenance requirements of the Department.

(s) Traffic impact study. An application for access to a development shall include a traffic impact study consistent with Publication 282 and prepared in accordance with § 441.3a (relating to preparation of a traffic impact study) if one of the following applies:

(1) The access is expected to have an ADT of 3,000 or more.

(2) During any one hour time period, the development is expected to generate either 100 or more new vehicle trips entering the development or 100 or more new vehicle trips exiting the development.

(3) In the opinion of the Department, the development is expected to have a significant impact on highway safety or traffic flow even though it does not meet (1) or (2) of this subsection.

For purposes of determining the need for a traffic impact study, it should be assumed that the total development will have access at only one location. All vehicle trips expected to be generated by the development based on full build out and occupancy of the entire tract of land available to be developed at that location should be included.

(t) Proof of publication. An application for access to a development subject to subsection (s) shall include proof of publication of a notice, in a form acceptable to the Department, in a newspaper of general circulation in the area of the proposed development, advising the general public of the submission of the application to the Department. The proof of publication will be maintained as a public record at the district office.

(u) Accuracy of application. The applicant is responsible for the accuracy of materials submitted to the Department, including the application, plans, sight distance measurements, drawings, studies, reports and correspondence, and the applicant shall certify to the Department,

as part of the application, that the materials submitted to the Department are true and correct.

Materials submitted to the Department become the property of the Department and may be determined to be public records subject to disclosure under the Right-to Know Law, Act of June 21, 1957, P.L. 390, as amended, 65 P.S. § 66.1 et seq. Persons are liable for the falsification of materials and are subject to the penalties provided in Section 4904 of the Crimes Code, 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

(v) *Right of appeal.* The applicant or other aggrieved person who has a direct interest as a participant in the application may appeal a denial or issuance of a permit by the Department under 2 Pa. C.S. §§ 501—508 (relating to practice and procedure of Commonwealth agencies), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) and 67 Pa. Code, Chapter 491 (relating to administrative practice and procedure), by submitting a written request for a hearing within 30 days after the mailing of the document containing the determination, to the Administrative Docket Clerk, Office of Chief Counsel, 400 North Street, Harrisburg, Pennsylvania 17120-0041. A filing fee as prescribed under 67 Pa Code, Chapter 491, made payable to the "Commonwealth of Pennsylvania," shall accompany each request.

(w) *Debarment.* The procedures relating to debarment are as follows:

(1) The Department may debar a person, applicant or permittee, including the employees, agents, officers, consultants, contractors, subcontractors, successors and assigns of the foregoing, from placing an access or structure, working within or otherwise occupying State highway right-of-way under permit, directing work, or having involvement in a permit issued or an application submitted under this chapter for one or more of the following:

(i) Failure to design, construct, alter, repair, maintain or use an access or structure in accordance with authorized plan details, permit conditions or this chapter.

(ii) Unsatisfactory past performance, as documented by records, reports or performance ratings.

(iii) Failure to complete permitted work under the permit and this chapter, as documented by records, reports or performance ratings.

(iv) Bribing, attempting to bribe or giving gratuities to a Department employee or a Department consultant.

(v) A reason set forth in 67 Pa. Code, § 457.13 (relating to suspension or disqualification).

(2) The first debarment of a person shall be for a period of 6 to 18 months. A subsequent debarment of the same person ordered within 5 years after the first debarment is served, shall be for a period of 18 months to 3 years.

(3) Individuals may request a list from a district office of persons currently debarred under this subsection.

(4) A person may appeal a final order of the Department under 2 Pa. C.S. §§ 701--704, 1 Pa. Code Part II and 67 Pa. Code, Chapter 491 within 30 days after issuance of the final order by the Secretary.

§ 441.3a. Preparation of a traffic impact study.

(a) General rule. When a traffic impact study is required under § 441.3(s) (relating to permit application procedure, traffic impact study), the applicant is responsible for assessing the overall

impact that traffic generated by the proposed development would have on the transportation system in the surrounding area.

(1) The applicant is responsible for data collection efforts.

(2) The study shall be conducted under the supervision of a person who possesses a professional engineer's license issued by the Pennsylvania State Registration Board for Professional Engineers, who shall affix a seal to the study, or may be conducted by other persons authorized by law.

(3) Upon receipt of a traffic impact study, the Department will review the applicant's assessment on whether capacity, safety or other enhancements are needed to mitigate traffic impacts.

(b) Scoping meeting. A pre-application scoping meeting may be held whenever a traffic impact study is required.

(1) The applicant should contact the district office permit manager or designee to schedule a scoping meeting.

(2) Upon request, the district office permit manager or designee will schedule a scoping meeting and will invite appropriate persons, based on information submitted by the applicant.

(3) The applicant should submit scoping meeting information requested by the Department and consistent with Publication 282.

(4) The applicant will receive direction from the Department at the scoping meeting.

(5) Traffic impact study items that may be discussed at the scoping meeting include description of the proposed development and zoning, development schedule and staging, trip generation, study area and type, urban or rural area determination, analysis periods and times,

traffic adjustment factors, other projects within the study area, trip distribution and assignment, required traffic counts, capacity and other required analyses, and acceptable methodologies to be used in the study.

(c) Traffic impact study contents and scope. The traffic impact study shall contain the following:

(1) Overview. The traffic impact study shall identify the existing land use, zoning and transportation facilities at the site and its surrounding area.

(i) The traffic impact study shall include a description of the property, indicating its size, general terrain features, highway right-of-way lines, and identify the municipalities and counties within the study area.

(ii) The traffic impact study shall identify the roadways that provide access to the site.

(iii) The limits of the study area shall be based on sound engineering judgment and an understanding of existing and future traffic conditions at the site and within the surrounding transportation network, and shall be defined at the scoping meeting.

(iv) The traffic impact study shall describe the development including its function, size, and short and long term growth potential.

(v) The traffic impact study shall identify the specific existing and proposed uses of the site as well as the current zoning categories.

(vi) The traffic impact study shall include a drawing which shows the development within the site boundaries, including

(A) Internal traffic circulation pattern.

(B) Existing and proposed parking.

(C) The size, location and type of existing and proposed improvements, buildings and building appurtenances, fuel pumps and drive-through facilities.

(D) Present and proposed building and land uses.

(E) The location and orientation of existing and proposed access points.

(vii) The traffic impact study shall describe the proposed development schedule and staging, including the anticipated opening date, the anticipated completion date for each major phase of development and the anticipated full build out completion date.

(viii) The traffic impact study shall include a complete description of the existing and proposed land uses and zoning categories within the study area.

(ix) The traffic impact study shall include a description of existing roadways, intersections and high volume driveways within the designated study area, including the geometrics, traffic signal permit drawings and improvements planned by government agencies or others.

(2) Existing traffic conditions. The traffic impact study shall describe the data collection and analysis efforts, volume studies, capacity and level of service analyses, and other analyses which were completed for the roadways, intersections and high volume driveways within the designated study area, to reflect existing traffic conditions. The applicant or the Department shall determine the location, time periods and methodologies to be used for data collection, studies and analyses, consistent with Publication 282.

(i) The traffic impact study shall include figures or schematic drawings, in a form acceptable to the Department and consistent with Publication 282, depicting daily and peak hour traffic volumes within the study area.

(A) Turning movement and mainline volumes shall be provided for the roadway a.m., roadway p.m. and site-generated peak hour conditions, or as otherwise directed by the Department after consultation with the applicant.

(B) ADT volumes shall be provided for the mainline roadway.

(C) Other daily and peak hour volumes may be required by the Department after consultation with the applicant.

(ii) The traffic impact study shall provide an assessment of the relative balance between traffic volumes and capacity within the study area for existing conditions during the appropriate peak hours, using techniques acceptable to the Department and consistent with Publication 282. Based on the capacity analysis results, the study shall determine the current levels of service. The study shall also describe the typical operating conditions at each level of service.

(iii) The traffic impact study shall evaluate the effectiveness of existing signal controls within the study area in terms of vehicle stops and delays, using techniques acceptable to the Department and consistent with Publication 282.

(iv) If directed by the Department, the traffic impact study shall include turning lane and queue length studies within the study area, using techniques acceptable to the Department and consistent with Publication 282, to determine the need for auxiliary lanes, the required auxiliary lane lengths, and to evaluate alternative access locations at various distances from controlled intersections.

(v) If directed by the Department, the traffic impact study shall include gap studies within the study area, using techniques acceptable to the Department and consistent with

Publication 282, to evaluate existing or proposed access locations where there is a heavy volume of traffic on the abutting major route, or a significant volume of left turns is expected from the site, or the exit would not be expected to qualify automatically for traffic signal control. Gap studies may identify whether there is a need for signal control or for additional access locations to reduce left turn volumes.

(vi) If directed by the Department, the traffic impact study shall include sight distance analyses, traffic signal warrant analyses, left-turn traffic signal phasing analyses, analyses of other needed traffic signal phasing or timing modifications, traffic signal corridor or network analyses, crash analyses, weaving analyses, and other studies and analyses within the study area, using techniques acceptable to the Department and consistent with Publication 282.

(3) *Future traffic conditions without development.* The traffic impact study shall describe the ability of the roadway network within the study area to accommodate future traffic without the development, for the ensuing 10 years beyond the opening date of the development, and other time periods as directed by the Department and consistent with Publication 282.

(i) The traffic impact study shall indicate the method and assumptions used to predict future traffic volumes, consistent with Publication 282, so that the Department can verify and approve the applicant's calculations. The traffic impact study shall use seasonal adjustment factors and annual base traffic growth factors from the Department, the appropriate Metropolitan Planning Organization or Local Development District or other source acceptable to the Department. The traffic impact study shall include the

additional traffic volumes that are expected for other proposed developments with issued permits within the study area, as directed by the Department. Figures or schematic drawings depicting future traffic volumes shall be consistent with subsection (c)(2)(i), including locations and times.

(ii) The traffic impact study shall describe the ability of the existing roadway system within the study area to accommodate future traffic without site development for the appropriate peak hours, using techniques approved by the Department and consistent with Publication 282. If roadway improvements or modifications are programmed by government agencies with approved construction funding, or if improvements or modifications will be constructed by others in conjunction with issued permits, the traffic impact study may include these conditions in the capacity and level of service analyses.

(iii) If directed by the Department, the traffic impact study shall include other studies and analyses consistent with subsections (c)(2)(iii) – (vi) to determine future traffic conditions without development within the study area.

(4) *Future traffic conditions with development.* The traffic impact study shall describe the adequacy of the roadway network within the study area to accommodate future traffic for the ensuing 10 years beyond the opening date of the development, and other time periods as directed by the Department and consistent with Publication 282, and as determined at the scoping meeting, where applicable.

(i) The traffic impact study shall identify the amount of traffic generated by the site for the daily and appropriate peak hour conditions. The traffic impact study shall provide trip generation rates with documentation and justification acceptable to the Department and

consistent with Publication 282. The traffic impact study shall use sources acceptable to the Department based on surveys of multiple sites with the same land use type and similar size as the proposed development.

(ii) The traffic impact study shall identify the direction of approach for site generated traffic for the appropriate time periods. The traffic impact study shall identify the method and assumptions used so that the Department can verify and approve the applicant's calculations.

(iii) The traffic impact study shall describe the utilization of study area roadways by site generated traffic. The traffic impact study shall combine anticipated traffic volumes identified under subparagraph (i) with anticipated traffic volumes identified under subsection (c)(3)(i) to describe mainline and turning movement volumes for future conditions with development.

(iv) The traffic impact study shall include mainline and turning movement volumes for the appropriate time periods for the roadway network in the study area as well as for the development access points and internal circulation roadways that may impact access operations.

(v) The traffic impact study shall include a capacity analysis and levels of service in the study area for the appropriate peak hours for future conditions with development, using techniques approved by the Department and consistent with Publication 282.

(vi) If directed by the Department, the traffic impact study shall include other studies and analyses consistent with subsections (c)(2)(iii) – (vi) to determine future traffic conditions with development within the study area.

(5) Recommended remedies. The traffic impact study shall compare the operating levels between anticipated conditions and identify remedies that will provide future design year levels of service with the development which are no worse than future design year levels of service without the development, unless a modification is granted under § 441.11 (relating to modification of conditions) based on future design year conditions with development which are safe and within the range of acceptable operation.

(i) For locations where the level of service of the design year without the development is Level of Service F, the remedies shall provide an estimated delay which will be no worse than the delay for the design year without the development.

(ii) If a new intersection is being established to serve as access to the development, the intersection shall be designed to operate at Level of Service C or better in the future design year where rural conditions exist and at Level of Service D or better in the future design year where urban conditions exist.

(iii) The traffic impact study shall include a description of proposed remedies, arranged by location and type of remedy.

(A) The remedies may include projects programmed by the Commonwealth or governmental bodies.

(B) The remedies may include a proposal to reimburse the Department as part of a programmed Department or municipal project, or to pay, in lieu of construction, the cost of all or a portion of off-site highway improvements which increased traffic arising from the development may necessitate. The Department, in exercise of its engineering judgment, will determine if the proposal is acceptable.

(iv) The traffic impact study shall provide details on the location, nature and extent of remedies which will provide sufficient roadway capacity and operating levels within the study area. If signalization is a recommended remedy, the traffic impact study shall include a traffic signal warrant analysis in accordance with Chapter 201 (relating to engineering and traffic studies). The final access design shall address both traffic flow and highway safety considerations to provide operational characteristics acceptable to both the Department and the municipality that will own the signal.

(v) The traffic impact study shall address how the access relates to internal site circulation and design.

(vi) The traffic impact study applicant shall include capacity and level of service analyses and describe the anticipated results of the recommended remedies, using techniques approved by the Department and consistent with Publication 282.

(vii) If directed by the Department, the traffic impact study shall include other studies and analyses consistent with subsections (c)(2)(iii) – (vi) to determine the anticipated effectiveness of the remedies.

(6) Summary. The traffic impact study shall include a clear, concise description of the study findings acceptable to the Department and consistent with Publication 282. Plans for the development shall include recommended remedies which will provide future design year levels of service with the development consistent with the requirements of subsection (c)(5).

§ 441.3b. Preparation of a drainage impact report.

(a) General rule. When a drainage impact report is required under § 441.3(i) (relating to permit application procedure, drainage impact report), the applicant is responsible for assessing

the overall effect of drainage flow rate and flow velocity associated with the proposed development.

(1) The applicant is responsible for data collection efforts.

(2) The report shall be conducted under the supervision of a person who possesses a professional engineer's license issued by the Pennsylvania State Registration Board for Professional Engineers, who shall affix a seal to the report, or may be conducted by other persons authorized by law.

(3) Upon receipt of a completed report, the Department will review the applicant's assessment on whether drainage system enhancements are needed to mitigate drainage impacts.

(b) *Drainage impact report contents.* The drainage impact report shall contain the following:

(1) *Cover sheet and plans.* The drainage impact report shall include a cover sheet and plans stating the name and principal address of the property owner, the type and purpose of the development and other pertinent information. Plans shall include the plan scale, the plan contour interval, the source of the information and the date of information.

(2) *Contour plans.* The drainage impact report shall include contour plans identifying the total drainage area in which the development is located, with both the drainage area and development labeled and outlined. If requested by the Department, the drainage impact report shall also include a United States Geological Survey map showing the drainage area affected by the development.

(3) Highway plans. The drainage impact report shall include a field verified location map and highway plans identifying the drainage system into which the drainage area containing the development will drain.

(4) Existing conditions. The drainage impact report shall include a plan identifying the land use for the drainage area before development, showing where existing drainage currently flows including surface and subsurface drainage systems with contributing areas clearly outlined and identified.

(i) The plan shall identify elevations with two-foot interval contours within the proposed development area of the site.

(ii) The plan shall identify relevant existing features and their locations including pavements, medians, structures, highway appurtenances, bridge locations and elevations, flow line inverts, guide points, gradients, utilities, right-of-way lines, property lines and buildings.

(iii) The drainage impact report shall include aerial or other photographs if requested by the Department.

(5) Future conditions. The drainage impact report shall include a plan identifying the site drainage area after each development phase, and shall identify existing structures and features which will remain after each development phase.

(i) The plan shall identify where the proposed structures and features will be located, including proposed surface and subsurface drainage systems.

