

The information contained in Chapter Fifteen: Right-of-Way, dated July 2006, has been updated to reflect the June 2016 Errata. The errata addresses errors, changes in procedure, changes in NDOR department titles, changes in other Roadway Design Manual chapters and other reference material citations which have occurred since the latest publication of this chapter.

Chapter Fifteen Right-of-Way

This chapter provides guidance to the roadway designer regarding issues associated with the design and acquisition of right-of-way. Refer to the Right-of-Way Manual (Reference 15.1), (<http://www.nebraskatransportation.org/roway/pdfs/row-manual/index.pdf>), for additional right-of-way information.

1. RIGHT-OF-WAY (R.O.W.) SURVEY

Whenever a proposed highway improvement requires the acquisition of easement rights and/or the purchase of additional land for construction purposes a right-of-way survey will be required. The **Survey Coordinator** in the **Geodetic Surveys Section** of the **Roadway Design Division** determines which projects need to have a right-of-way survey. Information used to determine whether or not a right-of-way survey is required includes:

- The Highway Improvement Programming Request DR Form 73, provided by the **Project Scheduling and Program Management Section**.
- The Initial Project Data DR Form 333 and the Project Data Revision DR Form 334, which are initiated by a request from the **District Engineer**.
- The Engineering Review Report, which is provided by either **Project Development** or **Roadway Design**.
- Additional input from the **Right-of-Way Design Engineer**.
- Additional input from the **District Engineer**.

Preliminary survey parties assigned to the project, assisted by the **Deputy State Surveyor**, make a right-of-way survey in conjunction with the roadway design survey. The two surveys then are combined into a single set of preliminary survey notes. The ultimate goal for all projects is the accurate completion of right-of-way surveys in a timely manner to allow for completion of the right-of-way Ownership Plans for the public hearing.

2. RIGHT-OF-WAY DESIGN PLANS

The **Right-of-Way Design Section** is responsible for the coordination and preparation of the following right-of-way design plans:

1. **Corridor protection plans** - Corridor protection plans generally are prepared in advance of other design activity for projects in areas of potential development. These plans are often aerial sheets from corridor study reports. Ownerships and the protected corridor are shown on the plan. Plans are filed with the **County**, and **NDOR** is notified before any preliminary subdivision plat or building permit is approved.
2. **Ownership Plans** – Ownership plans are prepared prior to the plan-in-hand activity. Preliminary survey, topography, land lines, previous right of way, previous controlled access, property lines and ownership data are shown on the Ownership Plans.
3. **Preliminary ROW Design** – Proposed limits of construction (LOC's) are added to the Ownership Plans and right-of-way is designed, along with any permanent or temporary easements, and permanent or temporary railroad easements and rights of entry or occupation areas as needed. These plans are used in the Preliminary ROW Plan Review, (See the Design Process Outline (DPO) (Ref. 15.8), Activity 5600, Clarity Task Code 5610).
4. **Appraisal Plans** – The changes made during the Preliminary ROW Plan Review are shown, areas of taking(s) are computed, legal descriptions are written and summarized on the right-of-way plans summary of areas sheet. The Appraisal Section and others use the resulting Appraisal Plans. The appraiser may request a plan review with the roadway designer using the appraisal plans.
5. **Negotiation Plans** – Following preparation of the right-of-way contracts, the Appraisal Plans are updated to reflect any changes made during appraisal. The negotiators use the resulting Negotiation Plans when dealing with property owners.
6. **Finalized Half-Size Plans** - After the right-of-way property deeds are recorded in the county **Register of Deeds Office**, the plans are checked and modified to reflect the properties which were acquired. Plans are then half-sized and filed in the **Right-of-Way Division**.

A more detailed description of these plans is presented in the following sections.

2.A Corridor Protection Plans

Highways in areas that have the potential for development prior to a planned highway improvement will be reviewed for corridor protection. Corridor protection is a procedure whereby **NDOR** notifies the appropriate local government agencies and the general public of the intent to acquire right-of-way along a highway corridor. Corridor protection is designed to allow **NDOR** to review proposed development that may occur adjacent to the selected highway corridor, minimizing acquisition costs and reducing or eliminating development impacts to the highway project.

The **Right-of-Way Division** has the responsibility for establishing corridor protection on state highways and notifying the public that corridor protection has been filed. If there is a need for corridor protection, a recommendation will be made by the **Planning and Project Development Division, Roadway Design Division, Right-of-Way Division**, or the **District**. If

a corridor hearing is held and a relinquishment is involved, the relinquishment agreement must be signed before project corridor approval is presented to the **Highway Commission**, (See Section 7.E).

For projects on existing alignment for which it is deemed necessary to file corridor protection, a strip 300 ft. (100 m) wide will be designated on both sides of the existing right-of-way. In the case of projects on a new alignment, a strip 400 ft. (120 m) wide on both sides of the proposed centerline will be designated for corridor protection. These widths are guidelines only and may vary depending on the terrain and roadway design standard. Applicable projects will have corridor protection procedures initiated after the project concept and alignment have been defined.

When a property owner files a preliminary subdivision plat or a request for a building permit in an area with corridor protection, the local zoning authority informs the owner that **NDOR** has filed corridor protection and that the preliminary plat cannot be approved or that the permit cannot be issued unless **NDOR** releases the corridor protection. **NDOR** has two months to approve or disapprove the request after notification by the local authority. If **NDOR** disapproves the request it has six months to negotiate and acquire the necessary right-of-way. If **NDOR** has not acquired the right-of-way within six months, the local authority can issue an approval of the preliminary subdivision plat or the building permit. See Legislative Bill 187, Section 39-1311 (<http://uniweb.legislature.ne.gov/laws/statutes.php?statute=39-1311>) and the Nebraska Dept. of Roads Operating Instruction 60-9, "Corridor Protection", (Appendix B, "Selected NDOR Operating Instructions), for additional information about corridor protection.

2.B Ownership Plans

The **Right-of-Way Design Section** begins the right-of-way design process with the production of a set of plans that depict preliminary survey, topography, current ownerships, property lines, and previous right-of-way in the area of the project. The plans are reproduced and forwarded to **Roadway Design** for use in public hearings.

The following items are used in the creation of Ownership Right-of-Way Plans:

- The sheet files from **Roadway Design** provide the base plan layout, (coordinate the base plan layout with the **Right-of-Way Design Section** at Meeting "A", see the current CAD Policy, <http://www.nebraskatransportation.org/roadway-design/downloads.htm>).
- The right-of-way survey provides section corners, quarter-section corners and lot corners.
- Title research provides a five-year record of ownership.
- Previous right-of-way and controlled access is researched by reviewing old plans, deeds, railroad maps, railroad leases and city plats.

