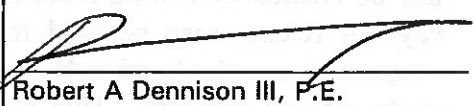


To: MODIFIED BY EB 11-010 & SUPERSEDED BY EI 11-010 EFFECTIVE 9/1/11		New York State Department of Transportation ENGINEERING INSTRUCTION	EI 10-040
Title: PERMISSION TO PERFORM CONTRACT WORK ON PRIVATE LAND			
Distribution: ☐ Manufacturers (18) ☒ Local Govt. (31) ☒ Agencies (32) ☐ Surveyors (33) ☒ Consultants (34) ☒ Contractors (39) ☐ _____ ()		Approved:  Robert A. Dennison III, P.E. Chief Engineer  Date	

ADMINISTRATIVE INFORMATION:

- Effective Date: This Engineering Instruction (EI) is effective with the May 5, 2011 lettings.
- Superseded Issuances: No issuances are superseded.
- Disposition of Issued Materials: Updates to *Highway Design Manual* (HDM) Chapters 5 and 21 will include guidance for designers on the use of releases. The Office of Real Estate will update the *Right of Way Manual*, the Office of Construction will update the *Construction Administration Manual* (CAM), the Local Programs Bureau will update Chapter 11 of the *Locally Administered Federal-Aid Procedures Manual*, and the Office of Design will update the *Standard Specifications*.

PURPOSE: To announce a consolidated private property permission and release form, update Department policy and guidance on the appropriate use of releases, and announce a revision to the Standard Specifications adding Section 107-13.

TECHNICAL INFORMATION:

Requirements: All work necessary for the construction of the project or to meet commitments made during preliminary design must be performed within the proposed highway boundary or appropriate rights acquired in accordance with HDM Section 5.5.6. For work on private property adjacent to a highway project on the State's system, the PERMISSION TO PERFORM WORK ON PRIVATE LAND, is used for work that is authorized by statute, is considered not essential to the construction of the transportation project, and reduces adverse impacts to a property owner. Release forms are used for the following:

- State Highway Law Section 19 and HDM Section 5.5.6.7 allow the planting of trees and shrubs on private property with the consent of the property owner.
- State Highway Law Section 54-A and HDM Section 5.5.6.6 discuss the use of property releases by property owners when entrance onto private property is required to reestablish existing entrances, approaches, or driveways to meet a new, substantially changed highway grade. Entrances, approaches, and driveways include curbs, walkways, stairs, minor grading, and paths. Work can include removal of the existing walkway, stair, curb, path, etc. Grading should be limited to slope flattening to create a mowable and aesthetically pleasing slope. Slopes flatter than 1:4 that are outside of the clear zone may be considered not essential to the transportation project, and this work may be performed under a release. Improvements to walkways to meet the Americans with Disabilities Act (ADA) may also be performed under a release (e.g., providing standard steps and

handrails). However, the Department is not obligated to correct ADA issues on private property.

- State Highway Law Section 10(24-b) and HDM Section 13.5.4 allow for the reconnection of utilities to private properties. State Highway Law Section 45 and HDM Section 10.2.2.3 discuss removal of unsound and hazardous trees, which include trees within the clear zone, trees within the deflection distance of guide rail, and unsound trees, which may be created by cutting roots or large branches encroaching on the highway right-of-way. A release may be used to obtain the property owner's waiver of any right to compensation under Section 45, in consideration of the property improvements performed on the private property. This may include leaving the wood or wood chips from the unsound or hazardous tree with the property owner for their disposal in accordance with state and federal requirements. Information on the state and federal requirements is available at: <http://www.dec.ny.gov/animals/265.html>

Releases are not to be used where the work is critical to the transportation purposes of the project, such as relocating a driveway away from an intersection, establishing the clear zone, or constructing culverts. Property rights are to be obtained to relocate driveways onto totally new horizontal alignments on private property, construct retaining walls, slopes of 1:2 or greater, and permanent public facilities (e.g., impervious surfaces, culvert headwalls). Refer to HDM Section 5.5.6 for the different types of right of way acquisitions and access.

Use of Adjacent Land for Contractor Staging, Access and Office Space: A release letter is not used for property rights acquired by the contractor (e.g., rental of property for equipment staging and storage). The contractor is responsible to the landowner and the contractor shall provide the Department with a copy of the lease, rental agreement, deed, etc. to confirm that the contractor has rights to the property.

Local Projects: NYSDOT has been approved to act in the relative position of the Federal Highway Administration for review and approval of plans and agreements as discussed in Section 2.6.4 of the Procedures for Locally Administered Federal-Aid Projects Manual (PLAFAPM). Additionally, New York State Highway Law Section 81 provides that provisions of the Highway Law apply to locally administered Federal-Aid projects. This means that Sections 19, 45, 54-A and 10 of the State Highway Law, NYSDOT's *Highway Design Manual* Chapter 5, as well as other procedures used by NYSDOT for their projects, also apply.

