



205 Grandview Avenue, Suite 207 • Camp Hill, PA 17011
717.730.4380 • pabuilders.org



President Dean Hilliard Central Susquehanna BA	Vice President Greg Harris HBA of Metro Harrisburg	Secretary Darrell Adams Lebanon County BA	Treasurer Richard Clawson Indiana-Armstrong BA	Associate VP Heather Dieckmann BA of Metro Pittsburgh	Immediate Past President Thomas McCosby Lawrence County BA
---	---	--	---	--	---

February 3, 2025

Via Electronic Mail

Victoria P. Edwards, Regulatory Counsel
Department of Transportation
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Department of Transportation Proposed Regulation #18-481; 67 Pa. Code Chapter 441:
Access to and Occupancy of Highways by Driveways and Local Roads

Dear Ms. Edwards:

On January 4, 2025, the Pennsylvania Department of Transportation (Department) published notice in the *Pennsylvania Bulletin* of proposed changes to 67 Pa. Code Chapter 441- Access to and Occupancy of Highways by Driveways and Local Roads and invited the regulated community to submit comments on the proposed revisions by February 3, 2025.

The following comments are being provided on behalf of the members of the Pennsylvania Builders Association (PBA):

- 1. Indemnification clauses incorporated by code rather than individual separate agreements.** The inclusion of the indemnification provisions as opposed to requiring applicants to submit a lengthy indemnification agreement along with an insurance policy is a welcome change to the regulated community. This change has the potential to streamline the application process and reduce unnecessary administrative burdens.
- 2. Applicants other than fee owner.** We also welcome the revisions to Section 441.3, which acknowledge applicants with an equitable interest in property in question under a sales agreement or option to purchase. Sales agreements and options to purchase agreements are frequently used in the land acquisition process and as the Department acknowledges, are contingent upon receipt of all permits prior to closing on a property. While the Department has often permitted non-fee owners to apply for and receive highway occupancy permits (HOPs), the existing process was cumbersome and complex with administrative burdens. Often separate agreements were required for indemnification clauses, covenants, and insurance. The proposed new process appears to streamline the permitting process for people with an equitable interest by



replacing those unnecessary administrative burdens with a simple notification or written authorization of permit application by the fee owner.

3. **Section 441.8(h) – Sight Distance.** The Department’s proposed revisions to Section 441.8(h), particularly the shift to apply intersection sight distance requirements to all vehicular access points, represents a significant change. Historically, intersection sight distance has been used primarily for local roads, and not driveways. The proposed change raises concerns, as it shifts the sight distance measurement point from 10 feet behind the traveled way to 14.5 feet. This 4.5 feet shift could place sight lines into potential embankments, especially in the varied topography of western Pennsylvania. As a result, this change may necessitate costly additional grading to achieve the sight distance requirements.

- a. Ambiguity in where the driveway may be located. The proposed language states, “**Achieving optimal sight distance along the property frontage must be considered when determining the location of the driveway**” is overly vague. The Department has previously attempted to require applicants to relocate access points even when minimum sight distance standards were met. The proposed phrasing could be interpreted to allow the Department the discretion to mandate the relocation of the access point to a point on the property frontage that offers the “best” sight distance, regardless of whether other locations meet the recommended criteria. This could lead to adverse impacts to the developable area of the property. We raise concerns that this language as worded, will allow the Department to require driveways to be moved to the portion of the property frontage which provides “the most” sight distance, even if other locations meet the regulatory required “recommended” sight distance.

To avoid potential costly redesigns or the loss of developable land, we recommend that once a proposed access point meets the required sight distance standards-whether by intersection sight distance or stopping sight distance-the identified point should be eligible for access to the state highway.