Ownership Plans are prepared prior to the plan-in-hand activity during "Preliminary Roadway Design", Activity 5300, Clarity Task Code 5350 (See the *DPO*, Ref. 15.8). It is desirable that the ownership plans be available for the project plan-in-hand inspection.

2.C Preliminary Right-of-Way Design

The roadway designer should submit the following items to **Right-of-Way Design** for their use in designing right-of-way for the project:

- Typical sections.
- 2-A sheets with alignment plotted.
- Final Design plans (Activity 5500, Clarity Task Code 5508) with limits of construction, (See the *DPO*, Ref. 15.8).
- Cross-sections.
- Culvert cross-sections.
- Access Control letter, if applicable (See Section 3).
- Identify the locations where the **Roadway Design Division** has identified and promised the extent of right-of-way to be purchased (e.g. from information meetings, meetings with property owners, in the release of corridor protection).

Possible conflicts with pivot irrigation systems should be investigated during Roadway Design (Activity 5500). A review of the design and pivot damages will be made at the Preliminary ROW Plan Review.

2.C.1 **New Right-of-Way Design**

Right-of-way will be designed using the following guidelines:

1. Design urban right-of-way about 2 ft. (0.6 m) behind the sidewalk to allow space for utilities.
2. Design rural right-of-way about 10 ft. (3 m) behind limits of construction in low cuts.
3. Design rural right-of-way about 20 ft. (6 m) behind limits of construction in high fills and high cuts.
4. Designers should try to minimize the impact of damages to irrigation pivots, wells, homes, yards, windbreaks and utilities.
5. Easements will be used where appropriate.
6. Design widths along reconstructed county roads should be tighter (0-10 ft. (0-3 m) behind limits of construction) than design width along state highways. On long county road relocations, right-of-way should be designed parallel and at a uniform offset from the centerline.
7. A standard break in controlled access is 40 ft. (12 m) wide. For intersections and anywhere else where it is desirable to have an access break opening wider than 40 ft. (12 m), access control should have an end station and a begin station (See Section 3).
8. Right-of-way shall be acquired to or beyond the lateral obstacle clearance.
9. When right-of-way is designed at the beginning and ending of a project, and either of those points are within the limits of an individual ownership, consideration should be given to acquiring right-of-way through the ownership for future connecting projects so that the owner will not have to be contacted again.

Normal right-of-way widths have been established by the **Board of Public Roads Classifications and Standards** and approved by **FHWA** (See the [Nebraska Minimum Design Standards](http://www.transportation.nebraska.gov/gov-aff/gov-aff-design-standards.html), Reference 15.2), (<http://www.transportation.nebraska.gov/gov-aff/gov-aff-design-standards.html>). Sound engineering judgment should be used to obtain a balance between right-of-way costs and widths.

2.C.2 Permanent Easements

It is generally desirable to purchase land for the highway. However, sometimes a permanent easement should be considered. In the case of a permanent easement **NDOR** has rights to a parcel of land for a specific purpose while the land remains in private ownership and will be taxed. The owner may fence the land or do with it whatever he/she chooses as long as it does not conflict with the purpose of the permanent easement. A permanent easement usually damages the land because it restricts the land use. Some examples of permanent easement uses are to:

- Build and maintain embankments, dikes, retaining walls, drainage structures, etc.
- Channel relocations and required buffer strips, (See Chapter Thirteen: Planning and Project Development, Section 4.B.6).
- Provide access to two or more adjacent properties.
- Minimize impact on adjacent property.
- Maintain a uniform right-of-way width.

2.C.3 Temporary Easements

Temporary easements permit the use of private property for a time period not to exceed the duration of the project. Temporary easements typically will be used when construction activities must take place outside of the area that is needed for the highway. Temporary easements are requested for:

- Site clearing (e.g., removal of a structure, such as a granary, that is bisected by the right-of-way line. Please note that a special provision should be written to provide that the contractor will remove both the structure and the foundation.).
- Culvert, channel, ditch cleanout.
- Borrow pit or excess material disposal.
- Replacement of existing driveways or building new driveways.
- Build, maintain and remove temporary roads.
- Build sewers or inlets that drain water from private property (e.g., an inlet in a private parking lot).
- Shaping (e.g., to blend in fill or cut in urban areas where the slope is 4:1 or flatter).

2.C.4 Railroad Easements, Rights or Leases

NDOR normally does not acquire land from railroads in fee. All land required at crossings or which is parallel to the highway will normally be acquired in the form of an easement, right of entry, right of occupation, or lease.

2.C.5 Preliminary ROW Design Review

When the preliminary right-of-way design is completed, it is sent to the **Roadway Design Unit Head** for review and coordination. The roadway designer then schedules a Preliminary ROW Plan Review to coordinate the right-of-way design and to identify potential right-of-way impacts, (See the *DPO* (Ref. 15.8), Activity 5600, Clarity Task Code 5610). After this meeting the Appraisal Plans are prepared.

2.D Appraisal Plans

The preparation of Appraisal Plans involves the actual design of the project right-of-way. These plans should be representative of the proposed right-of-way takings needed for construction. Two inputs are necessary for Appraisal plans: Ownership Plans and the limits of construction. The major steps undertaken by **Right-of-Way Design** at this stage are:

1. Receive (reference) the project design and limits of construction.
2. Design the right-of-way, referenced to the project centerline.
3. Design control of access.
4. Review the design and coordinate with **Roadway Design**.

Following approval of the right-of-way design, areas of all takings are computed and the metes and bounds legal descriptions are written. Appraisal Plans show the right-of-way design and stations/offsets. The **Utility Section, Railroad Liaison**, and appraisers use the Appraisal Plans.

Station and offset to utilities will not be shown on right-of-way plans until the Appraisal Plan stage. The roadway designer should not change DTM Alignment after the Appraisal Plan stage.

2.E Negotiation Plans

Negotiation Plans reflect any changes made to the Appraisal Plans as a result of the appraisal process. Right-of-way negotiators use Negotiation Plans to explain the offers to purchase right-of-way to landowners. If agreement cannot be reached with a landowner on an amount to settle, the **State of Nebraska** will file a condemnation to acquire the right-of-way. On all projects, all right-of-way required for the project should either be acquired and paid for or condemned and paid for prior to advertising a project for bid letting.

