#3200

BRETT R. MILLER, MEMBER
41ST LEGISLATIVE DISTRICT

HARRISBURG OFFICE:
P.O. BOX 202041
HARRISBURG, PA 17120-2041
PHONE: (717) 705-7161
FAX: (717) 705-1946

DISTRICT OFFICE:
2938 COLUMBIA AVE.
SUITE 501
LANCASTER, PA 17603
PHONE: (717) 295-5050
FAX: (717) 295-5053

House of Representatives
Commonwealth of Pennsylvania
Harrisburg

COMMITTEES

STATE GOVERNMENT
CHILDREN & YOUTH
LOCAL GOVERNMENT
AGING & OLDER ADULT SERVICES

EMAIL: bmiller@pahousegop.com
www.RepMiller.com

April 16, 2018

Jeffrey M. Spotts, Regulatory Counsel
Pennsylvania Department of Transportation
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Notice of Proposed Rulemaking, Department of Transportation
Regulation #18-479: Access to and Occupancy of Highways by Driveways and Local Roads

Dear Mr. Spotts:

Below are public comments I am submitting in regard to the aforementioned item that is being promulgated as a regulation.

The format I have chosen is to give my public comments within the pertinent sections of PennDOT's Regulatory Analysis Form (RAF) which was submitted with this application. Admittedly, being still new to this process, I confess that the manner in which I have chosen to provide my comments may not be in keeping with the standard of submissions of which you have been accustomed. Nonetheless, I appreciate the opportunity to respond and I thank you in advance for your consideration.

Please note that the format of my public comments are as follows: The RAF as well as PennDOT's reply will be in bold. My reply will be in standard, non-bold text.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Relevant to the Department's careful review of property and constitutional rights of property holders, persons with certain legal interests in property, including easements and mineral tights, have a constitutional right of reasonable access to property which may only be denied under compelling circumstances. See Hardee's Food Systems Inc. v PennDOT, 495 Pa. 514 (Pa. 1981). This constitutional protection extends a right of entry to the surface property to a lessee of oil and natural gas estates to provide access to what it owns

subsurface. See Belden & Blake Corporation v. DCNR. 600 Pa. 559 (Pa. 2009); Chartiers Block Coal Co. v. Mellon, 152 Pa. 286 (Pa. 1 893); Turner v. Reynolds, 23 Pa. 199, 206 (Pa. 1954). In view of this case law, the definition of "own" must apply to more than those who hold title in fee to apply for a permit. To conclude otherwise, the courts would likely determine that the existing regulation poses an unconstitutional restriction of access as it would diminish or even abrogate the rights of any person with a valid legal interest in property that allows for access but is not held in fee title.

Additionally, depriving a person who holds such an interest including a means of access to the property, may constitute a taking without just compensation. A de facto taking, also referred to as inverse condemnation, can occur when a court finds that the effect of a governmental action is tantamount to the destruction of an interest in private property for which just compensation must be paid, even though no formal condemnation proceedings were instituted. A de facto taking "occurs when the entity clothed with the power of eminent domain substantially deprives an owner of the beneficial use and enjoyment of his property." Griggs v. Allegheny Co., 168 A.2d 123 (Pa. 1961); see also McElwee & Son, Inc. v. Southwestern Pa. Transp. Auth., 948 A.2d 762 (Pa. 2008). Regulations that deprive an owner of all economically beneficial or productive use of property may constitute a taking. Machipongo Land & Coal Co. v. DEP, 799 A.2d 751 (Pa. 2002). The Eminent Domain Code provides a mechanism for property owners to seek compensation for alleged de facto takings. 26 Pa.C.S: § 502(c). If the regulation is not amended and Department is prohibited from issuing HOPs to non-fee title holders, the Department and Commonwealth taxpayers could be responsible for the attendant costs of de facto taking claims.

The proposed amendment clarifies that a person who holds an estate or other legal interest in property such as an easement holder or mineral estate with concomitant access rights may apply for a highway occupancy permit to gain access to the property to effectuate those rights. In other words, the applicant does not need to hold title in fee.