- b. **Definitions of “Impractical” and “Infeasible”** in Section 441.8(h)(2). We note the introduction of terms such as “impractical” and “infeasible” without clear definitions or examples to guide the application of unfeasibility or unfeasibility. While this section appears to allow the use of stopping sight distance when intersection sight distance cannot be achieved, the lack of clarity on what constitutes “impractical” or “infeasible” could result in inconsistent application across the Department’s regional offices.
 - i. For example, would re-profiling (that is to vertically adjust) a state highway be considered “impractical” or “infeasible”? What if the proposed solution to achieve sight distance is costly but technically feasible, such as the need for a retaining wall? These terms should be



President	Vice President	Secretary	Treasurer	Associate VP	Immediate Past President
Dean Hilliard <i>Central Susquehanna BA</i>	Greg Harris <i>HBA of Metro Harrisburg</i>	Darrell Adams <i>Lebanon County BA</i>	Richard Clawson <i>Indiana-Armstrong BA</i>	Heather Dieckmann <i>BA of Metro Pittsburgh</i>	Thomas McCosby <i>Lawrence County BA</i>

defined to avoid overly broad interpretation that could lead to varying standards in different Department regional offices.

- c. **Verification of Sight Distance.** In instances where sight distance is not met in the existing condition, it is often necessary to perform physical work within the highway right-of-way to achieve the required sight distance. Historically, the Department has required separate permits for grading and driveway construction; however more recent Department internal policy has allowed the issuance of a “hybrid” permit, which covers both grading and driveway construction contingent upon achieving sight distance. This hybrid permit has proven effective in streamlining the permitting process.
- i. We suggest incorporating this approach into Section 441.8(h) to create a more consistent and unified process for compliance across regional offices. For example, some Department regions currently require “signed and sealed as-built drawings” after driveway construction to verify sight distance, even though this is not explicitly required by regulation or written department policy. This unnecessary requirement creates additional costs and time to the developer, which could be avoided if the Department were to simply measure sight distance post-construction, as they do when issuing HOPs which do not require grading.
 - ii. A possible solution would be to add new subsection (3) to Section 441.8(h) to formalize the process for cases where sight distance cannot be verified prior to construction, with clear procedures outlined for the approval and verification of required grading and modifications. We suggest the following language:
 - 1. Plans depicting the required grading/modifications to achieve sight distance and include anticipated sight distance profiles signed and sealed by a professional engineer or other individuals authorized by law.
 - a. The plans indicate the following:
 - i. Driveway cannot be used until sight lines are verified by the Department
 - ii. Permittee must contact County Permit Office at xxx-xxx-xxxx to notify the Department that the embankment work is complete.
 - iii. Following notification that the embankment work is complete, the Department will conduct a field view to verify sight distance measurements.



4. **County Conservation District Approval Verification.** The Department frequently requires letters of approval from local county conservation districts prior to the issuance of a HOP. This requirement is not supported by any specific regulatory requirement but has resulted in significant delays in the HOP process. We urge consideration of flexibility in this area to help streamline the permitting process.

5. **Driveway Design Requirements.** Section 441.8(k), states that driveways are to be designed at a minimum pavement structure thickness of four inches. While this provision remains largely unchanged, it should be noted that the Department's regional offices often require the HOP applicant to match the pavement structure thickness of the adjacent state highway, even though the driveway access will not typically experience the same traffic volume of the state highway. This provision leads to increased costs associated with constructing and maintaining driveway access. Given that maintenance responsibility for the driveway lies with the HOP applicant, we question the way the regulation has been interpreted to add the additional requirement of a thickness greater than that specified by an engineered pavement analysis performed by the HOP applicant's engineer.

We appreciate the opportunity to submit these comments to the Department on the proposed regulation. Please feel free to contact PBA's Director of Regulatory and Legislative Affairs Sarah Miller at 717-571-6488 or via email at smiller@pabuilders.org

Sincerely,

A handwritten signature in black ink, appearing to read "Dean A. Hilliard". The signature is written in a cursive, flowing style.

Dean Hilliard
Pennsylvania Builders Association
2025 President