2.F PS&E Plans

When the roadway designer is ready to take plans to the **Plans, Specifications and Estimates Unit (PS&E)** for review, he/she should request a reproducible set of right-of-way design plans and a right-of-way certificate, (See Section 6). Right-of-way plan revisions following submittal to **PS&E** will be coordinated with the **District, Roadway Design, PS&E, Utilities** and others involved.

2.G Revisions

Right of way plan revisions may be made during any stage of development but most often occur during the Appraisal and Negotiation stages. As per revision process documented July 2, 1997, the requesting individual will notify the **Right of Way Design Engineer** and/or **Roadway Design Division** of possible conflict and concerns. The appraiser or negotiator will also report back specific suggestions or questions from the landowner and will ask the designer to review (and change if possible or necessary) the design related to the questions. Some change requests and/or revisions may also be brought to the **Roadway Design Division** through the **District Engineer**. Requests for right-of-way plan revisions must be formal and should include a transmittal letter and plan sheets showing the changes. A recommended right-of-way design offset or easements should be shown if applicable. Requests for plan revisions should be sent to the **Right-of-Way Design Engineer**. The following design or plan changes should be coordinated with **Right-of-Way Design**:

- Updated topography.
- Revised culvert design.
- Revised driveway design or location.
- Revised alignments.
- Revised limits of construction.

Final right-of-way plans are completed only after all land is purchased.

3. ACCESS CONTROL

Access control is a restriction of the number and location of access points, (intersections, driveways and field entrances), along a highway. Access control along a highway reduces interruptions in the traffic flow, increasing the efficiency and safety of the facility. Typically, access rights will be acquired on all:

- Interstates.
- Freeways.
- Expressways and other multi-lane divided highways.

Access control will be considered on all other highways when:

- The 20 year forecast traffic (ADT) is 3,001 or greater, as shown on the current 20 Year Forecast Traffic Map (See Chapter One: Design Standards, Section 6.A).
- The route is within the present or projected two mile (3.0 km) zoning limits of cities of the first class (population 5,000 to 99,999) and within the present or projected three mile (5.0 km) zoning limits of primary (population 100,000 to 299,999) and metropolitan class cities (population more than 300,000).
- There are 3 miles (5.0 km) or less between the interstate and the connecting or parallel highway.
- The development of any major highway, particularly where mobility is important.

The degree of access control should be balanced between three essential public functions: access to property, travel mobility and motorist safety.

By statute, (Revised Statutes of Nebraska, Section 39-1302, Paragraph (9), Reference 15.3), (<http://uniweb.legislature.ne.gov/laws/statutes.php?statute=39-1302>), **NDOR** may acquire, in public or private property, such rights of access as are deemed necessary, including but not necessarily limited to air, light, view, egress and ingress. The **State of Nebraska** cannot condemn property from one owner to provide access to property for another owner if the owner to be served by the access already has another access to his/her property. This is the case no matter how inconvenient the existing access may be or if the existing access is only a right-in, right-out situation because of median restrictions.

For additional information on access control and on the access control project review procedure, refer to the Access Control Policy to the State Highway System, (Reference 15.4), (<http://www.nebraskatransportation.org/roway/pdfs/accesscontrol.pdf>).

3.A Access Control Design

There are currently two types of driveway classification: access and future access. Access locations identified, but not built as part of the highway project, shall be designated as future access. Access should be provided for each property along a project to provide for possible future development.

At the time that the access points are designed, existing entrances may be removed or relocated to connect to the designed access locations as a part of the highway project. **NDOR** shall be responsible for constructing the entrances at the designed access locations as a part of the project. **NDOR** will not construct the access locations referred to as future access. Driveways at the quarter-section line will typically be "joint drives" and will provide access to two or more properties. EXHIBIT 15.1 is an example of the typical permanent easement acquired for a joint access.

The roadway designer shall designate access locations for a project during "Preliminary Design", (See the *DPO* (Ref. 15.8), Activity 5300, Clarity Task Code 5350). This may be accomplished by:

1. Obtaining relevant information from the **District Engineer** and others.
2. Reviewing the zoning, existing and future land use.
3. Conducting a field examination.
4. Giving consideration to intersection sight distance, natural barriers, property lines, the development of future frontage roads and traffic signal spacing.

All property adjacent to the highway project must be permitted access to a public road, unless the project results in the abutment of property that previously did not have direct egress and ingress to the highway. If a parcel is "landlocked" and access cannot be provided economically, the parcel may be purchased as part of the right-of-way taking.

If a roadway has previous controlled access, and access is being revised as part of a current project, some items to consider are:

- When providing an access (unrestricted) to a property that previously had restricted access, the property may be considered enhanced. The potential for enhancement will be considered during appraisal. Typically **NDOR** has no obligation to provide access rights other than what presently exists. A decision to provide enhanced access shall be justified.
- When access is restricted to a property that previously had unrestricted access, it is likely the property value has been damaged. **NDOR** appraisers will consider these damages before acquisition.

Once the roadway designer is prepared to make recommendations about acquiring access control, he/she should contact the **Highway Right-of-Way Associate** in the **Property Management Section** of the **Right-of-Way Division** and request to be put on the agenda for the next available access control meeting. The designer should present to the **Control Access and Permit Review Committee** his/her recommendations for or against acquiring access rights and should be able to support the recommendations. The roadway designer should

provide an aerial photo with property lines and locations of access sites that meet the policy for the **Committee's** review and approval.

The **Committee** reviews the project as part of the functional design review to determine access control. The **Committee's** decision is based on the following considerations:

- Traffic count.
- Highway classification.
- Safety of persons using the highway.
- Preservation of the public's investment in the existing highway.
- Effect of vehicles using the access point on the traffic-carrying capability of the highway.
- Existing sight distance.
- Highway alignment and configuration.
- Volume and speed of traffic on the highway at the proposed access point.
- Traffic volumes generated by the development served by the access and extent to which improvement to the highway facilities by persons requesting access will mitigate adverse effects caused by the access point to the highway.
- Closure or relocation of existing access points.
- Moving the new access to a property line for a joint-use drive.
- Conformance of proposed development to zoning regulations.
- Dedication of right-of-way for future public streets to provide for the orderly development of the property abutting the highway.

The roadway designer shall be responsible for preparing the CA (control access) Letter, which indicates the decisions made by the **Control Access and Permit Review Committee**.