In reply to PennDOT's statement of a compelling interest in why it has submitted these proposed regulations, the following points are submitted:

1. It must be stated at the outset that Pennsylvania has a long tradition of fee title holder property rights. In fact, Pennsylvania, from its very founding, has enshrined into the very first section of our Constitution the primacy of property rights: "§ 1. Inherent rights of mankind. <u>All</u> men are born equally free and independent, and <u>have certain inherent and indefeasible rights, among which are</u> those of enjoying and defending life and liberty, of <u>acquiring, possessing and protecting property</u> and reputation, and of pursuing their own happiness. (Emphasis added) The incredible importance of and priority given to property rights cannot be underestimated or diminished. While it is true that fee title ownership was in view at the writing of Article 1, Section 1, even if it is granted that the same "ownership" rights are extended to those with a legal interest in a property, the fact remains that at the very least, there is an equal interest in the property and neither is to be shown preference. The offering of these new regulations by

PennDOT strongly suggests a preference to those with a legal interest in a property and not those of the fee title holder. Deference to the legacy of the historic understanding of the concept of the primacy of fee title holder rights is in keeping with the historic understanding and use of this concept. Dramatically altering the historic understanding and usage of who owns property is not a compelling public interest.

2. Even if ownership rights of those with a legal interest in a property were to be considered on par with the ownership rights of fee title holders, this, in no way, abrogates the rights of the fee title holder. The issue at hand is not ownership, per se, but access. Neither entity in this case loses these rights. From the cited Belden and Blake case: "*Chartiers* imposed a duty on Belden & Blake to exercise its rights in a reasonable manner, with due regard to the surface owner's rights, and noted both parties may be restrained by a court of equity if necessary. *Id.*" *Ironically, the PA Supreme Court said* "However, a property owner's interests and rights cannot be lessened, nor their reasonable exercise impaired without just compensation, simply because a governmental agency with a statutory mandate comes to own the surface,' *Belden and Blake case cited by PennDOT. In the instant case, the government is not a player, but the fee simple owner is nonetheless entitled to the same constitutional property protections as the government.*

The court further recognizes in Belden that "the government and its agencies must be held to the same standard as any other surface owner. DCNR may *seek* additional conditions because of its mandate, but it has no authority to *impose* them unilaterally without compensation." Nor should PennDOT be allowed to grant rights to a fee simple property owner's land without the payment of just compensation.

3. PennDOT states that the courts "would likely determine that the existing regulation (is) unconstitutional". To this assertion, the following is given in reply:

a) PennDOT's statement is one of conjecture. PennDOT is not the court and it is not PennDOT's job to place itself in the position of deciding a decision of such consequence. This is clearly a matter that is within the jurisdiction of the courts.

b) PennDOT is a state agency, and as stated above, should give deference to the historical understanding and use of the term "own" as meaning the fee title holder.

4. As will be discussed further in #12, in light of the fact that even PennDOT concludes that Pennsylvania's regulations are directly in alignment with the regulations of other states, and in particular to the states bordering Pennsylvania, there is, therefore, no compelling reason to change Pennsylvania's regulations concerning ownership of land, as there is no evidence that other states are doing the same.

5. While it is true that PennDOT has the right to grant or deny access to the state's property or to a consenting owner's property, it does not have authority to grant access to another person's property without authorization. Nor does it have the right to deny the fee title holder the right to the use and enjoyment of his/her property by the granting of access to others.

6. PennDOT discussed the issue of de facto takings in terms of the entity with a legal interest in a property but not in terms of the fee title holder. Should this regulation be changed, PennDOT will be placing itself in the position of granting access to the entity with a legal interest in a property while simultaneously engaging in a de facto taking without just compensation of the fee title holder's property.

7. In the potential scenario where a fee title owner has not agreed to sign an application to allow another entity with a legal interest onto his/her property, PennDOT must not arbitrarily assume that the applicant's position is automatically correct, nor should PennDOT insert itself into what is a private contractual discussion between two entities. By granting the permit to the one, PennDOT has cut off negotiations and essentially taken away negotiating rights from the fee title holder. Such negotiations can include such factors as hours of operation, storm water considerations, property disturbance and restoration agreements, well protection, ingress and egress to a property during construction, verifying structural integrity of buildings on the property, noise and light disturbance, relocation arrangements, emergency protocol, indemnification, etc. PennDOT should recognize the standing of the fee title holders and give great deference to their rights and needs.