(ii) The plan shall identify elevations with two-foot interval contours within the proposed development area of the site and shall outline and identify contributing areas.

(6) Hydraulic computations. The drainage impact report shall include hydraulic computations identifying the effects of additional drainage flow rate and flow velocity on both the highway drainage within the right-of-way affected by the development and the drainage outside the right-of-way that is affected by the development.

(i) The computations shall identify both pre-development and post-development conditions and shall specify the change in runoff.

(ii) The computations shall identify whether the available capacity of the highway drainage system will be adequate as a result of the development and whether there will be an increase in the flow rate or flow velocity from the developed property after the installation of proposed storm water detention systems.

(iii) The hydraulic computations relating to the highway drainage and any concentrated flows within the right-of-way shall be developed consistent with the procedures and criteria in Design Manual, Part 2, and pertinent policy directives.

(iv) The hydraulic computations relating to the drainage outside the right-of-way shall be developed in accordance with procedures and criteria acceptable to the Commonwealth or governmental bodies.

(7) Recommended remedies. If the analysis indicates that the available capacity of the highway drainage system will not be adequate due to an increase in the flow rate or flow velocity, or that there will be an increase in the flow rate or flow velocity from the developed property, the drainage impact report shall include a description of proposed actions which will remedy the identified deficiencies, including hydraulic computations, arranged by location and

type of remedy. The remedies may not include projects programmed by the Commonwealth or other governmental bodies.

(8) Storm Water Management Act. If the proposed development is located within an area which has an approved watershed storm water management plan and ordinances pursuant to the Commonwealth's Storm Water Management Act (32 P.S. § 680.1--680.17), the drainage impact report shall demonstrate that proposed post-development conditions are consistent with the standards of the individual watershed storm water management plan and shall include a consistency letter from the affected municipality.

(9) Summary. The drainage impact report shall include a clear, concise description of the report findings, and shall include recommended remedies designed to ensure that post-development flow meets the requirements and standards of the Department.

§ 441.4. Permit fees and costs.

(a) Permit [issuance] application and supplemental fees. [Issuance fees shall be used] The Department will charge a non-refundable application fee to defray costs incurred by the Department in reviewing and processing the application and [plan] plans, including the preliminary review of the site location identified in the application [,and issuing and processing the permit]. Fees shall be as follows:

(1) [Issuance] Application fees [shall be as follows]:

(i) Minimum use driveways--\$ [15] 25.

(ii) Low volume driveways--\$ [30] 250.

(iii) Medium volume driveways--\$ [40] 500.

(iv) High volume driveways--\$ [50] 750.

(v) Local roads--\$500.

(vi) Temporary access only--\$ 50.

(vii) Auxiliary lanes only--\$ 500.

(viii) Structures only--\$ 50.

(2) Supplemental [fee] fees:

(i) For each [six] 6-month time extension [or each submitted change shall be]--\$ [10]
25.

(ii) For each submitted change-- 50% of application fee.

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

(1) Minimum use driveway--\$ [10] 25 each.

(2) Low volume driveway--\$ [20] 250 each.

(3) Medium volume driveway--\$ [35] 250 each.

(4) High volume driveway--\$ [50] 250 each.

(5) Local road--\$ 250 each.

(6) Temporary access--\$ 25 each.

(7) Auxiliary lane--\$ 250 each lane.

(8) Structure--\$ 25 each type.

(c) *Exemptions.* Permit [issuance] application fees and general permit inspection fees [shall] are not [be payable by any of] required from the following:

* * * * *

(2) Political subdivisions of this Commonwealth, as defined in the Statutory Construction Act of 1972, as amended, 1 Pa. C.S. § 1991.

* * * * *

(5) [Charitable organizations which are exempt from or in compliance with act of August 9, 1963, P.L. 628, No. 337 (10 P.S. §§ 160-1—160-17)] Applications relating either to an existing access that is being eliminated or to a structure that is being eliminated.

(d) *Additional [inspection] fees.* If the Department anticipates that either the cost of reviewing the required application information or the cost of inspecting the permitted work will exceed by a significant amount the application or inspection fees listed in this section, the following additional fees will be assessed:

(1) *Additional application fee.* The Department will itemize the additional amount of salary, overhead and expenses and the applicant will be charged for these additional costs.

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

(e) *Refunds.* [T] Upon request, 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, in writing, along with the permittee's copy of the permit to the issuing district
[permit] office [on or before] within six months after the permit [expiration] issuance date.

* * * * *

(2) The permit [issuance fee] application fees [shall] are 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).]

The applicant shall pay for notary and recording costs when the Department requires that the permit or other document be recorded in the county office of the Recorder of Deeds.

(g) Invoice of costs. If the Department takes an action under this chapter, the Department will provide an itemized invoice to the permittee or property owner for costs incurred by the Department.

(1) Charge calculation. The Department will calculate the charges on either an actual cost basis or on a standard unit cost basis.

(2) Payment due. The permittee or property owner shall pay the full invoice amount within 30 days after the invoice mailing date unless the permittee or property owner requests

an administrative hearing under 2 Pa. C.S. §§ 501--508 (relating to practice and procedure of Commonwealth agencies), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) and Chapter 491 (relating to administrative practice and procedure) within 30 days after the invoice mailing date.

§ 441.5. Issuance of permits.

(a) *General rule.* Upon approval of an application [duly made, in accordance with] submitted under this chapter, a permit will be issued by the appropriate district office, subject to this chapter and the conditions contained [on] in the permit and its attachments and supplements. The permit [will] shall be the applicant's authority [of the applicant] to proceed with the work [and will also serve as a receipt for the fees accompanying the application] specified in the permit. A copy of the permit and relevant plans must be available at the work site for inspection.

* * * * *

(d) *Permits not issued for [certain] limited access highways.* Permits will not [normally] be issued for [occupancy of or] access to [any] a limited access highway. [In exceptional cases, the Department in conjunction with the Federal Highway Administration, where applicable, may make exceptions.] However, the Department may authorize access to a limited access highway by written agreement, if the applicant submits a written request to the district office, providing information consistent with Design Manual, Part 1.

(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 may waive the requirement if the following conditions are satisfied:

- (i) no other reasonable access is available;
 - (ii) the applicant has done all that can reasonably be done to satisfy the design requirements;
 - (iii) if additional land is required, the applicant provides satisfactory evidence that it cannot be purchased at a reasonable price;
 - (iv) no traffic problem will be created; and
 - (v) the applicant executes an indemnity agreement satisfactory to the Commonwealth.
- (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, provided conditions (i), (ii), (iii), and (v) of paragraph (1) of this subsection are satisfied.]

Display of placard. If furnished with the permit, a placard, Form M-945PL, shall be posted at the right-of-way line by the permittee. The placard shall be posted approximately 4 feet above the surface and approximately 4 feet from the authorized access location so as to be visible from the roadway. The placard shall remain posted until the date specified on the placard.

(f) Permit requiring agreement/security. [Where the applicant will be required to perform a substantial amount of work, the Department may require the applicant to execute an agreement as a prerequisite to issuance of the permit] Agreement/security requirements are as follows:

(1) The Department may require the applicant to execute an agreement or provide security, or both, as a prerequisite to issuance of the permit if the work to be performed under the permit:

(i) Is complex or involves a potential for highway damage or failure that the Commonwealth may suffer if the area of the permitted work is not designed, constructed, restored, completed or maintained in a manner acceptable to the Department.

(ii) Involves reimbursement or use of Commonwealth funds by the permittee.

(iii) Involves reimbursement for design expenses, inspection fees or other costs and expenses incurred by the Department in connection with the permit.

(iv) Involves future maintenance obligations of a substantial nature.

(2) If the Department requires an agreement under paragraph (1), the agreement will address highway and access design features, auxiliary lanes, drainage, erosion and sedimentation control plans, construction materials and work methods, inspection of work, work zone traffic control, signalization, utility relocation, right-of-way to be acquired and conveyed or dedicated, responsibility for future maintenance and repair of the highway and access, indemnification and security, coordination and approval with the local municipality, Department and municipal contribution of work or funds if in conjunction with a programmed Department project, access covenants and subdivision questions, permittee's contractor pre-approval, appropriate security, and future highway improvements that may be necessary as well as other areas of interest and concern to the Department.

(3) If the Department requires security under paragraph (1), the security shall be delivered to the Department and shall guarantee the obligations secured for a period of at least 2 years after the acknowledged completion of the permitted work. Security shall be provided in the form of an irrevocable letter of credit issued by a commercial bank, executed by an authorized bank officer and naming the Department as sole beneficiary, to be honored on

demand upon presentment at a bank in the Commonwealth, unless another form of security is acceptable to the Department.

(g) *[Requesting permit time extension.] Permit supplements.* The permittee may request a supplement to the permit, on Form M-945A, to amend a permit condition. [A permit shall be valid for a six-month] Work under the permit is authorized during a 6-month period, or multiples thereof as specified on the permit[.], subject to the following conditions:

(1) If the permittee has not completed [all] authorized work by the completion date specified on the permit, [an application shall] a request may be submitted [requesting] to the Department for a time extension to complete work under the permit.

(2) If approved, a supplement to the permit authorizing a new work completion date [may] will be issued by the district office[, authorizing work to continue for an additional six-month period].

(3) An extension of time to complete work under the permit will not be authorized unless the permittee obtains an extension on the duration of security or insurance required under this chapter. The extension of security or insurance shall correspond with the permit time extension. The permittee shall provide evidence of the extension to the Department.

(4) Work may not be performed after the date authorized by the permit unless a time extension supplement or new permit is obtained.

(5) A time extension supplement will not be issued for a request received more than 60 days after the date by which work under the permit is to be completed. In that event, an application for a new permit may be submitted to the Department in accordance with this chapter.

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

(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.] *Temporary access permits.* The Department may authorize, by permit, the temporary occupancy of highway right-of-way by an access. Applicants may request a temporary permit to accommodate access for a day or more (for example, a single event such as a fair), or for a season (for example, a construction project), or for a year (for example, extracting natural resources such as timber from private property). The Department may allow coarse aggregate material to be placed on a temporary access surface in lieu of paving, if no material is deposited onto the highway pavement or shoulder and if the temporary access is continuously maintained. 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.

(j) *Photo documentation.* At least 15 days prior to opening more than 150 linear feet of pavement or shoulder, or both, the permittee shall deliver photo documentation to the district office verifying the preconstruction condition of the pavement and shoulder surfaces in accordance with the following:

(1) The pavement and shoulder that will be disturbed shall be photo documented in its entirety with color videotape or another record format acceptable to the Department. Photo documentation shall be compatible with district office viewing equipment.

(2) The permittee may also submit color images, color slides or color prints, if each image, slide or print is clearly labeled and arranged to verify the surface condition of each successive 25 linear feet of pavement and shoulder that will be disturbed.

(3) If photo documented pavement and shoulder surface conditions or locations are not discernible, complete or otherwise acceptable, the district office will either return the photo documentation to the permittee for resubmission or the district office will create its own photo documentation record and shall be reimbursed for the costs by the permittee within 30 days after receipt of the Department's invoice.

(4) The date of photo documentation shall be identified on each disc, cartridge, slide, print or other record.

§ 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] is binding upon the permittee[, its] and property owners, their agents, contractors, successors[,] and assigns.

* * * * *

(v) The permittee [shall be principally] and property owners are liable to the Department for [any] failure to comply with the permit and this chapter. The [principal] liability of the permittee and property owners to the Department [shall] does not preclude the permittee or the property owners or the Department from bringing [any] an action against the permittee's contractor, subcontractor, engineer, architect, assignee, agent, workers, employees [or any other person] or other persons.

(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.

(vii) Disputes between the permittee and the Department shall be governed by the appropriate provisions in Form 408.

(viii)] A permit [shall be] is valid only as long as the [traffic volume of the driveway] site plan, a structure or the type of vehicles or combinations which frequently use the access does not change, or the access ADT does not exceed the [approved] driveway classification [as set forth in] under § 441.8(a) [of this title] (relating to driveway design requirements).

[(ix)] (vii) [The Department, in granting a permit, will waive none of its powers or rights to require the future change in operation, removal, relocation, or proper maintenance of any access within State highway right-of-way.] As a consequence of a change in a Department requirement or standard, a change in the type or character of the highway, a change in traffic conditions, a change to the site plan or to a structure, or a change in the type of traffic frequently using the access or the driveway classification, the Department may require the permittee or property owner to make changes in the operation, location, maintenance of, or removal of an access or structure and associated highway work or improvements.

(A) The Department will provide the permittee or property owner with 30 days written notice which will identify the proposed changes and the reasons for the changes.

(B) The Department may require a new application or require the permittee or property owner to comply with plans prepared by the Department if a reasonable response is not received.

(C) If the permittee or property owner fails to perform the required work within a reasonable time period as determined by the Department, the Department reserves the right to perform the work upon written notice to the permittee or property owner, if practicable, and the permittee or property owner shall reimburse the Department for the costs within 30 days after receipt of the Department's invoice.

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

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

* * * * *

(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.] The Clean Streams Law (35 P.S. §§ 691.1—691.1001).

(D) O.S.H.A. construction safety and health regulations[, 39 Fed. Reg. 22801 (June 24, 1974) and 29 C.F.R. § 1926.1 *et seq.*] at 29 C.F.R. §§ 1926.1—1926.1051.

(E) [42 U.S.C. § 2000d, as implemented by 49 C.F.R. § 21 and 23 C.F.R. § 230.101 *et seq.*] Title VI, Civil Rights Act of 1964 (23 U.S.C. §§ 140 and 315) and implementing regulations.

(F) Ordinances enacted by [local] municipalities which contain more stringent minimum safety requirements than this chapter or which have a municipal permit issuance agreement with the Department.

(G) The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101—12213) as implemented by 28 C.F.R. Part 35.

(H) The Historic Preservation Act (37 P.S. §§ 501—512).

* * * * *

(3) *Work to conform to Department standards.* Permitted work shall conform to Department standards, including the following:

(i) The permittee shall perform the permitted work [shall be done] at [such] a time and in [such] a manner [as shall be] consistent with the safety of the public and [shall conform to all] consistent with requirements and standards of the Department including[, but not limited to, Form 408] publications identified in this chapter.

(ii) The permittee shall obtain highway materials from Department-approved sources, which are identified in current Department Publications 34, 35, 41 and 42. Upon request, the permittee shall make available for review certifications for backfill and restoration materials.

(iii) The Department may require the permittee to use contractors that are prequalified under Chapter 457 for work within the roadway.

(iv) If [at any time it shall be found by] the Department finds that the permitted work is not being done or has not been properly performed, the permittee [upon being notified in writing by the Department] shall [immediately] promptly take the necessary steps, at its

own expense, to place the work in condition to conform to [such] the requirements [or]
and standards of the Department.

(v) [In case any] If a dispute arises between the permittee and the Department's
inspector, the Department's inspector [shall have] has the authority to suspend work until
the question at issue can be referred to and be decided by the [district office] district
executive or his designee, from which determination the permittee shall have an
opportunity for a hearing under 2 Pa. C.S. §§ 501--508 (relating to practice and procedure
of Commonwealth agencies), 1 Pa. Code Part II (relating to general rules of
administrative practice and procedure) and 67 Pa. Code, Chapter 491 (relating to
administrative practice and procedure) by submitting a written request for a hearing
within 30 days after the district's determination, to the Administrative Docket Clerk,
Office of Chief Counsel, 400 North Street, Harrisburg, Pennsylvania 17120-0041.

(vi) Work not specifically regulated by this chapter is to be performed as authorized
by the district office.

(4) *Permittee responsibilities.* Permittee responsibilities [shall be as follows] include the
following:

* * * * *

(ii) [In the event of failure or neglect by the permittee] If the permittee fails to or
neglects 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.

(A) [In the event] If the Department determines that [such] the 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] the Secretary's attorneys, or [any] an attorney of [any] a court of record [shall be] is 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] is authorized to issue forthwith a writ of possession without leave of court, all at the cost of the permittee.

(B) The Department also reserves the right to perform the work upon written notice to the permittee or property owner, if practicable, and the permittee or property owner shall reimburse the Department for the costs within 30 days after receipt of the Department's invoice.