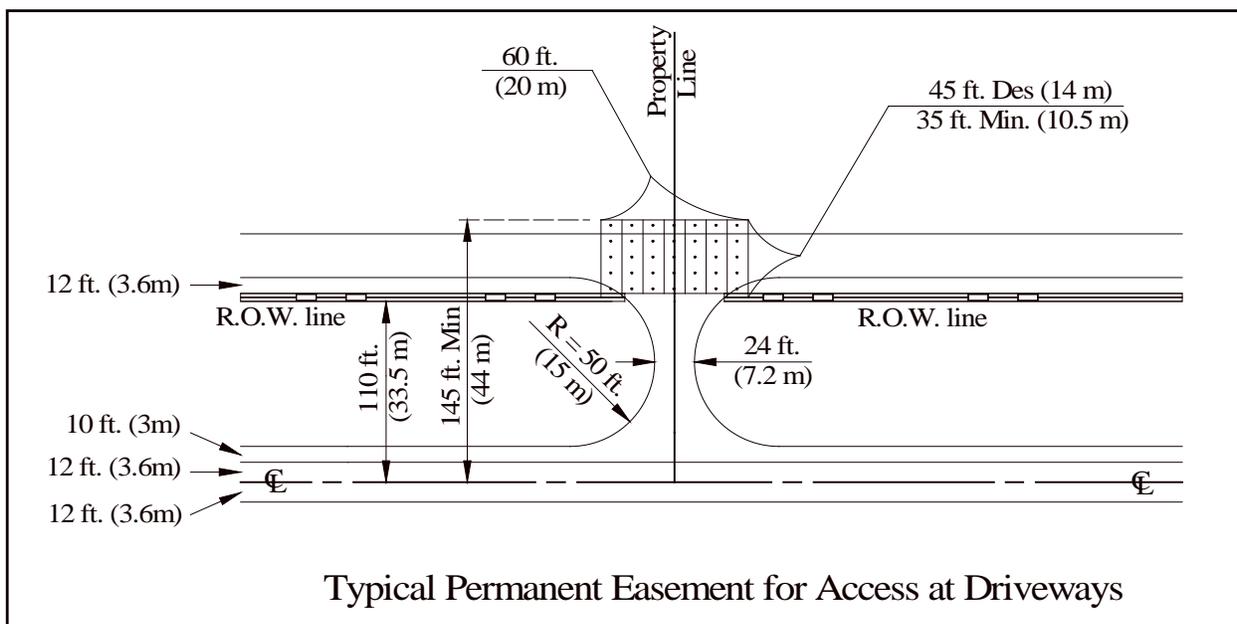


Exhibit 15.1 Typical Access Control at Joint Driveways

3.B Access Control on the Interstate and Freeways

The interstate and freeway systems are divided highways for through traffic with full control of access and no at-grade intersections. Access to the facility is allowed only at interchange locations. Access control should be acquired a minimum of 660 ft. (200 m) beyond the interchange terminal, (See [EXHIBIT 15.4](#)).

3.C Access Control on Expressways and Other Four-Lane Divided Highways

An expressway is a divided highway for through traffic with full or partial control of access, generally with grade separations at intersections. An expressway highway is, or will ultimately be, a four-lane divided highway with interchanges at major intersections and at-grade intersections at designated minor public road intersections.

Selected public road intersections will be permitted at-grade. At-grade access from abutting property to the expressway at approved points will also be considered and allowed as noted in the [Access Control Policy to the State Highway System](#), (Reference 15.4). In rural areas and in undeveloped urban areas, desirable spacing is no more than one access per mile (1.6 km) with 2,000 ft. (610 m) as the minimum distance between access locations (See [EXHIBIT 15.2](#)). Maximum allowable spacing is no more than three access locations per mile (1.6 km) with 1,000 ft. (305 m) between access locations. The maximum allowable spacing should be used only for access to landlocked parcels or farmsteads.

Desirable spacing for expressways in developed urban areas will consolidate access locations. Access locations should be no closer than two blocks. Maximum allowable spacing should also consider consolidating access locations and may match the existing street system and/or development. If possible, an access location on one side of the highway should be located opposite access on the other side of the highway.

3.D Access Control on All Other Highways

In rural areas, spacing of access locations on all other access controlled highways shall take into consideration all access of the property involved, including that from adjacent county roads or streets. Access locations required to provide reasonable access shall be provided by **NDOR** (See [EXHIBIT 15.2](#)).

An effort should be made to consolidate access locations. When consolidating access locations, driveways on one side of the highway should be located opposite the driveways on the other side of the highway. Future access openings should be provided for each property, where warranted, to provide for possible future development.

In undeveloped urban areas, rural rules apply. In developed areas, an effort will be made to consolidate access locations. Future access openings should be provided for each property, where warranted, to provide for possible future development.

Table I				
Expressway and Other Multi-lane Divided Highways				
Including Non Multi-lane Highways with future ADT over 6000				
Area Type	Desirable Access		Maximum Allowable Access*	
	Number of Access Locations per Mile (1.6 km)	Spacing Between Access Pts.	Number of Access Locations per Mile (1.6 km)	Minimum Spacing Between Access Points
Rural and Undeveloped Urban	1	2,000 ft. (610 m)	3	1,000 ft. (305 m)
Developed Urban	Consider consolidation of drives	2 blocks	Consider consolidation of drives	Consider street system and/or development

* Maximum allowable access is no more than three access locations per mile with 1000 ft. (305 m) as the minimum distance between access locations. Minimum spacing should only be used for access to developed properties such as occupied farmsteads, residences, businesses, and land-locked parcels.

Table II				
All Other Controlled Highways				
Area Type	Desirable Access		Maximum Allowable Access	
	Number of Access Locations per Mile (1.6 km)	Spacing Between Access Points	Number of Access Locations per Mile (1.6 km)	Minimum Spacing Between Access Points
Rural and Undeveloped Urban	3**	1,000 ft. (305 m)	Provide access to all properties **	Consider consolidation of drives
Undeveloped Urban	7**	600 ft. (183 m)	Provide access to 11 properties **	Consider consolidation of drives
Urban	Provide access to all properties **	Consider consolidation of drives	Provide access to all properties **	Consider consolidation of drives

** Future access openings should provide for each property, where warranted, to provide for possible future development.

Exhibit 15.2 Desirable and Minimum Access Locations

3.E Access Control on Side Streets and Roads

On projects that include the purchase of access control, access points along intercepting public roads and highways shall be located a sufficient distance from the intersection to avoid conflicts and to improve the efficiency of the highway intersection. Access control shall be extended along these intercepting roads to ensure the proper distance from the intersection remains clear of all intersections, driveways and field entrances.