8. While PennDOT offered various arguments in regard to property rights as to why the proposed changes in their regulations were in the public interest, they offered no explanation of the compelling interest to the public in why they mandated indemnification from the applicant for PennDOT's actions (see 441.3(e)(7)(ii) and 441.3(e)(7)(iii)). PennDOT must not be allowed to force the applicant to grant indemnification so that the applicant assumes all the costs and penalties of litigation. The reasons for this are:

a) PennDOT will place itself in a position in which it can act with impunity. No government agency should set itself apart from culpability for its actions.

b) By forcing such blanket indemnification, a situation is created whereby bias or outright corruption by unethical individuals could occur within PennDOT because there is impunity for their actions. Disallowing these regulations protects the citizens by maintaining consequences for illegal or unethical behavior on the part of government employees.

c) The demand for the indemnification shows that PennDOT is anticipating lawsuits against them for de facto taking claims, denial of use and enjoyment of one's property, interference in private contractual negotiations, etc., by fee title owners who believe their rights have been violated. The likelihood that these type of lawsuits will occur increases dramatically because PennDOT has inserted itself into the private contractual negotiations between two parties by taking sides of one "owner" over another, while simultaneously denying the fee title holder of the use and enjoyment of his property.

d) The fee simple owner must also be indemnified against any claims arising from the use of the driveway by the third party. *Belden* itself verifies the posting of bond or other form of indemnification is appropriate.

9. An additional area of concern related to proposed regulatory language related to indemnification includes the fact that if PennDOT mandates proof of indemnification for itself,

then it should mandate that the entity with a legal interest in a property also indemnifies the fee title holder from any damages as well. To mandate that the state be protected but not the fee title holder is to send the exact wrong message to the citizens of Pennsylvania. Our system of government rejects the notion that government exists for its own interests and that the people serve the government. Rather, government is to serve the needs of the people. This proposed change is not a compelling reason for such regulatory language.

10. Additional problems with the proposed regulatory language include PennDOT's requirement of proof of notice. Section 441.3(7)(i)(B) does not specify what "written notice" is. Is notice valid for first class delivery, hand delivery, delivery by a constable, or signed-returned receipt? The vagueness of this language could lead to misinterpretation and loopholes.

11. Related to the language mandating notice, Section 441.3(7)(i)(B) does not specify or require that the fee title holder has actually received the notice. It only specifies receipt of the written notice being delivered. This language does not take into account multiple potential scenarios impacting the recipient such as illness, or travel, or misdirected mail, etc., and appears to penalize the fee title owner should one of these scenarios occur and the fee title holder not be able to receive the mail. The language as it exists now does not – in any way – present a compelling interest for the need for this regulation. In fact, it does the opposite. Should this regulation go in, at the very least, it would need to contain language that PennDOT would not act until 30 days after PennDOT received confirmation that the notice had been actually received by the fee title holder. Otherwise, an unscrupulous applicant could give notice to PennDOT but wait 29 days to deliver the notice to the applicant, leaving one day for the fee title holder to respond. The current language does not make this clear. Further, it is customary in many governmental and business transactions that multiple attempts be made to contact one party for purposes of legal matters. These include two or three different attempts (each able to be documented) of contacting the impacted party regarding the legal matter. Further, thirty days is not enough notice for the fee simple owner to retain counsel and counsel to file a brief in a court of equity should the fee simple owner wish to contest the permit. From Belden "*Chartiers* clearly places the burden on the surface owner to seek legal redress to prevent or restrain the subsurface owner's exercise of its rights. *See Chartiers,* at 598 (subsurface owner's exercise of rights "will be restrained, within proper limits, by a court of equity if this becomes necessary...."). We reiterate that it is for the surface owner to challenge the subsurface owner's reasonable exercise of its rights, not the converse."

12. One item that is noticeably lacking in the proposed regulations is that PennDOT does not require verification that the easement agreement that is provided to PennDOT is the most current agreement. In the midst of the many such transactions, engineering changes, legal concerns, economic changes, etc., these variables often make it necessary for an easement agreement to be altered. In such cases, verification that the most recent easement agreement is in hand is of paramount importance so that the fee title holder may be protected.

13. Lastly, and very importantly, the 5th Amendment of US Constitution states as follows: "...nor shall private property be taken for public use without just compensation." Eminent domain cases do occur from time to time, but in the instances where they do occur, it is essential that the land only be taken after due notice, due process, and due payment. PennDOT should not grant any applicant with a legal interest in an eminent domain proceeding a highway occupancy permit until payment has been made in full. Once this has occurred and the negotiations are complete, then payment can be made and, though many times a difficult situation, at least the 5th Amendment of the US Constitution would have been followed and the fee title holder would have been paid in full. While the other provisions dealt mostly with PA law, this item has to do with our US Constitution and presents yet another reason why there is no compelling reason to change the current proposed regulation.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Generally, other states are like Pennsylvania. The term "owner" is not defined and it is unclear how other states handle situations where an applicant has a valid legal right to access property but is not the underlying fee owner. Below is a survey of law and policy guidance offered on publicly available websites.