(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.] The permittee shall protect its openings in the right-of-way to provide for the safety of the general public.

(A) At the end of a workday, the permittee shall cover an opening in the right-of-way with steel plates, or backfill the opening to the adjacent surface elevation, or

protect the opening in accordance with Chapter 203 (relating to work zone traffic control) and an approved traffic control plan, consistent with section 901 of Publication 408.

(B) If steel plates are used, the permittee shall extend the plates a minimum of 18 inches from each edge of the opening and shall secure the plates to prevent the plates from sliding out of place when subjected to traffic loads.

(C) The permittee shall perform backfilling in accordance with 67 Pa. Code § 459.8(g) (relating to special conditions--subsurface operations). Flowable fill material, if requested by the owner and authorized by the district office, may be used to backfill highway openings.

(D) [In the event] If the permittee fails to [refill the ditch or trench] cover, backfill or protect the opening or to proceed [to] until completion of the work [upon notice from the Department to do so], the Department may perform the [necessary and required] work upon written notice to the permittee, if practicable, and the permittee shall [be reimbursed] reimburse the Department for the costs [by the permittee] within 30 days after receipt of the Department's invoice.

(iv) If the permittee, after making an opening in the surface to place or repair [a drainage facility] an access or structure, or for [any other] another purpose, fails to restore [any portion of] the right-of-way to conform with Department [specifications upon notice from the Department to do so,] requirements and standards or a permit condition, the Department [may perform the work and the permittee shall reimburse the Department for the costs] may perform the work or restore the right-of-way upon written notice to the

permittee, if practicable, and the permittee shall reimburse the Department for the costs within 30 days after receipt of the Department's invoice.

(v) Unless temporarily exempted by the Department, in writing, the permittee shall prohibit the public from using an access or structure until the permitted work is completed in accordance with this chapter, the permit, approved plans, and requirements and standards of the Department.

(vi) If construction or restoration work will be performed in the improved area, the permittee shall identify to the Department both the permittee's contractor and its inspector-in-charge who shall be assigned to monitor the work. The permittee's inspector-in-charge, as well as the permittee, is responsible for ensuring work is performed in compliance with this chapter, the permit, approved plans, and requirements and standards of the Department.

(vii) The permittee shall notify the district office at least five full workdays prior to the start of work when the permit identifies that the permitted work will be inspected on a more than spot inspection basis.

(viii) Unless the permittee or property owner requests an administrative hearing under 2 Pa. C.S. §§ 501—508 (relating to practice and procedure of Commonwealth agencies), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) and 67 Pa. Code, Chapter 491 (relating to administrative practice and procedure) within 30 days of the mailing date of an invoice issued for costs incurred by the Department in taking an action under this chapter, the invoice amount will be considered settled, assessed and finally determined against the permittee or property owner and shall, unless

paid in full, constitute a first lien on the real and personal property of the permittee or owner of the property on which the access or structure is located. The lien shall be satisfied from the proceeds of sale of the property before any other lien, claim, mortgage or interest. The Department may transmit a certified copy of the lien to the prothonotary of the county where the access or structure is located, to be entered of record, upon which record it will be lawful for writs of scire facias to issue and be prosecuted to judgment and execution. The Department may also immediately revoke and annul the permit, and take recourse against security provided to the Department under this chapter.

* * * * *

(6) *Altering drainage prohibited.* Unless specifically authorized by the permit, the permittee [shall] may not:

(i) [alter] Alter the existing drainage pattern or the existing flow rate or flow velocity of drainage water[; or].

(ii) [direct] Direct additional drainage of surface water toward, onto, [or] into or otherwise affect the highway right-of-way or highway facilities [in a way which would have a detrimental effect on the highway or highway facilities].

* * * * *

(8) *Equipment damaging highway.* [Equipment damaging the highway shall conform] The highway shall be protected in accordance with the following [conditions]:

* * * * *

(ii) [In the event that other than rubber equipped machinery is authorized for use, the] If other than rubber equipped machinery or equipment is used, the permittee shall protect

the pavement and shoulders [shall be protected] from equipment damage by the use of matting[, wood,] or other suitable protective material [having a minimum thickness of four inches.], unless the permittee submits a written request for a waiver from the use of protective material, wherein the permittee acknowledges its obligation and commitment to repair or reconstruct the pavement and shoulders, if damaged, and to restore the pavement and shoulders to their former condition.

(iii) If the equipment damages the pavement or shoulders, the permittee shall restore the [pavement or shoulders to their] damaged pavement or shoulders, or both, to their former condition, [at the expense of the permittee] in a manner authorized by the district office.

(9) [*Traffic protection and maintenance.*] Work zone traffic control. [Maintenance and protection of traffic shall be carried out] The permittee shall carry out work zone traffic control in accordance with the requirements of [the Department, as set forth in Publication 43 and Publication 90.

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

(ii) Traffic control devices shall be provided in accordance with Publication 43 and Publication 90. Any open trench or hole shall be adequately barricaded to prevent

possible injury to pedestrians and the motoring public. All traffic control devices shall be of an approved type. Signs shall conform to the requirements of Publication 68.

(iii) Designated employees shall be assigned by the permittee to direct one lane traffic. Flaggers shall be provided as specified in the permit and in accordance with Publication 43 and Publication 90.] 75 Pa. C.S. Section 6123 (relating to erection of traffic-control devices while working), the approved traffic control plan, and the applicable provisions of Chapter 203, consistent with section 901 of Publication 408.

(10) *Restoration.* [All disturbed] The permittee shall promptly restore disturbed portions of the highway, including slopes [and all], highway appurtenances and structures [such as guard rail or drain 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] and in accordance with current requirements and standards of the Department. [This includes providing appropriate end] At the end of the workday, the permittee shall replace disturbed traffic control devices and guiderail systems. The permittee shall install crashworthy end treatments on [guard rail] guiderail systems [where] if a portion of existing [guard rail] guiderail [is being broken by the driveway] was removed.

(11) [Approval] Acknowledgment by inspector. [Approval] Acknowledgment by the Department's inspector [of all or part of any] that the permitted work has been completed, [shall] does not constitute [acknowledgment that] approval or acceptance of the work or agreement that the work was performed in accordance with the permit[, nor shall such approval of]. Acknowledgment of completion by the inspector will not act as a release of the

permittee or waiver by the Department of its right to seek performance or restitution [by] from the permittee.

(12) *Maintenance.* [All driveways] The property owner shall continuously maintain, to the pavement edge, driveways, local roads, structures and adjacent areas [within the highway right-of-way shall be continuously maintained by the property owner] utilized by vehicles gaining access to or from the highway, so as to conform to this chapter and the permit and so as not to interfere or be inconsistent with the design, construction, maintenance[,] and drainage of the highway, or the safe and convenient passage of traffic upon the highway. The owner may not move or authorize another person to move snow, trash, waste or other material from the property onto the pavement or shoulder or other area of the highway.

(13) *Indemnification.* Indemnification of the Department for property and personal injury will be governed as follows:

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

requested, defend the Commonwealth from liability, loss, injury or damage to persons or property which the Commonwealth, its officers, agents and employees individually may suffer as a result of claims, demands, costs or judgments of any type arising against it or them as a result of the granting of the permit to the permittee, including claims, demands, costs or judgments of any type, whether sounding in tort or otherwise, arising from any of the following:

(A) As a result of activities of the permittee, its agents, employees or others at the permit site or any work or other actions taken by these persons under or in violation of the permit.

(B) As a result of a failure of these persons to conform to all pertinent statutes, ordinances, regulations or other requirements of any governmental authority in connection with the permit.

(C) As a result of right-of-way acquisition and other property damages; or claims arising from the planning, design, utility relocation or construction of the work allowed by the permit or a portion thereof

(ii) This indemnification may not apply to a portion of a highway, roadway or other facility designed, constructed or reconstructed by the Commonwealth in connection with the work allowed by the permit, nor to work allowed by the permit which is negligently performed by the Commonwealth on behalf of the permittee at the permittee's expense. Right-of-way acquisition and other property damage, as used in this subsection, includes consequential damages; damages arising from de facto or inverse takings; special damages for displacement; damages for the preemption, destruction, alteration, blocking

or diversion of facilities; interference with access; and other damages that may be claimed or awarded within the purview of the Eminent Domain Code (26 P.S. Sections 1-101--1-903), the State Highway Law (36 P.S. Sections 670-101--670-1102) and eminent domain case law of the Commonwealth.

(iii) The permittee will be responsible to further indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits and actions brought by a party against the Commonwealth as a result of the permittee's failure to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12101--12213), as implemented by 28 C.F.R. Part 35 and related Department requirements and standards.

(iv) The permittee or its contractor shall add the Commonwealth as an additional insured to the permittee's insurance policy or the insurance policy of the permittee's contractor to secure the permittee's indemnification of the Department for property damage and personal injury under this paragraph. The amount of insurance for other than minimum use driveways shall be at least \$250,000 per person and at least \$1,000,000 per occurrence, or other statutory limitations on Commonwealth damages as the General Assembly may establish. Insurance for minimum use driveways shall be in an amount acceptable to the Department. The policy shall be of a duration acceptable to the Department.

(v) Upon request, the permittee shall deliver to the district office certificates of insurance evidencing that the coverage required under subparagraph (ii) has been obtained.

(14) *Insurance.* [The permittee shall, when requested by the Department, submit to the district office a certificate or certificates of insurance for public liability and property damage, in form and amount satisfactory to the Department, to cover any loss that may be incurred for or on account of any matter, cause, or thing arising out of the permitted construction.] The permittee or its contractor shall obtain, prior to the start of permitted work, a policy of insurance issued by an insurer having a certificate of authority and a licensed agent authorized to transact the business of insurance in this Commonwealth. The policy of insurance shall be in accordance with the following:

(i) The permittee or its contractor shall obtain insurance for public liability and property damage, in form and duration acceptable to the Department to insure any loss that may be incurred by the Department, the permittee or property owner arising from the design, construction, reconstruction, repair, relocation or installation of the permitted access or structure. The amount of insurance for other than minimum use driveways shall be at least \$250,000 per person and at least \$1,000,000 per occurrence. Insurance for minimum use driveways shall be in an amount acceptable to the Department.

(ii) Upon request, the permittee shall deliver to the district office certificates of insurance or insurance policy endorsements, in a form acceptable to the Department, evidencing that the insurance coverage required under subparagraph (i) has been obtained.

(iii) The permittee's obligations to indemnify the Department and obtain insurance to secure indemnification under paragraph (13) and its obligations to restore the highway and obtain security relating to restoration under paragraph (15) are separate from the

obligation to obtain insurance for the purposes required under this paragraph. Obtaining insurance under this paragraph does not relieve the permittee of its obligations under paragraphs (13) and (15) of this section.

(15) *Damage to highway.* [Restoration of] Responsibility of the permittee for restoration of the highway [shall include] includes the following:

(i) If there is a failure of the highway, including a slope or [any] other appurtenance thereto, in the [immediate] area of the permitted work within [two] 2 years after the acknowledged completion of the permitted work and there is no similar failure of the highway beyond the [area adjacent to the] area of the permitted work, the permittee [shall have] has absolute responsibility to make [all] temporary and permanent restoration [including restoration of the adjacent area if it has also failed] of this area.

[(ii) If there is a failure of the highway, including slope or any other appurtenance thereto, in the area adjacent to the immediate area of the permitted work within two years after the completion of the permitted work and there is no similar failure of the highway in the area of the permitted work or beyond the area adjacent to the area of the permitted work, it shall be presumed that the work done by the permittee was the proximate cause of the failure and the permittee shall be responsible to make all temporary and permanent restoration unless the presumption is rebutted by clear and convincing evidence.

(iii) If there is a failure of the highway, including slope or any other appurtenance thereto, in the immediate area of the permitted work, which occurs more than 2 years after the completion of the permitted work, and there is no similar failure of the highway beyond the area adjacent to the area of the permitted work, it shall be presumed that the

work done by the permittee was the proximate cause of the failure and the permittee shall be responsible to make all temporary and permanent restoration, including any failure of the adjacent area if it has also failed, unless the presumption is rebutted by clear and convincing evidence.

(iv) If there is a failure of the highway, including slope or any other appurtenance thereto, in the area adjacent to the immediate area of the permitted work, which occurs more than 2 years after the completion of the permitted work, the permittee shall be responsible to make all temporary and permanent restoration if the permitted work was the proximate cause of the failure.

(v) If the permitted work is the proximate cause of damage to the highway, including slope or any other appurtenance thereto, beyond the adjacent area, the permittee shall be responsible for all remedial work and shall make all temporary and permanent restoration.

(vi) Where] (ii) If the permittee has the responsibility to restore the highway, including a slope or [any] other appurtenance thereto, under [subparagraphs (i)--(v), including instances where a presumption of responsibility has not been rebutted] subparagraph (i), the permittee [shall have] has the duty to restore the improved area in accordance with the permit. If the permittee fails to restore the improved area properly, the Department [will have] has the authority to do the work at the expense of the permittee. The permittee shall reimburse the Department for the costs within 30 days after receipt of the Department's invoice and thereafter, the Department will have the right of recourse to the security required under this chapter.

(iii) The obtaining of security or an agreement described in Section 441.5(f) (relating to issuance of permits, permit requiring agreement/security) to secure restoration costs does not relieve the permittee of the restoration obligations imposed by subparagraphs (i) and (ii), nor does it relieve the permittee of its obligations under paragraphs (13) and (14) of this section. The obtaining of security or an agreement will not act as a release of the permittee from liability under principles of tort law with respect to a failure of the highway in the permitted area occurring after the expiration of the security or agreement.

(16) Future additional driveways. Future additional driveways shall [consist of] be governed by the following:

(i) If the Department anticipates that a property may be subdivided and that [such] the subdivision [will] may result in an unacceptable number or arrangement of driveways, or both, in which case the Department may require the property owner to enter into an access covenant (Form [CC-14] M-946) prior to the issuance of a permit.

(ii) The access covenant will [restrict access to the approved locations] prohibit the construction of any future access to the State highway to the property served by the access shown on the plans accompanying the permit application, regardless of whether [the land] that property is [later] subdivided or conveyed to other persons[, or both] at a later date.

* * * * *

(iv) The applicant or the Department shall determine whether an access, structure or work authorized under the permit may interfere with or result in consequential damage to another property owner's existing access or structure, in which case the applicant, at the expense of the applicant, shall submit a release executed by each affected property owner

in favor of the Department and in a form acceptable to the Department. If the applicant demonstrates that a release cannot be reasonably obtained from each affected property owner, and includes proof of written notice to each affected property owner of the submission of the application to the Department and of the right to appeal under Section 441.3(v) (relating to permit application procedure, right of appeal), the Department may agree to accept an indemnification agreement in favor of the Department and in a form acceptable to the Department, if there is no operationally sound alternative available to the applicant. The Department may require the applicant to provide additional security in a form and amount acceptable to the Department.

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

Prohibited uses of the highway. The permittee shall proceed with permitted work consistent with the following:

* * * * *

(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 or within the clear line of vision of entering or exiting vehicles 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.] to preclude the servicing of vehicles within the right-of-way.

(iii) Drainage detention facilities and retention facilities may not be placed within the right-of-way.

- (iv) Septic systems and their appurtenances may not be placed within the right-of-way.
- (v) Hazardous material storage containers may not be placed within the right-of-way.
- (vi) The top of any pipe carrying other than storm water drainage shall be installed at least 3 feet beneath the surface within the right-of-way unless a lesser depth is authorized by a published Department standard or regulation. A permit may not be issued for a pipe to be installed aboveground within the right-of-way.

§ 441.7. General [driveway] access requirements.

* * * * *

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

* * * * *

(3) Access to a property which abuts two or more intersecting [streets or] highways or local roads may be restricted to only that [roadway] highway or local road which can more safely and efficiently accommodate [its] traffic.

* * * * *

(d) *Local roads.* [An access 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] The applicant or the Department shall determine whether the access qualifies as a local road under this chapter. A local road shall be designed consistent with the Department's current standards [governing the design of local roads] identified in Publication

70M. [All other requirements of this chapter shall be complied with before the local road will be allowed access onto a State highway.]