Access control shall be purchased for a minimum distance of 220 ft. (67 m) along intercepting public roads and for 660 ft. (200 m) along intercepting highways, (See EXHIBIT 15.3). To account for multiple through lanes, turning lanes, and variable median widths this distance shall be measured from the closest edge of the nearest through lane of the mainline, (See EXHIBIT 15.4). **Roadway Design** will calculate these distances in relation to the project centerline and provide the necessary information to **Right-of-Way Design** for the design of the access control.

Skewed intersections will have the access control measured along the centerline of the intersecting roadway from the closest edge of the nearest through lane of the mainline, (See EXHIBIT 15.5). The access control limits will be offset to left and/or right of the intercepting road at this station. Intersections of greater than 15° skew should be evaluated on a case by case basis to determine if the minimum distances should be increased to maintain the integrity of the intersection.

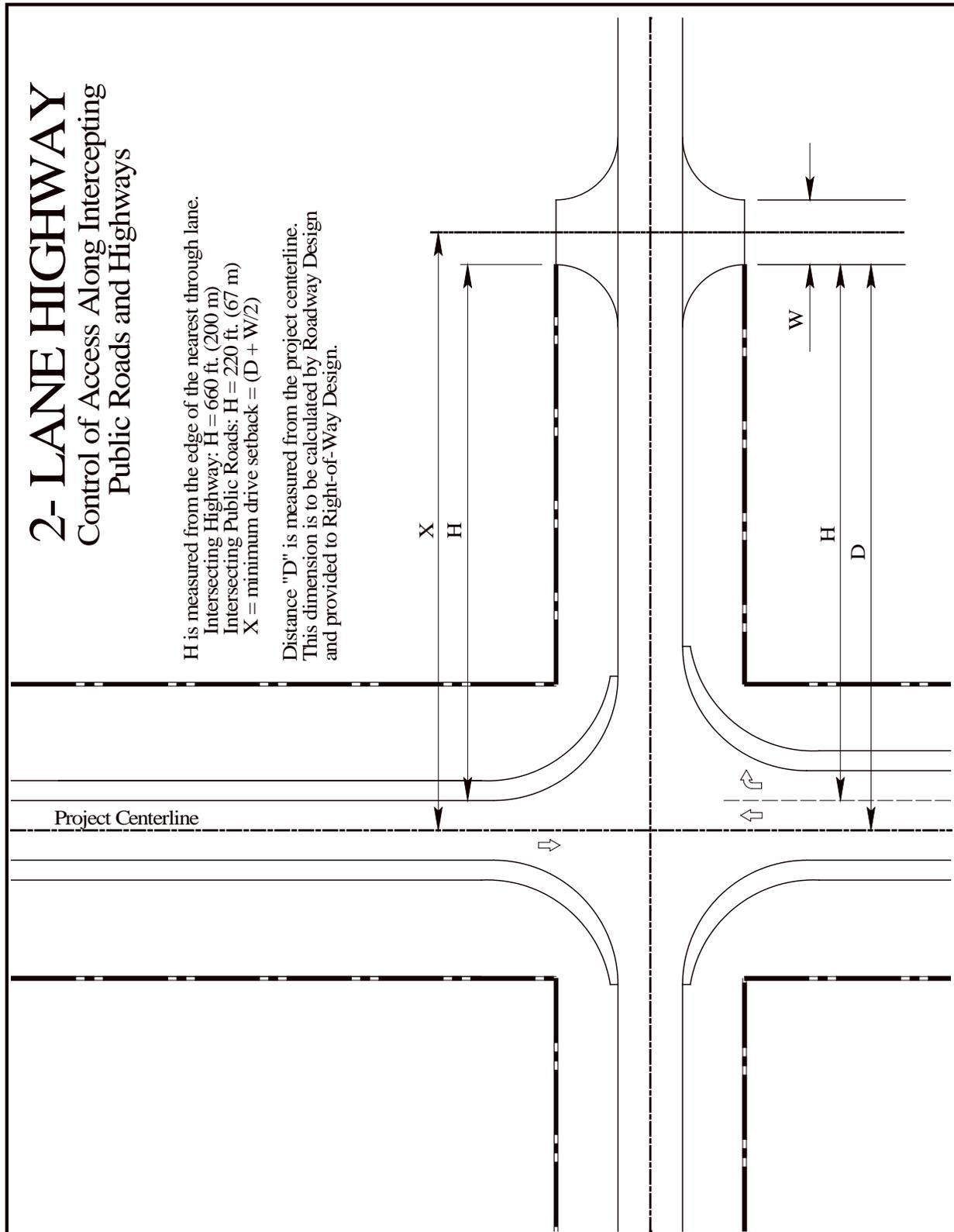
Drives and field entrances along the intercepting roadway shall be placed so that the driveway throat is beyond the access control limits. Exceptions to this policy must have approval of the **Control Access and Permit Review Committee**.

Specific or unusual intersections shall be evaluated on a case-by-case basis, with recommendations brought before the **Control Access and Permit Review Committee** for approval.

3.F Public Notification

The normal public notification and public hearing process should be followed when access is to be affected. There are instances when, even though access control is not changed, access to individual properties may be affected, such as when islands are installed. A public hearing is considered adequate notification if these situations arise. However, if a public hearing is not held, an information meeting should be conducted when four or more properties are affected. If no public hearing is held and if there are fewer than four properties involved, final plans shall be sent to the **District Engineer** who will be asked to contact the property owners and show them the proposed design and its effect on their property.

A Highway Commission Statement shall be prepared for all projects that include new access control, (See the *DPO* (Ref. 15.8), Activity 5400, Clarity Task Code 5434 for additional information).