Virginia — Like Pennsylvania's requirement for a highway occupancy permit, Virginia law at 24 Va. Admin. Code § 30-21-20 requires a "land use permit" for any work done within the right-of-way. The Virginia Department of Transportation's website indicates that land use permits can be issued to the highway right-of-way abutting property owner to install entrances and to "[a] person, organization or government authorized to assume the responsibility and liability for an approved activity within the highway right-of-way. The law does not provide a definition for "property owner."

http://www.virginiadot.orglbusiness/resources/land_use_regs/newPermitpackagesfFrequentlyAskedQuesfions.pdf

New Jersey - The New Jersey State Highway Access Management Code, N.J. Admin. Code § 16:47-1.1), provides the following relating to access permits:

"Applicant" means a private party or entity, municipality, county, or any public agency applying for an access permit. The applicant shall own the lot where the access is sought.

"Own" is not defined.

"Lot' means a single tax map parcel or two or more tax lot parcels which are in common ownership, have a unity of use and are contiguous. All land adjacent to a State highway is considered to be part of a lot.

"Permittee" means the owner of a lot which has an access permit or the municipality or county having a permit for a street.

Guidance on the NJDOT's website indicates that applications for driveways can only be signed by the lot owner or a representative holding an appropriate power of attorney. A completed power of attorney form shall be submitted with the application when the lot owner does not sign the application. For shared access between lots, at the time of the development application for each lot, an application, signed by the owner of the lot, and separate fee shall be submitted for each lot. For easements or access through lots adjacent to the highway, the application shall be signed by the owner of the lot adjacent to the highway. The term "owner" is not defined and no guidance could be found regarding how the state handles situations where the underlying fee owner does not agree to apply for the driveway permit for the easement holder's access.

New York - The New York Code, Rules and Regulations (Title 17, Chapter IV, Subchapter B), N.Y. Comp. Codes R. & Regs. lit. 17 § 4(B), require any person, institution, corporation, or other entity desiring permanent or temporary access to a state highway to obtain a work permit from the department to provide an entrance and/or exit.

Applications for work permits shall be accepted only from property owners or their authorized agents. Certification of legal ownership or owner's authorization may be required. The term "owner" is not defined.

Oklahoma - According to Oklahoma DOT's Driveway Agreement form, the applicant must either be the owner or have the legal right to possession and control of the parcel of property adjacent to the right-of-way frontage within which the said proposed driveway is to be constructed.

Texas - Texas defines "Permittee" in their Administrative Code (Title 43, Part 1, Chapter 11, SubchapterC, 43 Tex. Admin. Code § 1.11(C)) as "[a] real property owner, or the owner's authorized representative, who receives an access connection permit from the department to construct or modify an access connection from the owners property to a highway on the state highway system." The term "real property owner" is not defined.

Colorado - "Applicant" means any person, corporation. entity or agency applying for an access permit. "Permittee(s)" means any person, unit of government, public agency or any other entity that owns a fee interest in the property served, to whom an access permit is issued. The permittee is responsible for fulfilling all the terms and conditions of the permit.

"Property owner" means a person who holds a fee simple title to the property for which access to the state highway is being sought.

However, it appears that interests in property other than fee interests are considered because Colorado's application instructions regarding the Property Owner (Permittee) requires the name and contact information of "the legal property owner (owner of the surface rights)" and indicates that "having a contract on the property' is not a sufficient legal right to that property for purposes of this application. If the access is to be on or across an access easement then a copy of the easement MUST accompany this application." See https://www.codot.gov/library/forrns/cdotOl37.pdf (providing a form and instructions from which the above is derived).