(e) *Number of [driveways] access locations.* The [number and location of entrances which may be granted] Department's decision on the number of access locations that will be permitted to serve a property will be based on [usage, interior and exterior traffic patterns, and current design policy of the Department] preserving the flow of traffic and highway safety, considering the amount and type of traffic the access is expected to serve, the location, type and density of the development, the type and character of roadway which it accesses, interior traffic patterns, frontage and other criteria consistent with the AASHTO publication entitled "A Policy on Geometric Design of Highways and Streets".

(1) [Normally, only] Only one [driveway] access will be permitted for a [residential] property [and not more than two driveways will be permitted for a nonresidential property] unless the applicant demonstrates that additional access for the property is necessary to accommodate traffic and that highway safety and traffic flow will not be adversely affected by the additional access.

(2) [If the property frontage exceeds 600 feet, the permit may authorize an additional driveway.] Access may be restricted to right turn only ingress and egress or to another highway or local road that can more safely and efficiently accommodate traffic.

(3) [Regardless of frontage, a development may be restricted to a single entrance/exit driveway,] The Department may require an access to be served by an internal collector road separated from the traveled way.

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

* * * * *

[(3) Where the highway is curbed, driveway approaches shall be installed 1 ½ inches above the adjacent highway or gutter grade to maintain proper drainage. See Figure 5.]

§ 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 and other nearby highways. This chapter separates driveways into four general 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] and references to typical figures follows:

[(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 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 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 vehicles per day, which often requires traffic signalization, such as:

(A) large shopping centers; or

(B) multi-building apartment or office complexes.]

(i) Minimum use driveway, see Figure 9-1. An access having an ADT of not more than 50.

(ii) Low volume driveway, see Figure 9-2. An access having an ADT of more than 50 but less than 1,500.

(iii) Medium volume driveway, see Figure 9-3. An access having an ADT of at least 1,500 but less than 3,000.

(iv) High volume driveway, see Figure 9-4. An access having an ADT of 3,000 or more.

(2) The applicant shall use the design features described in this section and illustrated in the [attendant] figures at the end of this section and Section 441.9 (relating to typical access layout figures) [are to be used by the applicant in designing] to design the [driveway] access plans which accompany the application. [Dimensions shall be selected] The applicant shall

select dimensions from the range of values [shown on the appropriate figure, unless site conditions warrant a deviation] provided in this chapter. The Department may require design details which [are more stringent than] differ from those specified in this chapter [to insure the safe and efficient operation of any proposed driveway] to provide acceptable operation and safety, consistent with site development. Design details which differ from those specified in this chapter shall be consistent with the AASHTO publication entitled "A Policy on Geometric Design of Highways and Streets," current edition, and the Department's Design Manual, Part 2.

(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.] A change to the alignment, grade or cross section of a State highway, resulting from construction of an access, shall be made consistent with Design Manual, Part 2.

(b) *Angle of access [driveway] approach.* Angle of access [driveway approach] approaches shall include the following:

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

(2) When two [access] driveways are constructed on the same property frontage and used for one-way operation, each of these driveways may be placed at an angle less than [a right angle] 90 degrees, 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] a driveway may be 30 degrees[, as shown in Figure 12].

(c) Driveways adjacent to intersections. Driveways serving properties located adjacent to a highway intersection shall be subject to the following:

(1) There shall be a minimum ten foot tangent distance between the end of the intersecting highway radius and the beginning radius of [the first] a permitted driveway.

(2) The distance from the edge of pavement of the intersecting highway to the beginning radius of [the first] a permitted driveway shall be a minimum of [20 feet on curbed highways and] 30 feet [on uncurbed highways].

[(3) Paragraphs (1) and (2) of this subsection may be waived only if the intersecting highway radius extends along the property frontage to the extent that compliance is physically impossible.]

(d) *Property line clearance.*

(1) Except for joint-use driveways, no portion of [any] an access or structure shall be located [outside] in front of the property [frontage boundary line] of another person unless the applicant, at the expense of the applicant, submits a release executed by each affected property owner, in favor of the Department and in a form acceptable to the Department. Releases shall be notarized and recorded, by and at the expense of the applicant, in the county office of the Recorder of Deeds.

(2) Except for joint-use driveways, no portion of an access or structure shall be located on the property of another person.

(e) [Multiple] Adjacent driveways. [Multiple driveways serving the same property must] Adjacent driveways shall be separated by a minimum distance of [15 feet measured along the right-of-way line and] 20 feet [measured along the shoulder, ditch line, or curb] between the near

end of each driveway radius. When the distance between [multiple] adjacent driveways is 50 feet or less [measured along the shoulder or ditch line] between the near end of each driveway radius, the permit may require this area [between shall] to be clearly defined by [permanent curbing] curb or other approved structures, in accordance with subsection (g). [This curb shall be placed in line with existing curb or two 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] buildings and structures 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].

* * * * *

(3) [Applications for driveways providing access to drive-in-service developments shall, when requested, include information relative to the amount of storage provided between the service facility and the right-of-way, the number of service operations anticipated during peak periods, and the hours and days of operation.

(4) The area [between the right-of-way line adjacent to and] on both sides of [a driveway shall be used as a clear zone to provide a physical barrier between the traveled way and activity on private property. This area] an access shall remain free of [any] vehicles, structures, foliage and other obstructions which may interfere with a clear line of vision for entering or exiting vehicles, in accordance with subsection (h).

(4) Unless determined otherwise by a queuing analysis acceptable to the Department, the distance from the edge of roadway to internal access for parking areas and internal roads shall be at least 75 feet for medium volume driveways and at least 150 feet for high volume driveways. To prevent conflicting traffic movements, a raised median or curb may be required by the Department.

(g) [Curbing] Curb and other approved structures. Requirements for [curbing] curb and other approved structures shall conform with the following:

(1) The [permit] Department may require the installation of [curbing wherever it is required] curb or other approved structures to control access or drainage, or both. [All curbing must be permanent curbing, as defined in Section 441.1 of this title (relating to definitions).]

(2) [Where] If property abutting the right-of-way line could be used as a parking area, the [permit] Department may require [curbing, permanent guardrail, or fencing] curb or other approved structures to be [constructed along the right-of-way line in order] placed along the property frontage to prohibit vehicle encroachment upon the [sidewalk or shoulder area] right-of-way.

(3) If[, in the opinion of] the Department[, there is a high probability] anticipates that vehicles would otherwise utilize a portion of the property frontage, other than the [approved] driveway, to gain access to the property, the [permit] Department may require [curbing or other physical barriers] curb or other approved structures to be constructed.

(4) [When curb exists adjacent to the proposed driveway, the line and grade of the existing curb shall be matched, unless otherwise authorized by the permit.] The prevailing curb line shall be continued along the property frontage if curb is being constructed or

replaced. If curb is being constructed and there is no prevailing curb line, curb shall be placed consistent with Design Manual, Part 2.

(5) Curb shall comply with requirements and standards of the Department, including Roadway Construction Standards RC-64M, RC-65M, RC-66M and RC-67M.

(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:

(Editor's note — Tables 1 through 6 below are to be deleted)

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

<i>Posted Safe Sight Speed (mph)</i>	<i>Safe Sight Distance—Left¹ (feet)</i>	<i>Safe Sight Distance—Right¹ (feet)</i>
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 (mph)</i>	<i>Safe Sight Distance—Left¹ (feet)</i>	<i>Safe Sight Distance—Right¹ (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 (mph)</i>	<i>Distance—Left¹ (feet)</i>	<i>Safe Sight Distance—Right² (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 (mph)</i>	<i>Distance—Left¹ (feet)</i>	<i>Safe Sight Distance—Right² (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 (mph)</i>	<i>Safe Sight Distance in Feet¹</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 Feet ¹</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.]

(1) Formula sight distance. The formula sight distance for driveways shall be determined in accordance with the following:

(i) The measured sight distances in each direction along the highway shall exceed the formula sight distance computed from the following:

$$FSD = 1.47 Vt + \frac{V^2}{30 \left[\frac{a}{32.2} \pm G \right]}$$

Note to formula:

— FSD = Formula sight distance (whole feet);

— 1.47 = Conversion factor (m.p.h. to f.p.s.);

— V = Miles per hour, as measured by speed limit or safe-running speed, as determined by the Department;

— t = Brake reaction time, equal to 2.5 seconds.

— 30 = Factor to convert m.p.h. to feet, utilizing gravitational constant.

— a = Deceleration rate of 11.2 feet per second squared.

— 32.2 = Gravitational constant, in feet per second squared.

— G = Average grade of roadway where braking will occur, divided by 100.

(ii) Table 8-1 identifies formula sight distances for selected roadway speeds and average grades.

(iii) If trucks, longer combination vehicles, buses, special mobile equipment or similar specialized vehicles will frequently use the driveway, the Department may require sight

distances greater than the minimum values derived from the formula sight distance, considering number of lanes, medians and roadway geometry, consistent with Chapter 9 of the AASHTO publication entitled "A Policy on Geometric Design of Highways and Streets," current edition, and the Department's Design Manual, Part 2.

(iv) The owner should locate a driveway at a point which provides optimal sight distance. The Department may require sight distances greater than minimum values derived from the formula sight distance if the district office determines another location along the property frontage of the owner will better accommodate the amount and type of traffic that is expected to frequently use the driveway and considering the type, character and 85th percentile speed of the highway which is being accessed.

[(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.]

(2) Measured sight distance. The correct measurement of sight distance at a driveway is the responsibility of the applicant. The applicant shall record sight distance measurements on

Form M-950S, or an electronic format authorized by the Central Permit Office and consistent with Publication 282. Measurements are subject to verification by the Department.

(i) For the purpose of measuring sight distance, the driver's eye height shall be 3.50 feet above the proposed driveway surface and highway pavement surface. The vehicle's height shall be measured at 3.50 feet above the proposed driveway surface and highway pavement surface. The placement of vehicles measured at the driveway and on the roadway shall be consistent with the operation of the driveway and roadway, as illustrated on Form M-950S and consistent with Publication 282.

(ii) When measuring sight distance lengths, the applicant shall also consider impacts of legally parked vehicles and foliage which may not be present when the measurements are made. For each direction along the highway, the following lengths shall be the measured sight distances for that direction, as illustrated on Form M-950S:

(A) The maximum length of roadway along which a driver at a driveway location can continuously see another vehicle approaching on the roadway. Consistent with driver responsibilities contained in Sections 3112, 3114, 3323, 3344 and 3361 of the Vehicle Code (75 Pa. C.S.), the driver's eyes shall be measured 10 feet back from the traveled portion of the roadway.

(B) The maximum length of roadway along which a driver on the roadway can continuously see the rear of a vehicle which is located in the driver's travel lane and which is positioned to make a left turn into a driveway.

(C) The maximum length of roadway along which a driver of a vehicle intending to make a left turn into a driveway can continuously see a vehicle approaching from

the opposite direction. This sight distance length is measured from the location of the approaching vehicle to a point on the roadway where the left-turning vehicle crosses the path of the approaching vehicle.

[(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.]

(3) Inadequate sight distance remedies. If measured sight distances do not exceed the formula sight distances computed under this subsection, the Department will deny access to the highway. The applicant may, at its own expense, submit a new application which provides measured sight distances which exceed the formula sight distances computed under this subsection. The new application shall incorporate one or more of the following remedies:

- (i) Removal of physical obstructions from the drivers' line of vision.
- (ii) Prohibition of left turns out by exiting vehicles.
- (iii) Installation of a left turn in standby lane or other auxiliary lanes.
- (iv) Prohibition of left turns in by entering vehicles.
- (v) Alteration of the horizontal or vertical geometry of the roadway or driveway.

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

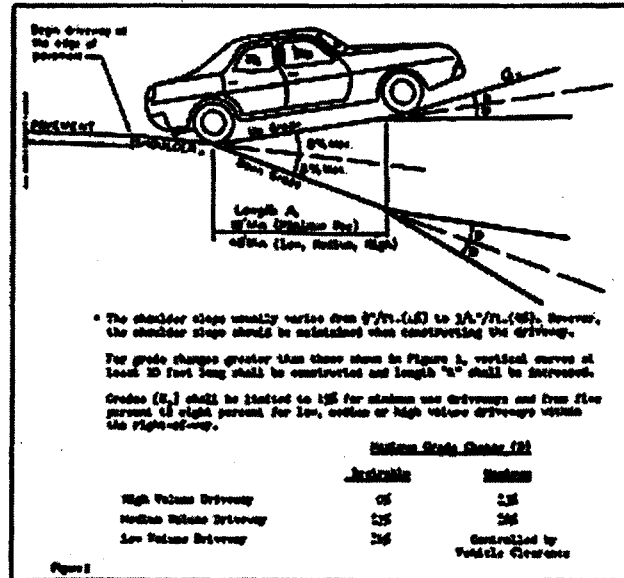
(1) [All driveways] Driveways, local roads, auxiliary lanes and structures shall be constructed so as not to impair highway drainage [within the right-of-way], alter the stability of the improved area, or [change] impair the drainage of adjacent areas.

(2) [Where] If a drainage ditch or swale exists, the permittee shall maintain the ditch or swale flow line across the access. The permittee may be required to install adequate pipe under the [driveway] access or structure, [in accordance with Form] consistent with Design Manual, Part 2 and Publication 408. Drainage pipe installed under [driveways] an access or structure shall be at least [15] 18 inches in diameter or have an equivalent capacity. Larger diameter pipe may be required to accommodate the predicted flow of drainage. The ends of drainage pipes within the improved area shall be fitted with end sections that match existing contours.

(3) The side slopes for driveway embankments [within the right-of-way shall not be steeper than ten to one. See Figure 6] shall be constructed in accordance with Figure 8-6.

(4) Grade requirements in uncurbed shoulders [within the right-of-way] shall conform to Figure [1] 8-1.

(Editor's note — Figure 1 is to be deleted)



(5) Grade requirements where curbs and sidewalks are present.

(i) The [driveway approaches] curb reveal shall be installed 1 ½ inches above the adjacent roadway or the gutter grade to maintain proper drainage. See Figure [5] 8-5.

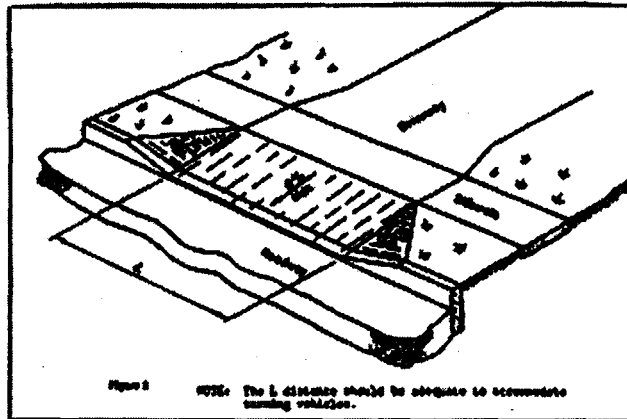
Depressed curb is preferable to the alternative of extending curb around the driveway radii in situations involving minimum use driveways, low volume driveways with an ADT below 500 or existing buildings which preclude other than a depressed curb design.

(ii) The difference between the cross slope of the roadway and the [upward] grade of the driveway approach shall not exceed [8.0%] 8%.

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

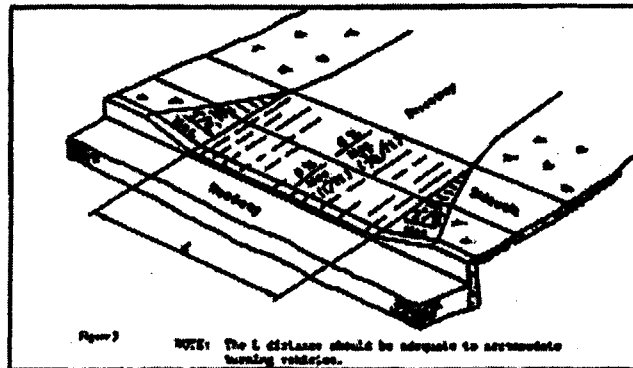
(A) [When] If the grass strip between the curb and the sidewalk is wide enough to maintain an [8.0%] 8% maximum driveway approach grade, construct the driveway as shown in Figure [2] 8-2.