**Exhibit 15.3 Control of Access Along Intercepting Public Roads and Highways
 2-Lane Highway**

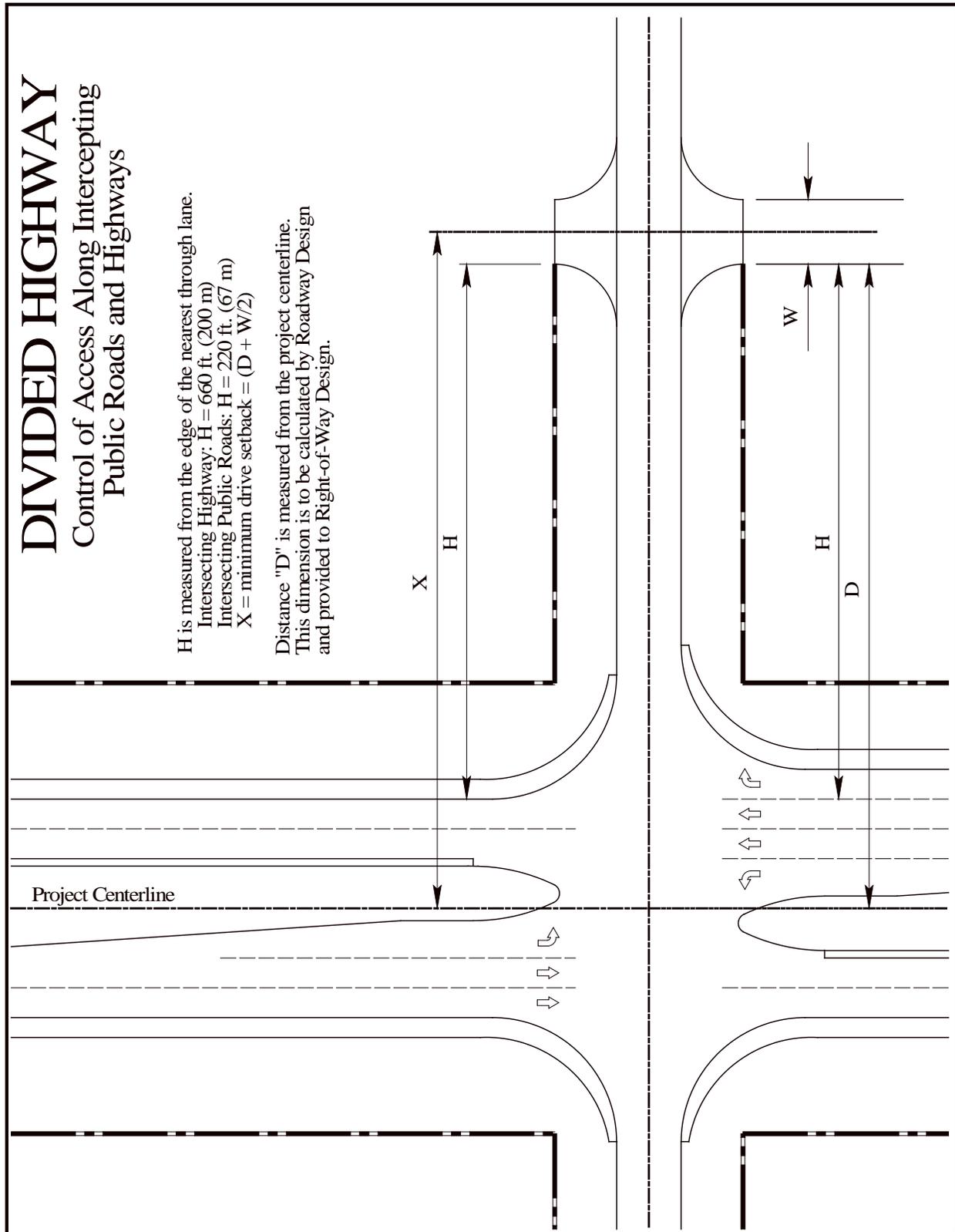
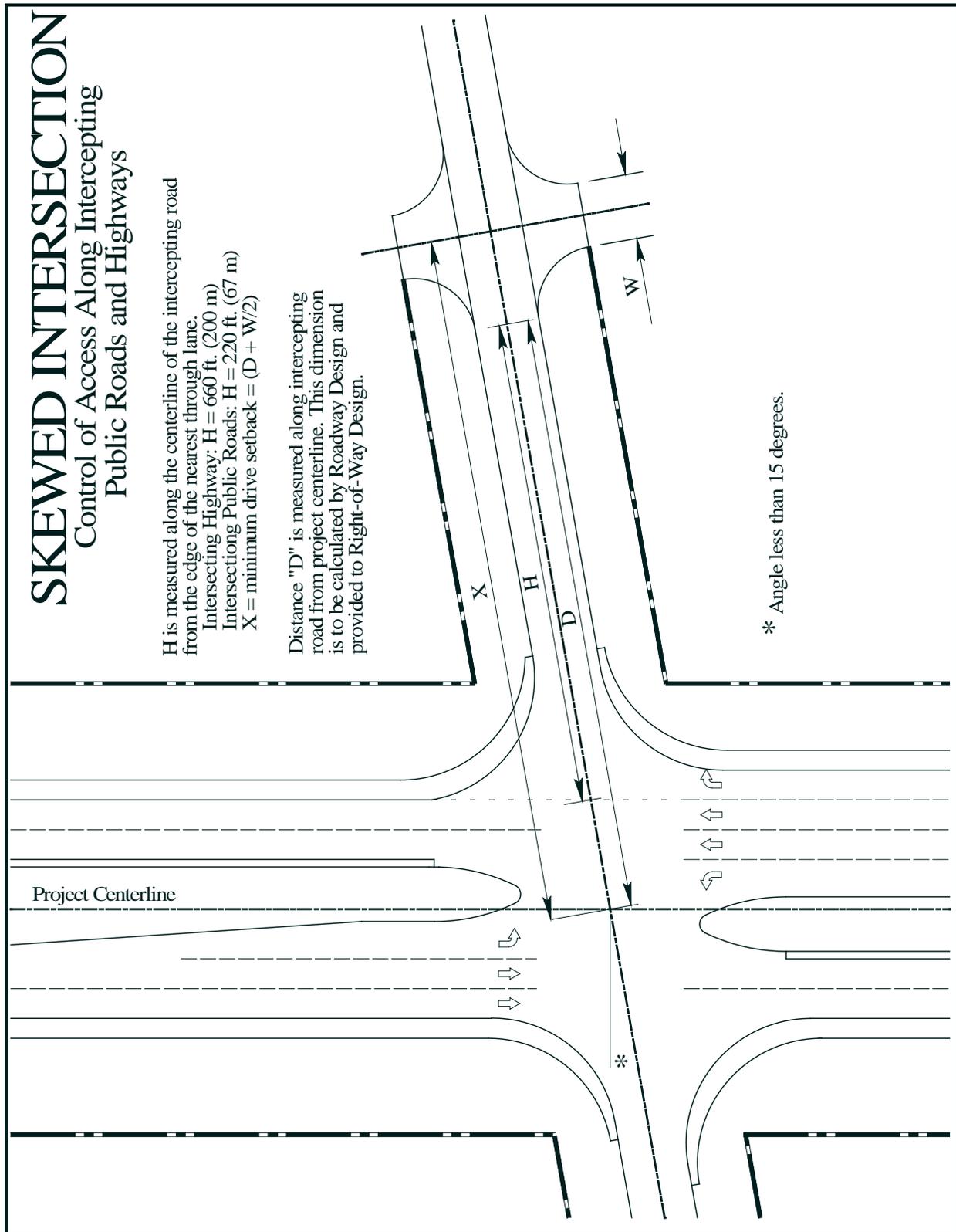