Maryland — Per Md. Code Regs. 11.04.05.01 (Code of Maryland Regulations), the following is a descriptive listing of a portion of the parties authorized to apply for a permit. The words 'commercial", 'industrial", and "subdivision", used singularly or collectively in the following text, shall include all entrances other than those for an individual residence:
(1) Owners, or their duly authorized representatives (developers, contractors, tenants, lessees, etc.), of land newly being developed commercially, industrially, or as a subdivision, all desiring access to a State highway;
(2) Parties desiring to establish a new public street intersection or modify an existing public street intersection;
(3) Parties desiring to change existing entrances or create new entrances into existing commercial or industrial facilities, and subdivisions;
(4) Parties desiring to modify, expand, or in any other manner make improvement to an existing facility, which will increase or change the type of vehicular generation or traffic pattern;
(5) Parties desiring to change use or occupancy of an existing facility;
(6) Parties owning, occupying, leasing, or using a commercial or industrial facility (which was in
existence before 1957) that is not fully channelized in accordance to permits issued by the Administration and which is now deemed hazardous from the viewpoint of access;
(7) Parties desiring to do any work within or across the State highway right-of-way.

Ohio — The State Highway Access Management Manual provides:
1.4.50. 'Permittee" means any person, wit of government, public agency or any other entity that can own property, to whom an access permit is issued. The permittee, normally the property owner served by the access, is responsible for fulfilling all the terms and conditions of the permit; and,

2.3.2. Permit applications shall include a completed Department Form No. MR 505 and any attachments necessary for the Department to review and assess the application accurately and thoroughly. Permit applications must bear the complete name(s), address(es), telephone number(s), and signature(s) of the property owner(s). Application by the contractor or anyone other than the owner of the property, or his authorized agent is not acceptable.

MR 505
Applications for public roads, commercial accesses, or residential driveway approaches shall only bear the signature of the property owner, the company owner, or the corporate official responsible for construction and maintenance of the installation placed in the highway right-of-way.

Conclusion
It is anticipated that the proposed regulatory amendments will improve the Commonwealth's competitiveness with other states regarding economic development by clarifying who can be an applicant. As the definition of required permit applicants is not well settled in adjoining states— Pennsylvania will be at a competitive advantage, especially for out-of-state persons or entities seeking permits. Moreover, the proposed amendments will avoid unnecessary delay and potential litigation where an applicant has a clear legal right to access but is not the underlying fee owner.

In reply, please note the following:

1. As PennDOT notes, the conclusion is the record clearly shows that PA is clearly in line with what other states are doing, that is, requiring the fee title owner to obtain the necessary permits and to be the signatory on the transaction.

2. PennDOT's argument that PA may achieve a competitive advantage with other states is conjecture at best, for the vast majority of said applicants would be from people within Pennsylvania, not out-of-state individuals doing business in PA. Further, even if there was a competitive advantage due to this proposed change – and there isn't one – this would still not be a relevant argument to do away with fee owner's property rights.

3. PennDOT's argument that changing this language will avoid delays and potential litigation is conjecture and cannot be accepted at face value as evidenced by the fact that the current status of Pennsylvania's law, which is in keeping with PA's adjoining states, has shown absolutely no record of such delays or litigation.

4. The argument that the fee simple owner's property rights must be taken away to avoid delays or potential litigation clearly shows a diminished value being placed on the fee simple owner's property rights. Pennsylvania, from its very founding and enshrined into the very first section of our Constitution notes the primacy of property rights: "§ 1. Inherent rights of mankind. All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness. (Emphasis added) Indeed, PA's Constitution must be acknowledged: Property rights must supersede potential delays and/or litigation that one of the parties might have to undergo. Additionally, as summarized in Hardee's Food Systems Inc. v PennDOT, 495 Pa. 514 (Pa. 1981), "...property rights can only be denied in compelling circumstances." (See also: Wolf v. Department of

Highways, 422 Pa. 34, 39, 220 A.2d 868, 871 (1966); Rolling Green Golf Club Case, 374 Pa. 450, 456, 97 A.2d 523, 525 (1953); Breinig v. Allegheny County, 332 Pa. 474, 480, 2 A.2d 842, 847 (1938).) The fee title holder's property rights can only be denied in compelling circumstances which cannot be litigated by PennDOT.

5. Potential delay or litigation (though no evidence exists to suggest that this has or will occur) is not a "compelling circumstance" sufficient enough to deny a fee property owner of his/her property rights.