(Editor's note — Figure 2 is to be deleted)



(B) If the driveway grade [would exceed 8.0%] exceeds 8% in the area between the curb and the sidewalk, depress the outer edge of the sidewalk and maintain a maximum sidewalk cross slope of [6.0%] 2%. This will enable the driveway [slope] grade to stay within [the 8.0% slope limit] 8%. See Figure [3] 8-3.

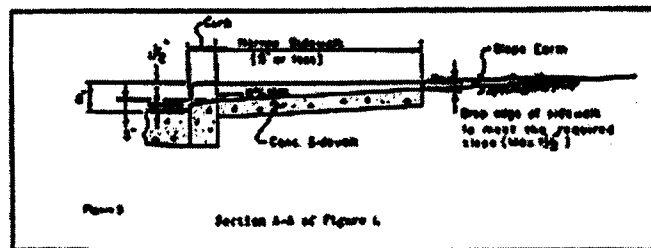
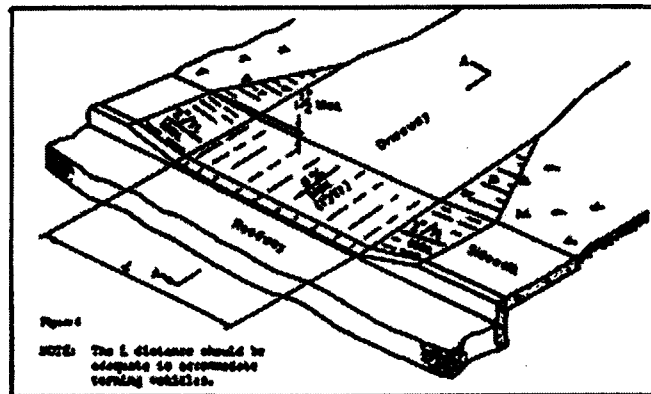
(Editor's note — Figure 3 is to be deleted)



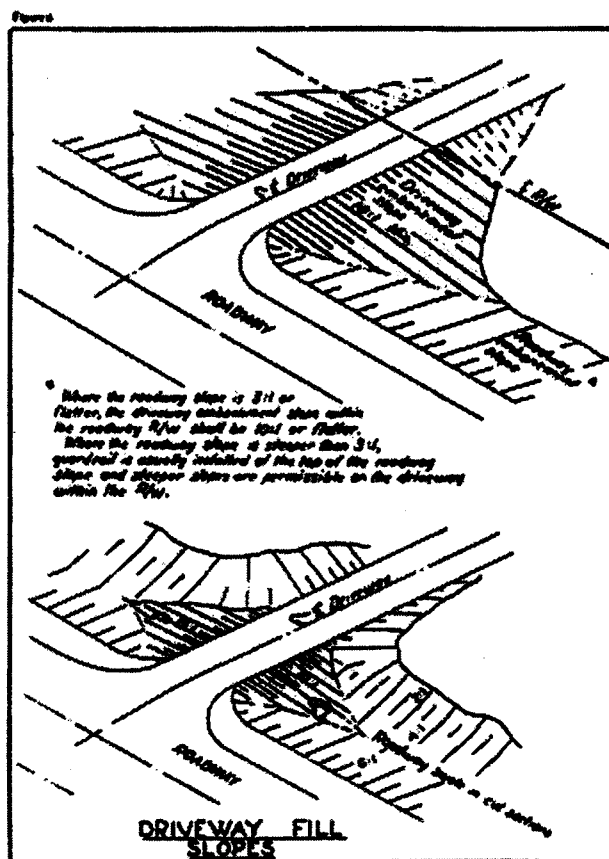
(C) If the sidewalk cross slope [would exceed 6.0%, as indicated in clause (B) of this subparagraph] exceeds 2%, depress the entire sidewalk. The amount of depression [shall] may not exceed 1 ½ inches at the inner edge of the sidewalk. The longitudinal [slope] grade of the sidewalk [shall] may not exceed [two inches per foot] (8%). See Figure [3] 8-3.

(iv) [When] If the sidewalk [is] directly [against] abuts the back of the curb and the sidewalk is at least [five] 5 feet wide, the curb shall be sloped as shown in Figure [5 of this subsection] 8-5. This will eliminate the need for depressing the back edge of the sidewalk. For sidewalks narrower than [five] 5 feet, the curb [will] shall be sloped and the back edge of the sidewalk [will] shall be depressed [(] to a maximum of 1 ½ inches)] to maintain [an 8.0%] a 2% maximum [grade] sidewalk cross slope on the driveway. The longitudinal grade of the sidewalk [shall] on the driveway may not exceed (8%). See Figure 8-4.

(Editor's note — Figures 4 & 5 are to be deleted)



(Editor's note — Figure 6 is to be deleted)



(j) *Auxiliary lanes.* Auxiliary [lanes shall consist of] lane requirements include the following:

* * * * *

(2) [*Left turn stand-by*] *Turn lanes.* The permit may require the installation of a left turn [stand-by] standby lane, a two-way left turn lane or a right turn lane to separate and protect [left] turning vehicles from through traffic if failure to do so would result in unacceptable traffic operations or an undue hazard [to] for the traveling public, as determined by a traffic study approved by the Department.

(3) [*Additional right-of-way for lanes.* Where the width of the highway right-of-way is insufficient to permit the construction of a needed auxiliary lane, the permittee shall provide any necessary additional right-of-way.

(4) *Cost.* When required, auxiliary] Construction. Auxiliary lanes shall be constructed, at no cost to the Department, [in accordance with the Roadway Construction Standards and Form 408] consistent with the Department's requirements and standards, including Design Manual, Part 2 and Publication 408.

[(5)] (4) *Lane in front of another property.* If an auxiliary lane must be located in front of property of another person, the applicant, at the expense of the applicant, shall [be required to secure the approval of the other person or indemnify the Commonwealth against any action which the other person may bring against the Commonwealth] submit a release executed by each affected property owner in favor of the Department and in a form acceptable to the Department. If the applicant demonstrates that a release cannot be reasonably obtained from each affected property owner, and includes proof of written notice to each affected property

owner of the submission of the application to the Department and of the right to appeal under Section 441.3(v) (relating to permit application procedure, right of appeal), the Department may agree to accept an indemnification agreement in favor of the Department and in a form acceptable to the Department, if there is no operationally sound alternative available to the applicant. The Department may require the applicant to provide additional security in a form and amount acceptable to the Department. The Department may also require documentation relative to the use of land as described in Section 441.3(n) (relating to impact on sensitive or unique property) and Section 441.3(p)(relating to impact on archeological and historic property), if applicable.

(5) Longitudinal joints. The applicant or the Department shall determine whether motorists may be misdirected by unaligned longitudinal pavement joints resulting from a pavement widening, in which case the Department may require a full pavement width overlay and new pavement markings.

(k) *Access [driveway] pavement.*

(1) [Access] Minimum use driveways shall be [appropriately surfaced with a stabilized material between the traveled way and the right-of-way line] constructed with selected material surfacing meeting the requirements of section 677 of Publication 408 unless a higher type material is specified by the permit. The applicant shall construct the access pavement to the pavement edge or, if the shoulder is paved, to the outside edge of the existing shoulder.

(2) Low, medium, and high volume driveways and local roads which provide access to paved highways shall be paved [within] from the pavement edge to at least 20 feet beyond the right-of-way and joints shall be sealed. [Materials used in the construction of driveways shall

meet the requirements of Form 408. The driveway pavement shall be at least four inches thick within the right-of-way.]

(3) Bituminous access pavements shall have the following materials placed from the pavement edge to at least 20 feet beyond the right-of-way:

(i) Subbase material meeting the requirements of section 350 of Publication 408 with a minimum depth of 6 inches.

(ii) A bituminous concrete base course meeting the requirements of section 305 or section 309 of Publication 408, with a minimum depth of 4 ½ inches.

(iii) A wearing course of ID-2 material meeting the requirements of section 420 of Publication 408 or superpave asphalt material meeting the requirements of section 409 of Publication 408, with a minimum depth of 1 ½ inches.

(4) Cement concrete may be placed within the right-of-way only as directed by the district office.

(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] an access [driveway] will not be permitted on a ramp or within 50 feet [of] from either the end of the ramp radius or the intersection of the edge of pavement of the ramp [or its] speed change lane [with] to the [edge of pavement of the intersecting roadway] beginning of the access radius. [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*] Medians. Median [openings] requirements shall consist of the following:

(1) The removal or alteration of a portion of median divisor along a divided highway to provide [access to and from traffic in both directions] left turn ingress or egress will not be permitted unless it is determined that the operating characteristics of the highway system will be improved by [such] the action.

(2) A left turn standby lane shall be installed to separate and protect left turning vehicles whenever a median opening or alteration is permitted.

(3) Requests for removal of a median divisor will not be granted without the approval of the [director] district executive or higher Departmental authority.

(4) The applicant, at the expense of the applicant, shall submit a release, in favor of the Department and in a form acceptable to the Department, executed by each abutting or adjacent property owner whose existing access pattern will be affected by the placement or alteration of a median. If the applicant demonstrates that a release cannot be reasonably obtained from each affected property owner, and includes proof of written notice to each affected property owner of the pendency of the application and of the right to appeal under Section 441.3(v) (relating to permit application procedure, right of appeal), the Department may agree to accept an indemnification agreement in favor of the Department and in a form acceptable to the Department, if there is no operationally sound alternative available to the applicant. The Department may require the applicant to provide additional security in a form and amount acceptable to the Department.

(5) The Department may require the placement or alteration of a median to improve the operating characteristics of the highway system.

(n) *Shoulder upgrading.* Shoulder upgrading may be required, as follows:

(1) [Where] If the existing shoulder on either side of a proposed low, medium, or high volume driveway or local road is not structurally or operationally adequate to allow its use by turning vehicles, the permittee shall upgrade the shoulder area for a minimum of 100 feet [on either side of the driveway] from the end of each access radius.

(2) If vehicles traveling on the roadway will utilize the shoulder on the opposite side of the roadway to bypass vehicles attempting to turn left into the access, and a left turn standby lane is not warranted, the Department may require the permittee to upgrade the existing shoulder for a sufficient distance to enable that use.

(3) If curb is required under subsection (g), the shoulder area between the near edge of the pavement and curb shall be constructed with a Type 6 paved shoulder in accordance with section 656 of Publication 408 or constructed to match the existing pavement or shoulder type, whichever is higher.

(4) [The] If the permit requires the installation of a paved shoulder to control drainage, the type of shoulder to be installed will be specified by the permit, in accordance with the volume and type of traffic expected to use the [driveway] access.

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

* * * * *

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

* * * * *

(iii) Traffic signals shall be designed, placed and operated in accordance with the traffic signal permit, consistent with Department Publication 148 (relating to traffic standards--signals) and Department Publication 149 (relating to traffic signal design).

(3) Islands. Islands shall be designed consistent with the AASHTO publication entitled "A Policy on Geometric Design of Highways and Streets". A raised island shall be at least 100 square feet and each side of the island shall be at least 15 feet in length, after the rounding of corners.

(p) Required right-of-way. The Department may require the applicant to acquire additional right-of-way necessary to accommodate work to be authorized under the permit, and may require the applicant to utilize property acquisition policies, practices and procedures of the Department. Right-of-way shall be acquired by the applicant in a manner acceptable to the Department and conveyed to the Department in fee simple or other acceptable interest. Where work authorized under the permit provides a significant public benefit, the Department may authorize and empower the municipality or other authority in the jurisdiction of the permit to acquire required right-of-way on behalf of the Department. Work authorized under the permit includes the construction of the following:

(1) Auxiliary lanes.

(2) Turning lanes.

(3) Drainage.

(4) Structures.

(5) Transportation facilities.

(6) Curb.

(7) Traffic signals.

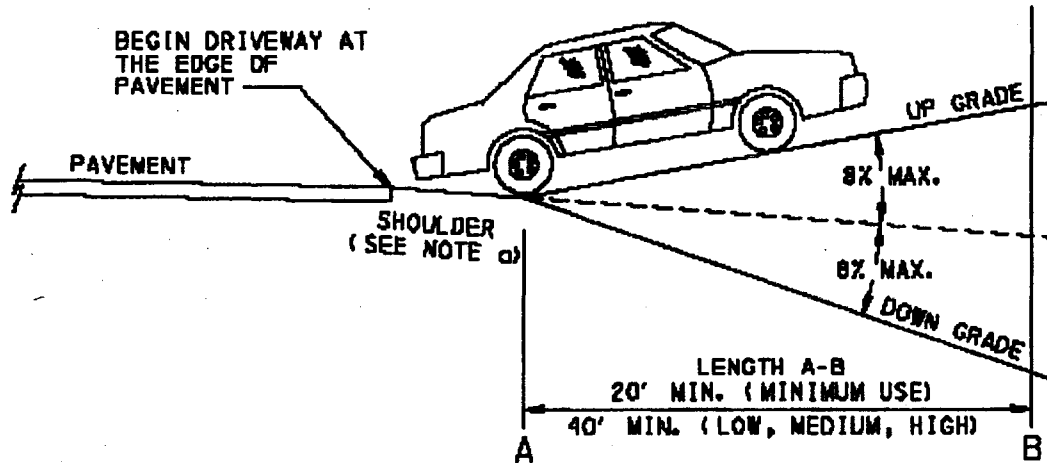
Table 8-1: Sample Formula Sight Distances

Average Grade (G) (Percent)

<u>Speed</u> <u>(V)</u> <u>(MPH)</u>		<u>0.0</u>	<u>+1.0</u>	<u>+2.0</u>	<u>+3.0</u>	<u>+4.0</u>	<u>+5.0</u>	<u>+6.0</u>	<u>+7.0</u>	<u>+8.0</u>	<u>+9.0</u>	<u>+10.0</u>
25		152	150	149	147	146	144	143	142	141	139	138
30		197	194	192	190	188	186	184	182	180	179	177
35		246	243	240	237	234	231	229	226	224	222	220
40		300	296	292	288	285	281	278	275	272	269	266
45		359	354	349	344	339	335	331	327	323	320	316
50		423	417	410	404	399	393	388	383	379	374	370
55		492	484	476	469	462	456	449	443	438	432	427

<u>Speed</u> <u>(V)</u> <u>(MPH)</u>			<u>-1.0</u>	<u>-2.0</u>	<u>-3.0</u>	<u>-4.0</u>	<u>-5.0</u>	<u>-6.0</u>	<u>-7.0</u>	<u>-8.0</u>	<u>-9.0</u>	<u>-10.0</u>
25			154	155	157	160	162	164	167	170	173	176
30			199	202	205	208	211	214	218	222	227	231
35			249	253	257	261	266	270	276	281	287	293
40			305	310	315	320	326	332	339	346	354	362
45			365	371	378	385	392	400	408	417	427	438
50			430	438	446	454	464	473	484	495	507	520
55			501	510	519	530	541	552	565	579	593	609

Figure 8-1

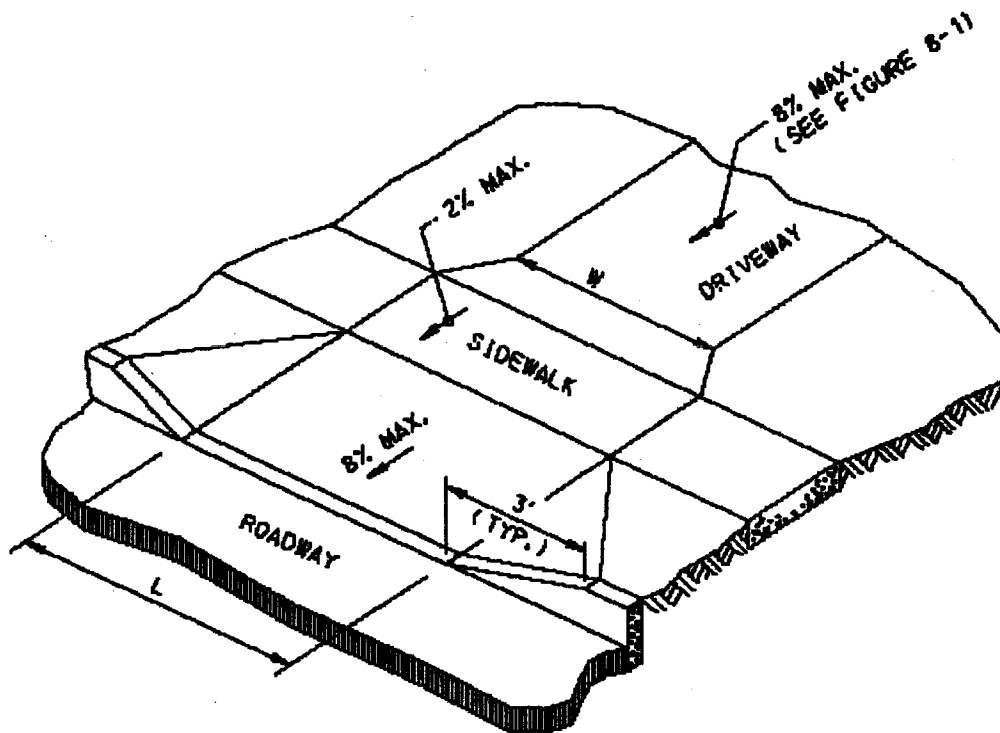


NOTES

- (a) The shoulder slope usually varies from 2% to 12.5%. The existing shoulder slope shall be maintained across the full shoulder width.
- (b) If an existing drainage course is disturbed, it shall be restored by the permittee in a manner authorized by the district office.
- (c) The access grade along length A-B shall be no more than 8%.
- (d) Use a 40-foot minimum vertical curve for a high volume driveway.