Exhibit 15.4 Control of Access Along Intercepting Public Roads and Highways
 Divided Highway



**Exhibit 15.5 Control of Access Along Intersecting Public Roads and Highways
 Skewed Intersection**

4. APPRAISAL

Right-of-way appraisal begins with the Appraisal Plan distribution. On some projects the **Roadway Design Division** will hold an information meeting prior to appraisal and acquisition, which may be attended by appraisers from the **Right-of-Way Division**, (See the *DPO* (Ref. 15.8), Activity 5600, Clarity Task Code 5620). This is a meeting to present plans, right-of-way needs and the appraisal and negotiation process to the public. Public input and suggestions should be reviewed for consideration.

Following this public information meeting, if held, the appraisal process begins. Appraisers are required to meet with landowners where the taking and property damages are estimated to be more than a set dollar amount. Appraisers will notify the roadway designer and/or the right-of-way designer of questions, concerns or suggestions from the landowners concerning the plans.

5. ACQUISITION

The right-of-way agent will contact property owners in person or by mail when property is to be acquired.

5.A Contract Preparation

After appraisals are prepared and reviewed, they are sent to the **Right-of-Way Division Negotiation Section**. Contracts are prepared showing itemized descriptions of the property to be acquired and the dollar value associated with each item. When the contracts to purchase and legal instruments to file are prepared, the **Negotiation Section** notifies the **Right-of-Way Design Section**. The **Right-of-Way Design Section** makes any necessary changes and sends out "tentative final" Negotiation Plans.

5.B Condemnation

If the **State** and the landowner cannot agree on a settlement amount, the negotiator will notify the **Chief Negotiator**. The **Chief Negotiator** will request a condemnation plat from the **Right-of-Way Design Section**. The plat will be prepared and sent to the **Roadway Design Division** for review and coordination.

The roadway designer should review the plat for errors, omissions, or design revisions in the condemnation area. Check the alignment information, the North arrow, the situation sketch, and the county. If there is a possible change on the tract, an error or omission on the plat or a question concerning the plat, the roadway designer shall notify the **Right-of-Way Design Section**. If the plat needs to be corrected, the **Right-of-Way Design Section** will make the required changes.

6. RIGHT-OF-WAY CERTIFICATION

The **Right-of-Way Division**, prior to the advertising letting date of a project, shall furnish a certificate stating either that all of the right-of-way is available to the contractor and clear of improvements, or stating the estimated date when non-complying tracts will be clear and available. The **Property Management Supervisor** shall furnish the factual information for the right-of-way certificate, which shall be signed by the **Right-of-Way Manager**. This certificate is sent to the **Roadway Design Division** and, on federal-aid projects, to **FHWA**.

The **Right-of-Way Design Section** should provide the roadway designer with a listing of all removal items which will appear on the Right-of-Way Certificate during the Review Appraisal Process, approximately three months prior the project letting. For additional information, see the *DPO* (Ref. 15.8), Activity 5700, Clarity Task Code 5790.

6.A Public Interest Letters

All right-of-way should be acquired prior to the project letting date. Sometimes, however, right-of-way acquisition is delayed, e.g., through condemnation proceedings, etc. To maintain project construction schedules, it is sometimes necessary to request special exception from **FHWA** on federally funded projects to proceed with the scheduled letting dates. This request should be in the form of a public interest letter (See EXHIBIT 15.6) that includes:

- Information about the project.
- The status of all right-of-way acquisitions.

This public interest letter shall conform to the requirements of Title 23 CFR 635.309 (b) (http://www.fhwa.dot.gov/real_estate/practitioners/right-of-way/corridor_management/pdq/pdq13.cfm) and a "Memorandum of Understanding" with the **Federal Highway Administration** (See Appendix C, "Public Interest Letters"). It is very important that all pertinent information be included in this request to avoid additional delay.

The **R.O.W. Division** provides a right-of-way status report to the **Roadway Design Unit Heads** monthly. Roadway designers should use this report when developing a public interest letter. Upon completion of the public interest letter:

1. The **Assistant Design Engineer** will send the public interest letter, through the **Roadway Design Engineer**, to the **Deputy-Director of Engineering** (with a cc to the **Project Scheduling and Program Management Engineer**).
2. When the letter has been approved, the **Deputy-Director of Engineering** will notify the **Roadway Design Engineer**, with a cc to:
 - **FHWA**.
 - The **Contracts Manager**.
 - The **Roadway Design Office Supervisor** (vault/file copy).
 - The **Assistant Design Engineer**.
 - The **P.S. & E. Engineer**.
 - The **Project Scheduling and Program Management Engineer**.
 - The **District Engineer**.
 - The **District Construction Engineer**.
 - The **Right-of-Way Manager**.

On some projects, right-of-way certificates and utility statements are not required because the project does not require additional right-of-way and will not have utility conflicts. The types of projects that do not normally require right-of-way certificates include:

- Armor coat
- Fog seal
- Slurry seal
- Bridge painting
- Aggregate surfacing
- Crack sealing
- Concrete pavement repair
- Joint repair, seeding
- Mill resurfacing

A statement, however, will need to be included in the project proposal that no additional right-of-way is needed and no utility conflicts are anticipated.



Memorandum

DATE October 10, 2002
TO Monty W. Fredrickson, Deputy Director-Engineering
FROM Eldon D. Poppe-Roadway Design Engineer
SUBJECT Project EACSTPD-BR-S40D(102), Prosser North, CN 41987.

I request your authorization under the provisions of Title 23 CFR 635.309(c) and per the Memorandum of Understanding with the Federal Highway Administration dated December 7, 1998, to proceed with the contract letting of Project EACSTPD-BR-S40D(102) on November 14, 2002.

All of the right-of-way required to build this project has not been acquired at this time. The total number of tracts is 7. Tracts 1, 3, 5 and 7 have been paid. Tract 6 has been signed, but not paid. The remaining tract 4 is being negotiated. This taking is for 0.38 acre for \$690.00, temporary easement for \$660.00 and fence for \$1555.00, for a total of \$2,905.00.