6. Finally, it very well could be argued that if PennDOT's proposed regulations were to be approved, litigation may, in fact, increase. There are several reasons for this 1) PennDOT's granting of a lease holder's access to a fee title owner's property who objects, is acting as the court and simultaneously denying the fee title owner's property rights. This is not the jurisdiction nor purview of PennDOT. Further, 2) PennDOT, in making such decisions is acting as a "taking" of the fee simple owner's property and thus becomes the comdenmor. As such, PennDOT's mandate for indemnification in the newly proposed language in 441.3(7)(ii) and 441.3(7)(iii) is in direct contradiction of the Eminent Domain Code, 26 P.S. § 1-612 (Supp. 1981), which provides in pertinent part: "All condemnors, including the Commonwealth of Pennsylvania, shall be liable for damages to property abutting the area of an improvement resulting from change of grade of a road or a highway, permanent interference with access thereto, or injury to surface support, whether or not any property is taken." Clearly, PennDOT's proposed rules will work in contradiction to their stated aims and will bring about increased litigation.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Any person, business or local government intending to obtain access to or from a roadway under the jurisdiction of the Department will be affected by the regulation. An approximate number of people who will desire to do so at any given time cannot be calculated. Currenfly the Deparunent issues approximately 3,000 such HOPs each year.

This rulemaking should not have any adverse effects to HOP permittees.

Response: It is also clear that should the current regulation remain as is, it will have no adverse effect on the HOP permittees.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

Positive financial, economic and social impacts are anticipated. Clarity as to an appropriate permittee will realize efficiencies. Moreover, clarity as to appropriate HOP applicants should avoid the need for research or litigation, which will have a positive financial and economic impact. Lastly, social impacts attributable to this regulation are remote and not easily ascertainable.

Response: While this was discussed in depth above, while PennDOT maintains positive impacts, there is no reference to the potential negative impacts on fee title holder property owners. Clarity as to ownership is not in question now. The issue under consideration is access and who has the authority to grant access. As referenced before, the changing of this regulation could very well result in increased litigation.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulation's clarification of the term "owner" will establish a binding norm to be uniformly applied. Case law has consistently held that ownership must include property interests other than fee simple absolute ownership. This regulation will not pit competing interests in property at odds with each other but will recognize legally viable interests in property in a permitting process that encourages owners with competing interests to reach consensus either outside or within litigation.

Response: Owners with competing interests do exist but the negotiating playing field is not level. In eminent domain cases, the fee title holder is easily overwhelmed with the complexity, the staff, money, resources, and pressure from individuals whose only interests are those of the company. As such, the landowner, being under such overwhelming odds simply can't compete. And, when the only defense the fee title owner has left – the right to "acquiring, possessing and protecting property" has been taken away by his own government, what confidence can one have in his own government?

(21) Provide a specific estimate of the costs and/or savings to the state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

Costs and/or savings to state government cannot be calculated in view of the answers to the above sections 14 and 19 (explaining that this regulation reflects current practice). A clearer definition of "owner" will reduce legal costs incurred in litigating matters related to interests in property. This change should reduce the number of administrative challenges and a reduction in collected filing fees.

In reply, these statements are not accompanied by any documentable evidence. In any case, even if they were, the cost savings are de minimis. In addition to this, administrative challenges occur

for multiple reasons and as stated previously, could very well increase because of a change to this regulation.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The proposed regulation sets forth procedures that have been in place with the Department for more than a decade. No legal, accounting or consulting procedures, or additional reporting, recordkeeping or other paperwork is required to give effect to this regulation as the costs incurred have become the norm for the past 16-plus years. In fact, a clear definition of "owner" should result in reduced administrative legal costs as discussed above.

Response: On November 16, 2017, by a 5-0 vote, the IRRC ruled that PennDOT's actions of implementing broader definitions of the definition of property owner were a violation of the Regulatory Review Act. On December 14, 2017, by a 7-3 vote, the Joint Committee on Documents affirmed the guidance of the IRRC and ordered PennDOT to either promulgate a regulation or desist from using their expanded definition. PennDOT's admission of being not following the Regulatory Review Act for over a decade is troubling and does not present a strong track record of avoiding administrative problems by following legislative directives, nor does it evoke a sense of confidence in the agency's ability to avoid the same in the future. This is particularly true in light of the fact that PennDOT has admitted that it has twice before started to promulgate these regulations and twice before failed to follow through.

In conclusion, for the above reasons and considerations, I am requesting that the current regulations remain in place. And, if the decision is made to proceed with the regulations, I am requesting that the specific suggestions be incorporated into any revised regulatory language.

Thank you again for the opportunity to participate in this process and thank you for considering my comments.

Sincerely,

Brett R. Miller
State Representative
41st Legislative District

cc: IRRC