FIGURE 8-1

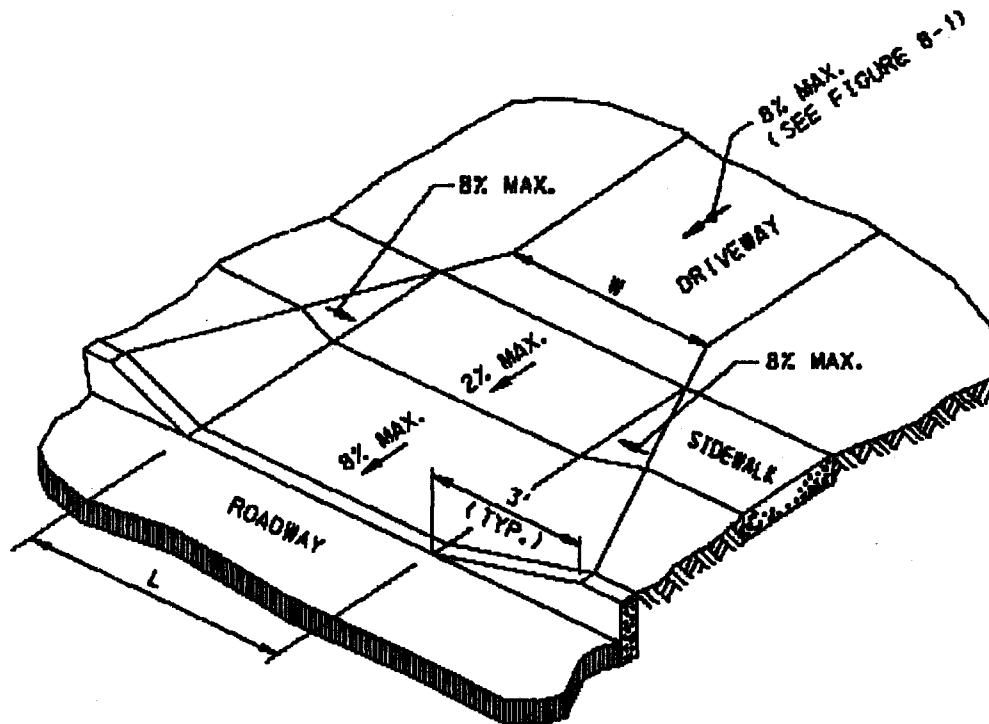
Figure 8-2



NOTE: The L distance shall be adequate to accommodate the largest vehicle expected to frequently use the driveway.

FIGURE 8-2

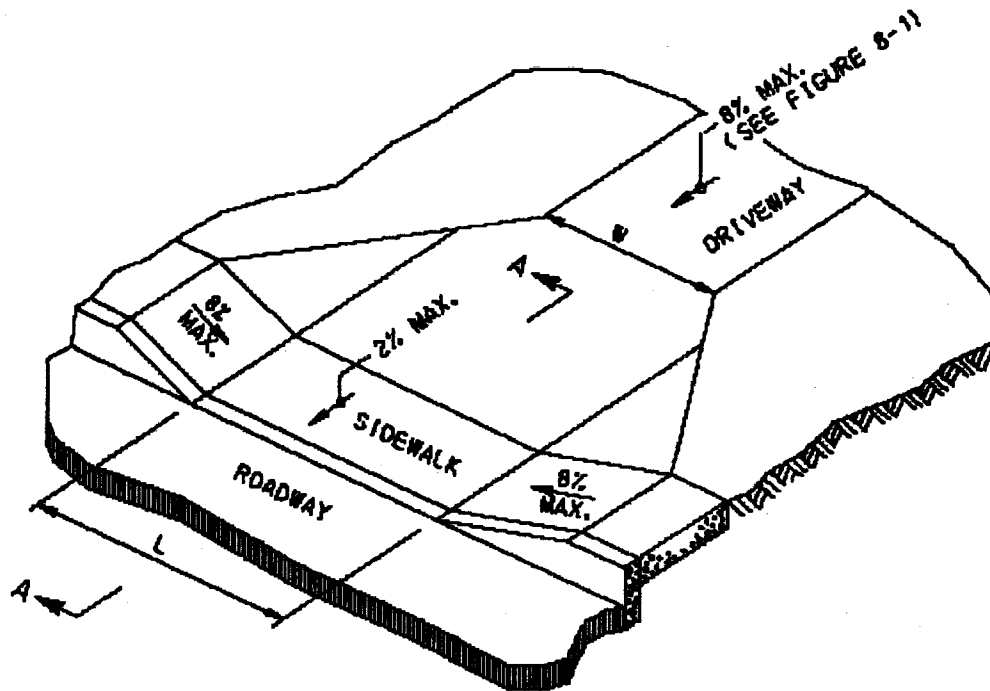
Figure 8-3



NOTE: The L distance shall be adequate to accommodate the largest vehicle expected to frequently use the driveway.

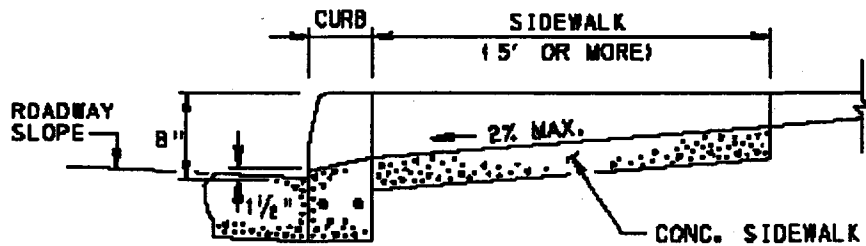
FIGURE 8-3

Figures 8-4 & 8-5



NOTE: The L distance shall be adequate to accommodate the largest vehicle expected to frequently use the driveway.

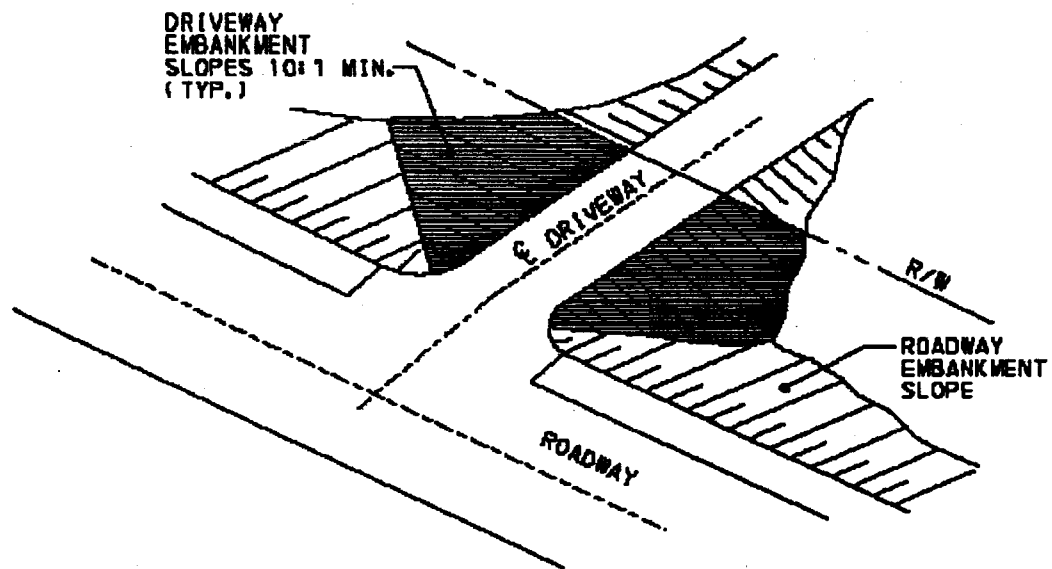
Figure 8-4



NOTE: Place curb consistent with RC-64M, Publication 72M.

FIGURE 8-5. (SECTION A-A OF FIGURE 8-4)

Figure 8-6



- (a) Where the roadway slope is 3:1 or flatter, the driveway embankment slopes shall be 10:1 or flatter.
- (b) Where the roadway slope is steeper than 3:1, the Department may authorize guiderail to be installed at the top of the roadway slope. If guiderail is present, steeper slopes may be authorized on the driveway embankment slopes.

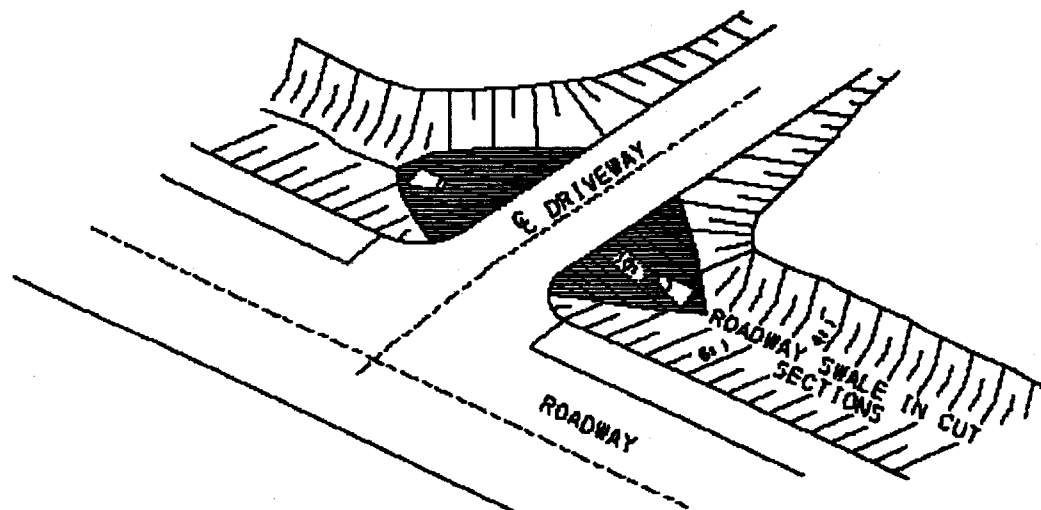


FIGURE 8-6. DRIVEWAY FILL SLOPES

§ 441.9. [Driveway] Typical access layout [illustrations] figures.

(a) General rule. Figures [7] 9-1 through [12] 9-5 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.] These typical figures are provided to assist applicants in developing the access plans which will accompany the application. Applicants shall use the appropriate typical figure as a guide to provide safe and efficient highway access.

(b) Additional requirements. The Department may also require the following:

(1) Additional access width to provide additional turning lanes for adequate traffic flow and highway safety.

(2) Restricted access dimension values, to accommodate only the largest vehicles or combinations which will frequently use the access.

(3) Additional access dimension values to accommodate vehicles which have a larger turning radius, including fire trucks and school buses, if these vehicles will frequently use the access.

(c) Sidewalks. Sidewalks shall be designed and constructed consistent with Design Manual, Part 2, and section 676 of Publication 408. The applicant shall continue the prevailing sidewalk line along the property frontage, if sidewalk is constructed or replaced.

(d) Curb ramps. If curb exists or is to be constructed, the applicant shall comply with the following when constructing or replacing curb ramps at pedestrian crosswalks and at sidewalks:

(i) Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12101--12213) as implemented by 28 C.F.R. Part 35.

(ii) Americans with Disabilities Act Accessibility Guidelines (ADAAG) as implemented by 36 C.F.R. Part 1191.

(iii) 23 U.S.C. Section 402(f) (relating to highway safety programs).

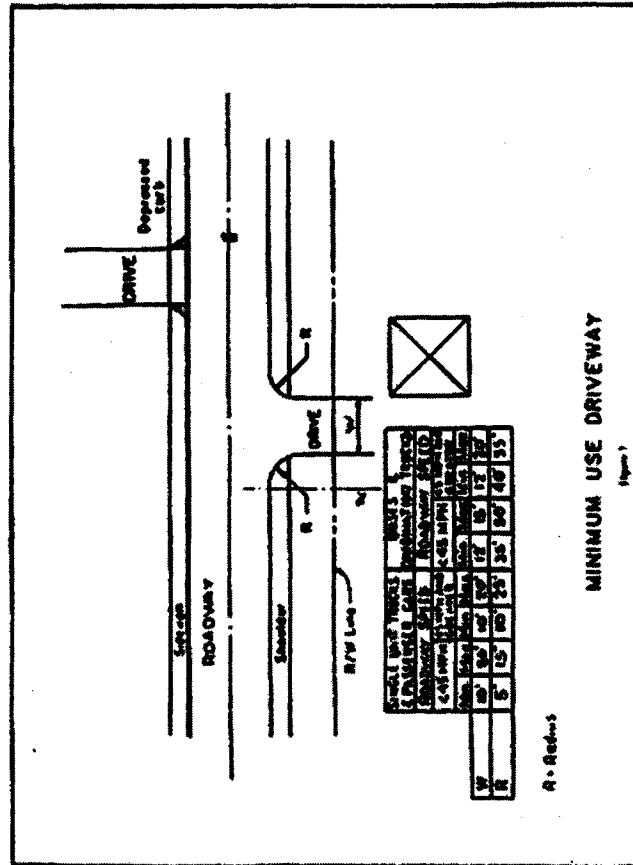
(iv) 53 P.S. Section 1898 (relating to purpose; authority to install).

(v) Design Manual, Part 2, where applicable.

(vi) Section 694 of Publication 408.

(vii) Roadway Construction Standard RC-67M for curb ramp construction or replacement at pedestrian crosswalks and at sidewalks, if curb exists or is to be constructed.