It is expected that all of the right-of-way will be acquired and physical possession held by the State prior to the project's November 14, 2002 letting date, well in advance of the project's tentative starting date of June 3, 2003. If not, the bid proposal does specify that the contractor will not be allowed to perform work on any tract until legal and physical possession has been acquired by the State. If necessary, the contractor will be granted an extension of time if a delay has been caused because of a tract not being acquired.

The project has been scheduled for 90 working days, with a completion date of Nov. 29, 2003. It is feasible to move this project to a later letting and still begin work on June 3, 2003. However, per our Standard Specifications, the contractor could request an earlier starting date, which gives flexibility to the contractor's schedule of work and potential cost savings. Moving the letting to a later date would eliminate this flexibility and potential cost savings, which is not in the public's interest. Also, moving this project to later lettings, which are already large, necessitates the risk of accepting higher bids, which is not in the public's interest.

I believe it is in the public's interest that this project remain in the November 14, 2002 letting as scheduled, because of the potential cost benefits as described above. I do not believe the significance of the remaining tract necessitates moving the project to a later letting date.

I request your concurrence in this determination.

cc: Randy Needham
Chuck McCann
Claude Oie
Liz Wunderlich
Roger Winkelhake
Eldon Poppe
Barb Engel

7. MISCELLANEOUS

7.A Liaison with Local Public Agencies

The **Right-of-Way Design Division** will coordinate with the **Local Public Agency Right-of-Way Coordinator** for right-of-way concerns for off-system projects.

7.B Right-of-Way Markers

Right-of-way markers will be required on most projects. One marker should be set at each of the following points:

- At each point where the right-of-way width changes.
- At each PC and PT.
- At each PI without a curve.
- At such other points required to accurately delineate the right-of-way, but not less than 20 per mile (1 per StaM average).

Where it is undesirable to set concrete right-of-way markers, such as on lot or block lines in an urban area, the concrete markers will be omitted and authorized **NDOR** personnel will place iron pipes or pins.

On projects where the existing right-of-way will be altered, the existing markers should be reset. The summary of quantities should separately identify the quantities of new markers and markers to be reset. Markers should be located so that it is possible for a person standing at one marker to see either adjacent marker.

7.C Re-establishing Land Monuments and Property Corners

When construction disturbs or threatens to disturb existing land monuments or lot corners, and when requested by the landowner or **District Engineer**, the new lot corners and the new right-of-way breaks shall be re-established under the construction contract by a licensed land surveyor hired by the contractor. This work shall consist of establishing new right-of-way breaks where **NDOR** has purchased additional right-of-way and re-establishing property corners on the new right-of-way line where, through work that occurred in the area, the monuments were destroyed.

7.D Access Control Fencing

When access control fencing is specified (as it is on all interstate and freeway projects), the fencing is run along the right-of-way line according to the policy set by the Standard Specifications for Highway Construction, Section 910 (Reference 15.5), (<http://www.nebraskatransportation.org/ref-man/specbook-2007.pdf>). The following exceptions and criteria should be kept in mind:

- Where there is a frontage road, the fence is placed between the frontage road and the mainline.
- Access fences should tie into the ends of box culverts or cattle passes.
- Fences should tie into the ends of existing fences and grade separation structures. Where the crossroad runs underneath, fences may run underneath the structure.
- If a portion of a utility line within the right-of-way may be left undisturbed, the access fence may be run inside the utility line so that it can be serviced.
- At all rural interchanges, access fencing should extend 500 ft. (150 m) along the cross road from the ramp termini.

For further information see Chapter Ten: Miscellaneous Design Issues, Section 5.

7.E Relinquishment and Abandonment

When a segment of highway is relocated, the functional classification of the old highway will be changed. **NDOR** will offer to relinquish to the political or governmental subdivision(s) or public corporation(s), any portion of the old state highway that has been relocated. If an offer to relinquish a highway segment is not accepted by the local jurisdiction(s), the **State** may abandon it as provided by law. **NDOR** will relinquish the highway to the local agency after following the approved policy for relinquishment of highways. See Reference 15.6, (<http://uniweb.legislature.ne.gov/laws/statutes.php?statute=39-1313>), Reference 15.7 (<http://uniweb.legislature.ne.gov/laws/statutes.php?statute=39-1314>), and Nebraska Dept. of Roads Operating Instruction 60-13, "Relinquishment of Roads from the Highway System", (Appendix B, "Selected NDOR Operating Instructions"), for additional information.

Before the highway is relinquished, the surfacing shall be brought up to the minimum standards of its' new functional classification, (city street, county road, etc.), if necessary. The roadway designer has the responsibility of producing the necessary plans and estimates for any upgrades required before relinquishment, and has the responsibility for the preparation of the exhibits for the public hearing and of the agreements with the local government(s) regarding the relinquishments.

Early acceptance by the local government is important. A signed Covenant Relinquishment Agreement is required before the public hearing. If a public hearing is not held, the signed agreement and petition are needed before presenting the project to the **Highway Commission** for location approval, (See the *DPO* (Ref. 15.8), Activity 5400, Clarity Task Code 5434).

8. REFERENCES

- 15.1 Nebraska Department of Roads, Right-of-Way Manual, Current Edition.
(<http://www.nebraskatransportation.org/roway/pdfs/row-manual/index.pdf>)
- 15.2 Board of Public Roads Classifications and Standards, Nebraska Minimum Design Standards, Current Edition.
(<http://www.transportation.nebraska.gov/gov-aff/gov-aff-design-standards.html>)
- 15.3 Nebraska Revised Statutes, Section 39-1302, Paragraph (9)
(<http://uniweb.legislature.ne.gov/laws/statutes.php?statute=39-1302>)
- 15.4 Nebraska Department of Roads, Access Control Policy to the State Highway System, Current Edition. (<http://www.nebraskatransportation.org/roway/pdfs/accesscontrol.pdf>)
- 15.5 State of Nebraska Department of Roads, Standard Specifications for Highway Construction, 2007. (<http://www.nebraskatransportation.org/ref-man/specbook-2007.pdf>)
- 15.6 Nebraska Revised Statutes, Section 39-1313
(<http://uniweb.legislature.ne.gov/laws/statutes.php?statute=39-1313>)
- 15.7 Nebraska Revised Statutes, Section 39-1314
(<http://uniweb.legislature.ne.gov/laws/statutes.php?statute=39-1314>)
- 15.8 Nebraska Department of Roads, Design Process Outline (DPO), Current Edition.
(<http://www.nebraskatransportation.org/roadway-design/downloads.htm>)