(Editor's note — Figure 7 is to be deleted)



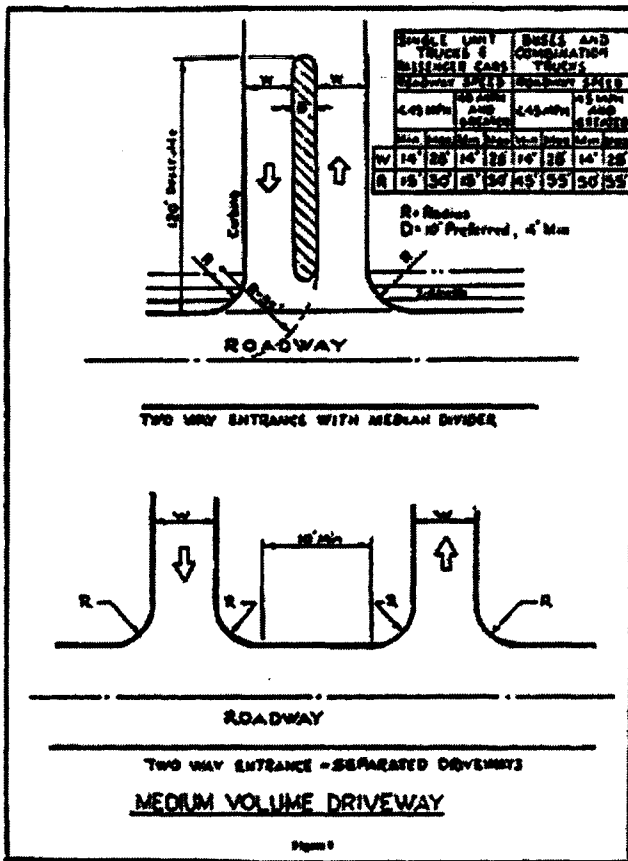
LOW VOLUME DRIVEWAY

SOME DRIVELANE TYPE

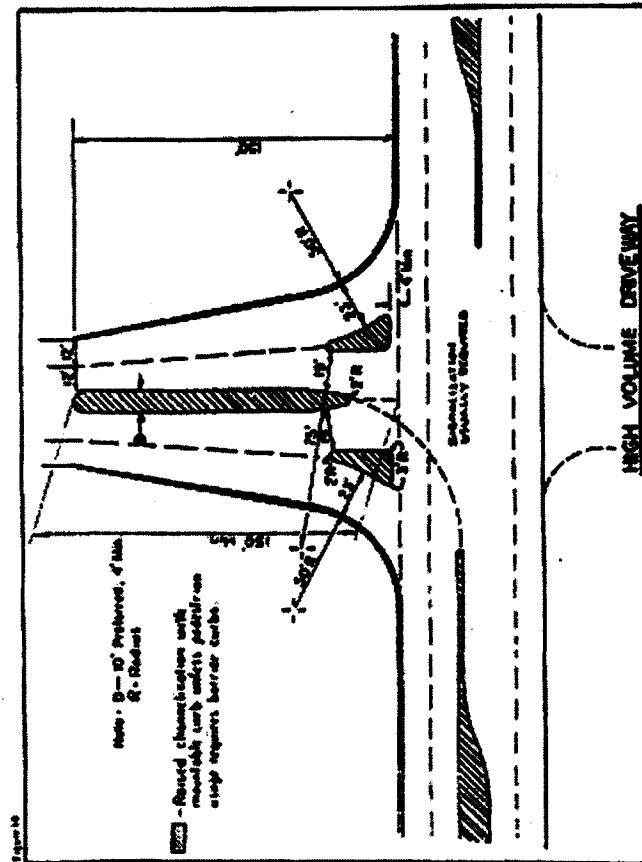
DRIVEWAY WITHOUT CURBS

DRIVEWAY TYPE	DRIVEWAY WIDTH		DRIVEWAY LENGTH		DRIVEWAY AREA		DRIVEWAY VOLUME		DRIVEWAY COST	
	MIN.	MAX.	MIN.	MAX.	MIN.	MAX.	MIN.	MAX.	MIN.	MAX.
1st Class	10'	15'	10'	15'	10'	15'	10'	15'	10'	15'
2nd Class	10'	15'	10'	15'	10'	15'	10'	15'	10'	15'
3rd Class	10'	15'	10'	15'	10'	15'	10'	15'	10'	15'
4th Class	10'	15'	10'	15'	10'	15'	10'	15'	10'	15'
5th Class	10'	15'	10'	15'	10'	15'	10'	15'	10'	15'
6th Class	10'	15'	10'	15'	10'	15'	10'	15'	10'	15'
7th Class	10'	15'	10'	15'	10'	15'	10'	15'	10'	15'
8th Class	10'	15'	10'	15'	10'	15'	10'	15'	10'	15'
9th Class	10'	15'	10'	15'	10'	15'	10'	15'	10'	15'
10th Class	10'	15'	10'	15'	10'	15'	10'	15'	10'	15'

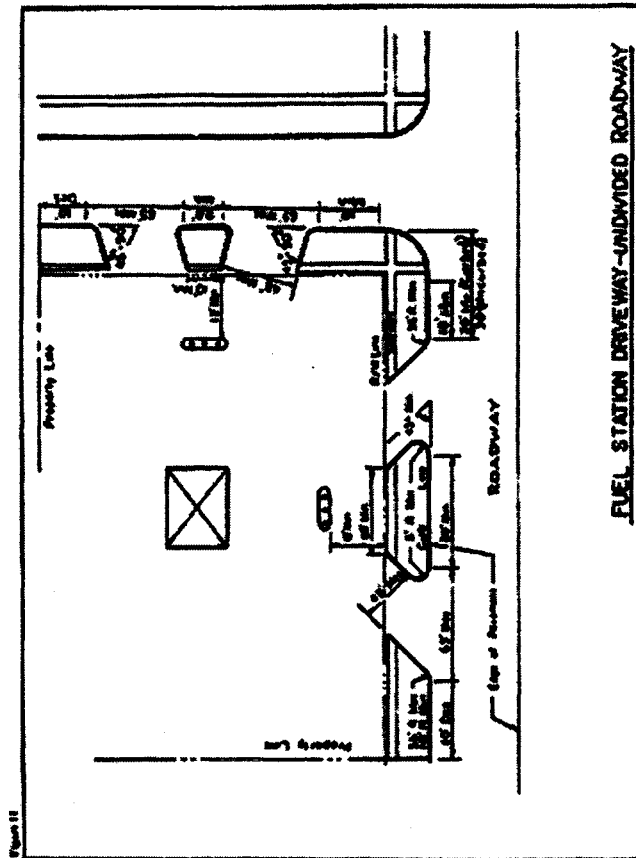
(Editor's note — Figure 9 is to be deleted)



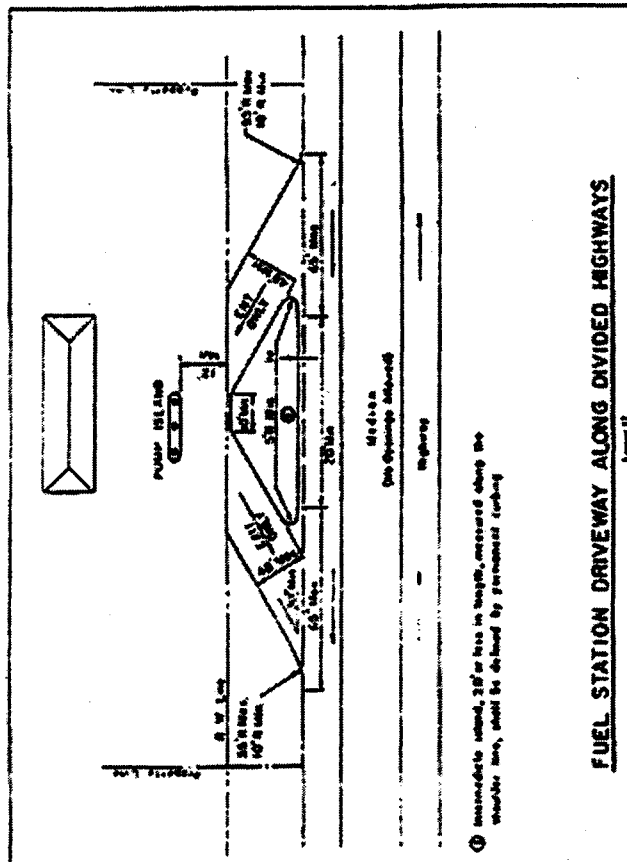
(Editor's note — Figure 10 is to be deleted)



(Editor's note — Figure 11 is to be deleted)



(Editor's note — Figure 12 is to be deleted)



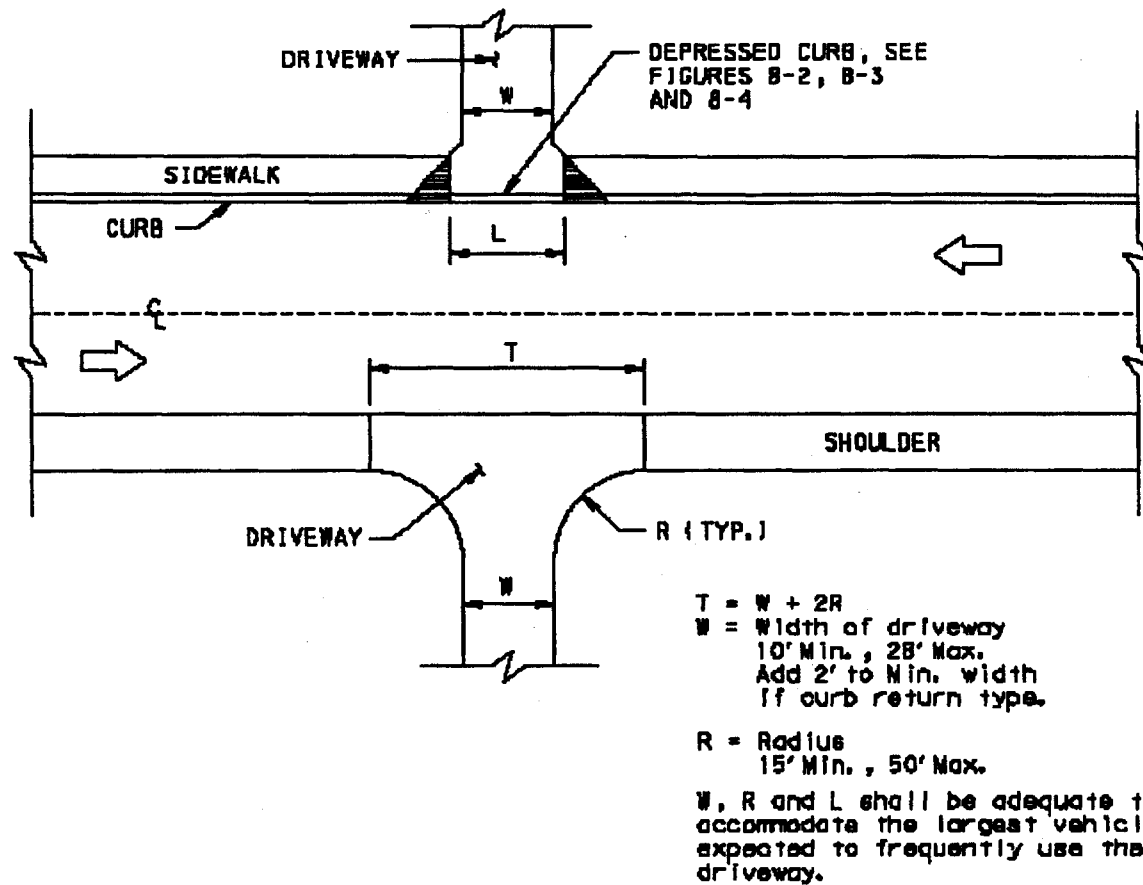


Figure 9-1

FIGURE 9-1. TYPICAL MINIMUM USE DRIVEWAY

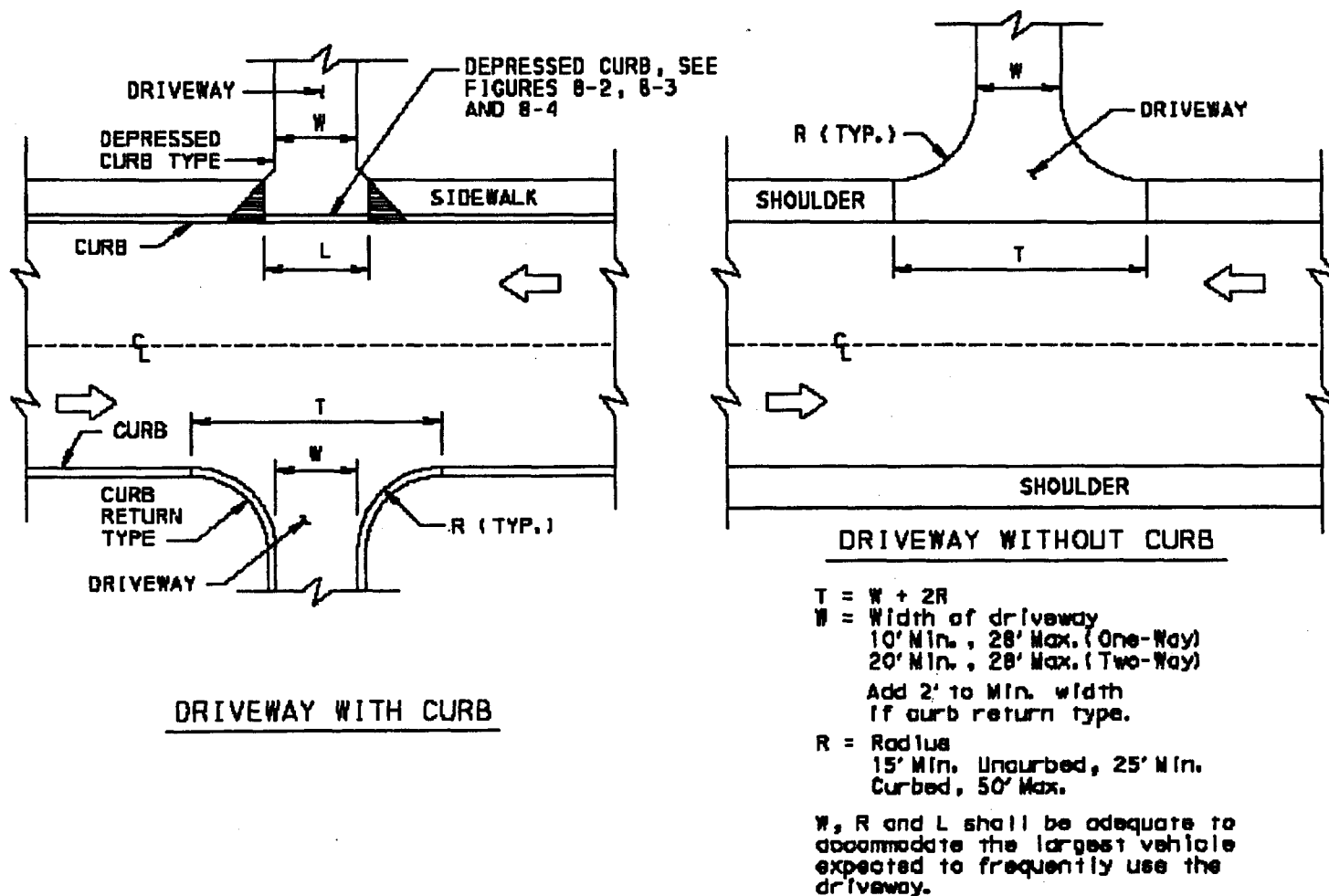
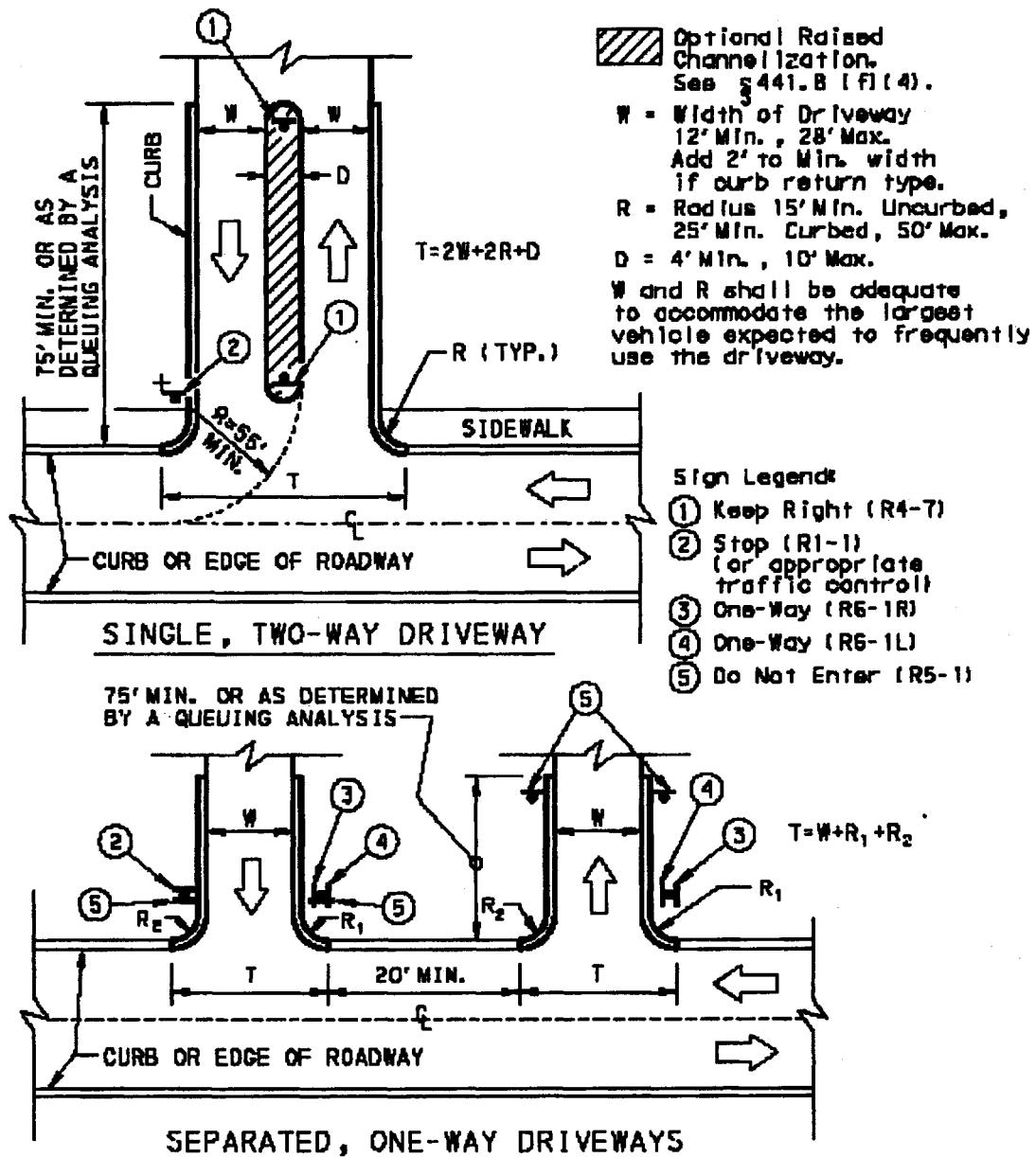


Figure 9-2

FIGURE 9-2. TYPICAL LOW VOLUME DRIVEWAY

Figure 9-3



- NOTES: 1. The need for auxiliary lanes and their required length shall be consistent with the criteria in Publication 282.
2. Provide signing consistent with Publications 235M, 68 (Chapter 211), and 111M. Provide pavement markings consistent with the MUTCD, Publication 68 (Chapter 211), and TC-8600.

FIGURE 9-3. TYPICAL MEDIUM VOLUME DRIVEWAY (SHOWN WITH CURB)

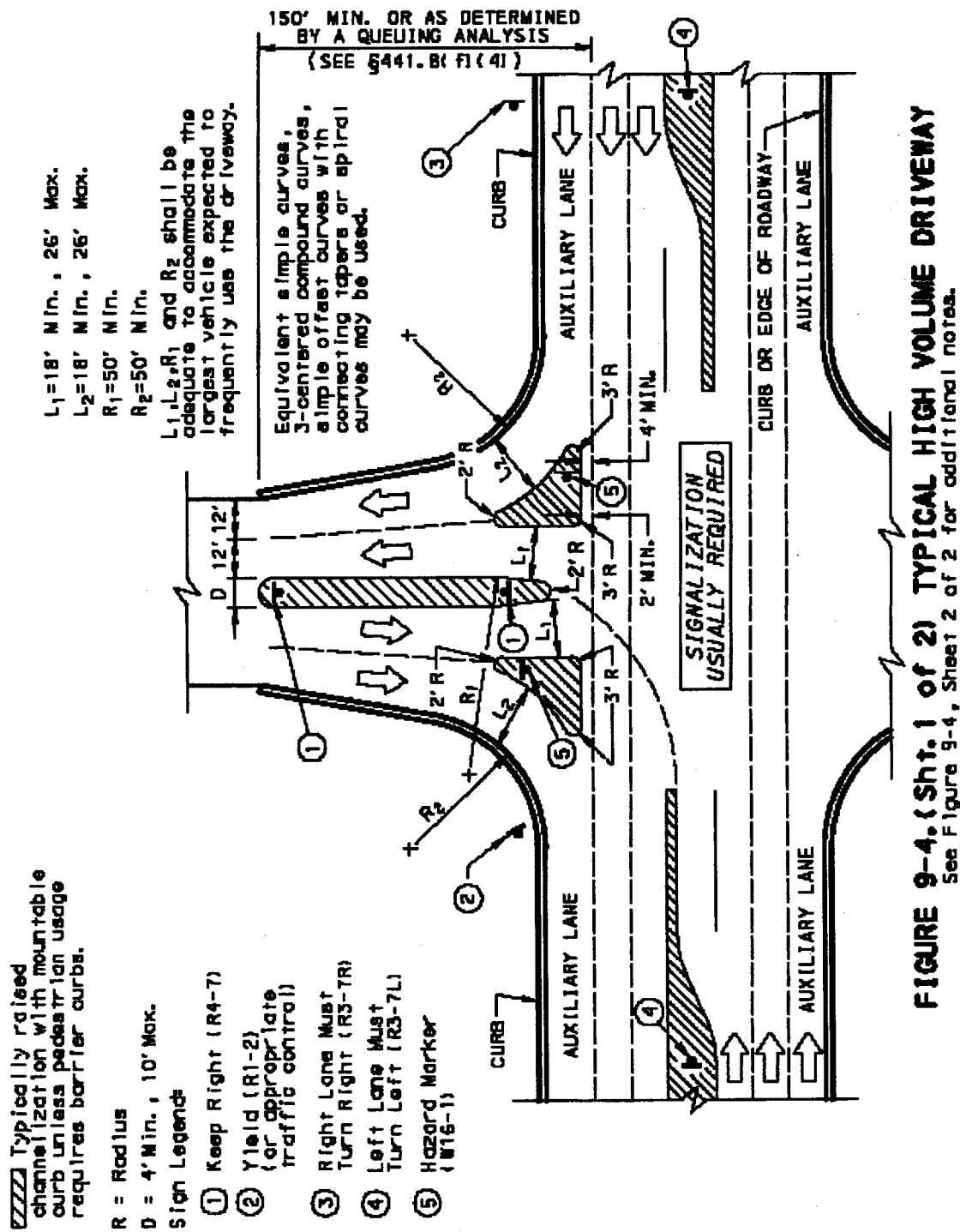


Figure 9-4

NOTES

1. This figure is merely one example of a high volume driveway. Use the design requirements of this chapter and the notes for this figure when designing a high volume driveway to satisfy site conditions and anticipated traffic.
2. Design consistent with Design Manual, Part 2 and the AASHTO publication entitled "A Policy on Geometric Design of Highways and Streets".
3. Number and configuration of lanes as determined by a capacity analysis.
4. The need for auxiliary lanes and their required length shall be consistent with the criteria in Publication 282.
5. Provide signing consistent with Publications 236M, 68 (Chapter 211), and 111M. Provide pavement markings consistent with the MUTCD, Publication 68 (Chapter 211), and TC- 8600.
6. Provide signalization, if warranted, consistent with Publication 201M (Chapter 201) and the MUTCD.
7. Traffic signal design and operation shall be consistent with Publications 149, 148, and 68 (Chapter 211), and the MUTCD.
8. Align driveway across from another driveway or roadway whenever possible.
9. The need for channelization and the required type shall be based on site conditions and anticipated traffic. Design islands consistent with §441.8(o)(3).
10. Provide Pedestrian accommodation consistent with §441.9(c) and (d).

FIGURE 9-4. (Sheet. 2 of 2)

§ 441.10. Penalties and enforcement.

(a) *General rule.* A violation of this chapter or the permit requirements [shall constitute] constitutes grounds for imposition of [any or all] one or more of the following penalties:

(1) Upon receipt of [oral or] written notice of a violation from [the authorized] a representative of the Department or a police officer whose jurisdiction includes the [permitted] work area, the permittee, property owner or person performing the work shall cease to perform further work in the [permitted area] right-of-way except to restore the area to a safe condition. Further work may not [commence] be performed in the [permitted area] right-of-way until the violation has been remedied or a permit or supplement has been obtained. [If the 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.]

* * * * *

(4) The Department may [block driveways or sever, remove, or block drainage facilities constructed without a permit or in violation of this chapter.] take the following actions:

(i) If a permitted or unpermitted access or structure is designed, constructed, altered, repaired, maintained or used in violation of a condition of the permit or this chapter, or constitutes a hazard to traffic or interferes with the proper use of the highway by the Department or the general public, the Department may perform or require the following remedies to be performed, at the full cost and expense of the permittee or property owner:

(A) Block or limit the access.

(B) Sever, remove, block or unblock the structure.

(C) Bring the access or structure into conformance with the provisions of this chapter, the permit and requirements and standards of the Department.

(ii) The Department will provide written notice to the permittee or property owner in advance of an action specified in subparagraph (i) unless impracticable or because the violation, hazard or use creates a dangerous highway condition or an immediate threat to the general public.

(iii) The Department will provide an invoice to the permittee or property owner detailing costs incurred or to be incurred by the Department in taking an action specified in subparagraph (i), for which assessed and determined amount the permittee or property owner shall be finally liable to the Department, to be paid in full within 30 days after the invoice mailing date unless the permittee or property owner requests an administrative hearing within 30 days after the invoice mailing date, under 2 Pa. C.S. Sections 501--508 (relating to practice and procedure of Commonwealth agencies), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) and Chapter 491 (relating to administrative practice and procedure).

* * * * *

(6) [The other action] Other actions as may be deemed necessary or proper after consultation with the Office of Chief Counsel.

(7) Other conditions which may be specified on a Departmental Citation, Form M-945C.

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

(1) The [Secretary] Department may revoke a permit whenever [he] it determines that [the driveway or] a structure or an access, its approaches, or their use is not being maintained, is in violation of a condition of the permit or this chapter, [constitute] constitutes a hazard to traffic or interferes with the proper use of the highway by the Department or the public.

(2) The Department may revoke a permit where it has provided written notification to the permittee or property owner that the Department requires changes in design, operation, location, maintenance of, or removal of an access or structure, and the permittee or property owner has failed to comply with the Department's requirements within a reasonable time period as determined by the Department.

(3) The [director] Department may revoke a permit for nonpayment of a fee [specified] authorized in Section 441.4 (relating to permit fees) including default [of] on a check submitted for the payment.

(c) *Revocation procedure.* Prior to revocation of a permit, except for nonpayment as specified in [paragraph (2)] subsection (b)(3), the [applicant] permittee or current property owner shall be given an opportunity for a hearing in accordance with 2 Pa. C.S. Sections 501--508 (relating to practice and procedure of Commonwealth agencies), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) and Chapter 491 (relating to administrative practice and procedure).

§ Section 441.11. Modification of conditions.

(a) *General rule.* When a term or condition of this chapter —other than Section 441.8(h) (relating to driveway design requirements, sight distance)—cannot be met, an applicant may

request, in writing, that the district office modify that term or condition if it is not required by law, and shall provide justification acceptable to the Department, including evidence of each of the following:

(1) That the applicant has done everything that can reasonably be done to comply with the term or condition.

(2) That no other access is available to or from the property.

(3) That the proposed modification satisfies the intent of the term or condition to be modified.

(4) That the proposed modification represents the minimum feasible deviation from the term or condition to be modified.

(5) That the reason for the requested modification is the impracticability of meeting the exact terms or conditions of this chapter rather than mere economic benefit to the applicant.

(b) *Granting of modification.* The Department reserves the right not to grant a modification under this chapter. If a requested modification is granted, the permit will specify the allowable modification. A permit issued under authority of this section shall be signed only by the district executive or higher Departmental authority. The granting of a modification will be predicated on the applicant's complying with each of the following:

(1) Unless the applicant is excused in writing, the execution of a hold harmless and indemnity agreement acceptable to the Department, consistent with Section 441.6(13) (relating to general conditions, indemnification).

(2) Unless the applicant is excused in writing, the procurement of security acceptable to the Department guaranteeing highway restoration and maintenance costs, consistent with Section 441.6(15).

(3) Unless the applicant is excused in writing, the procurement of public liability insurance for personal injury and property damage on behalf of the Department, its officers, agents, and employees, in a form and amount acceptable to the Department, for the life of the access or structure.

(4) Unless the applicant is excused in writing, the execution of an agreement acceptable to the Department, consistent with Section 441.5(f) (relating to issuance of permits, permit requiring agreement/security).

(5) Permit conditions, including use restrictions, special traffic control devices, safety features and recording of the permit.

(c) *Restrictions.* A municipality authorized to issue permits for the Department may not modify a term or condition of this chapter without obtaining written authorization from the district executive. If the modification is granted by the district executive, the municipality shall require the applicant to provide security or satisfy other conditions required by the district executive. The municipality shall indemnify and hold harmless the Department for negligence by the municipality in issuing the permit.

(d) *Effect of modification upon third parties.* The modification of a term or condition by the Department does not create rights in a third party.

(e) *Right of appeal.* If a requested modification is not granted, the applicant may appeal under 2 Pa. C.S. Sections 501--508 (relating to practice and procedure of Commonwealth

agencies), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) and 67 Pa. Code, Chapter 491 (relating to administrative practice and procedure), by submitting a written request for a hearing within 30 days after the mailing of the document containing the determination, to the Administrative Docket Clerk, Office of Chief Counsel, 400 North Street, Harrisburg, Pennsylvania 17120-0041. A filing fee as prescribed under Chapter 491, made payable to the "Commonwealth of Pennsylvania," shall accompany each request.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

www.dot.state.pa.us



Office of Chief Counsel
P.O. Box 8212
Harrisburg, Pennsylvania 17105-8212
(717) 787-6485

September 21, 2004

Robert E. Nyce
Executive Director
14th Floor Harrisburg 2
333 Market Street
Harrisburg, PA 17101

**Re: Proposed Rulemaking
Regulation # 18-378, 67 Pa. Code Chapter 441 —
Access to and Occupancy of Highways by Driveways, Local Roads
and Structures**

Dear Mr. Nyce:

Enclosed please find a copy of the Face Sheet, Preamble, Annex A and Regulatory Analysis Form for amendments to Chapter 441 of Department regulation which the Department of Transportation intends to adopt following proposed rulemaking in accordance with the provisions of Section 204 of the Commonwealth Documents Law, Act of July 31, 1968, P.L. 769, 45 P.S. § 1204.

Copies of these materials were also delivered today to the majority and minority chairpersons of the Pennsylvania House and Senate Transportation Committees and to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

The Department of Transportation will provide you with any assistance you require to facilitate a thorough review of this regulation. Thank you for your attention.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen F. J. Martin". The signature is written over a horizontal line and is positioned above the printed name and title.

Stephen F. J. Martin
Regulatory Counsel

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: #18-378

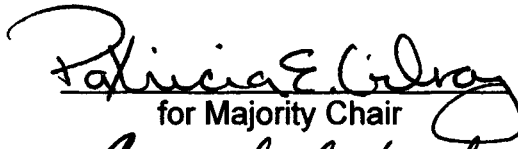
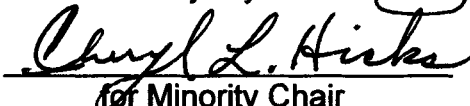
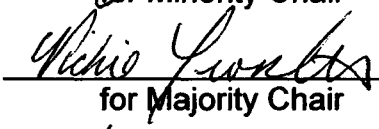



SUBJECT: 67 Pa. Code Chapter 441 — Access to and Occupancy of
Highways by Driveways, Local Roads and Structures

AGENCY: Department of Transportation

TYPE OF REGULATION

- ☒ Proposed Regulation
- ☐ Final Regulation
- ☐ Final Regulation with Notice of Proposed Rulemaking Omitted
- ☐ 120-day Emergency Certification of the Attorney General
- ☐ 120-day Emergency Certification of the Governor

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<u>9/21</u>	<u></u> for Majority Chair	SENATE COMMITTEE ON TRANSPORTATION
<u>9/21</u>	<u></u> for Minority Chair	
<u>9/21</u>	<u></u> for Majority Chair	HOUSE COMMITTEE ON TRANSPORTATION
<u>9/21</u>	<u></u> for Minority Chair	
<u>9/21</u>	<u></u>	INDEPENDENT REGULATORY REVIEW COMMISSION
<u>9/21</u>	<u></u>	LEGISLATIVE REFERENCE BUREAU

Date: September 21, 2004

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