Permission to Perform Contract Work on Private Land Form: The attached property release form, PERMISSION TO PERFORM CONTRACT WORK ON PRIVATE LAND is used to obtain the property owner's consent to allow incidental construction activities on private property and waive their rights to compensation for tree removals. Designers should consult with the Regional Real Estate Group to help ensure that the release is appropriate. The designer should prepare the property release forms during the final design stage, when possible. The designer, project manager, real estate personnel, and/or local sponsor should obtain the property owner's signatures during final design based on Regional procedures, knowledge of the work, and whether or not property rights will also be obtained for work essential to the project. When work on private property is identified during construction, the Engineer in Charge (EIC) will obtain the property owner's signatures on the release forms.

Tax maps may be used to identify the reputed property owner for the release form, which cannot be signed by persons renting or leasing the property. Two copies of the release should be signed so that the property owner can retain a copy.

If the owner elects not to sign the release and the work was to be performed under Sections 19, 54a or 10 of the Highway Law, the designer (or engineer if the project is in construction) is to instruct the contractor to forego the work and should send the property owner written, return-certified, notice that they have declined the work.

If the owner elects not to sign the release and the work was to be performed under Section 45 of the highway Law for tree removals, a letter should be sent along with Section 45 of the Highway Law notifying the property owner of the Department's right under Section 45 of the Highway Law, and the contractor shall be directed to proceed with the work. Under Section 45 of the Highway Law, the property owner may make a claim for compensation for damage caused by the entry and work.

Plans:

- Incidental work on private property is to be shown on the general plans only if a release has been obtained. The general plans should include reference to a table of property releases. The approximate limits of disturbance should be shown on the plans and as an attachment to the release form if the work will not be in-kind.
- The proposal or miscellaneous table section of the plan set shall include a Table of Property Releases identifying the purpose of the release, the owner, and date that it was obtained. A professional stamp is not needed for this table.

BACKGROUND: Nonessential work is the work included in nearly every project that is not directly related to the transportation project and is not required in order to avoid severe consequences to the abutting property. For example, on a 1R project, reestablishing a property owner's access (driveway or walkway) due to a minor elevation change is not essential to the roadway resurfacing and merely a matter affecting the owner's convenience in using the access. Plantings on private property, flattening grades to allow easier maintenance by the property owner, and reconnecting private utilities are other routine examples. Under state law, the Department is not to use public funds to pay property owners for the inconvenience of having an access to the highway reconnected, trees planted on their property, grades flattened, etc., but must pay for and may appropriately use public funds to avoid damage to the reasonable uses of the abutting properties. Releases are to be used for this nonessential work that benefits private property owners and reduces adverse impacts of the project.

The *Construction Administration Manual* (CAM) currently has different releases for incidental work on private property. These releases have been consolidated into a single updated form:

HC90 Walkway Release
HC91 Tree & Shrub Release
HC92 Seeding & Turf Release
HC93 General Use Release
HC94 Approach Release
HC 95 Utility Release

In the past, most plans did not show the release work, many releases were not obtained until the project was under construction, and the releases that were obtained in design were not communicated to the bidders. This added work for the EIC, may have increased bid prices, and resulted in inconsistent treatment statewide. The table, notations in the plans, and specification revisions required by this issuance are intended to reduce the contractor's uncertainty by clarifying where releases have been obtained. They will also help to ensure that the contractor does not enter private property for contract work without a release.

TRANSMITTED MATERIALS: The following forms and specification revisions are transmitted with this EI:

HC- 90 PERMISSION TO PERFORM CONTRACT WORK ON PRIVATE LAND (NYSDOT Let Projects)

HC- 91 PERMISSION TO PERFORM CONTRACT WORK ON PRIVATE LAND (Locally Let Projects)

Specification revisions for Section 107-13 of the Standard Specification Book (USC and Metric)

CONTACT: Questions on this issuance may be directed to Richard D. Wilder, at (518) 457-5922 or at rwilder@dot.state.ny.us.

NEW YORK STATE DEPARTMENT OF TRANSPORTATION
PERMISSION TO PERFORM CONTRACT WORK ON PRIVATE LAND

CONTRACT: D _____ PROJECT IDENTIFICATION NUMBER: _____

FROM STATION: _____ TO STATION: _____

LOCATION: _____ New York County of: _____

The undersigned owner(s) of private land(s) that is/are located at the address(es) listed below:

Property owners address (include mailing address if different)

hereby grant permission and give consent to New York State Department of Transportation or its contractors or designees, to enter onto the property identified above in connection with the above referenced contract for the purpose(s) identified below. This permission is granted with the understanding that such work shall be limited to as shown in the attached or an area within ____ Feet of the public right of way line to:

- ☐ RE-ESTABLISH APPROACHES TO
PRIVATE LAND (DRIVEWAYS/WALKWAYS)¹
☐ PLANT TREES & SHRUBS²
☐ GRADE AND RE-ESTABLISH TURF¹

- ☐ REPLACE ELECTRICAL, GAS, TELEPHONE, WATER, OR
SEWER UTILITY CONNECTIONS TO PRIVATE PROPERTY³
☐ REMOVE UNSOUND OR HAZARDOUS TREES²

The work is scheduled to occur between the months of _____, 20__ and _____, 20__.
The Engineer will contact the property owner before entering the private property if these dates change.
The property owner may revoke permission at any time by contacting the Engineer,
_____ at _____.

The property owner(s) are responsible for maintaining the improvements to be constructed. The undersigned property owner(s) agree that New York State Department of Transportation or its contractors or designees, shall not be liable for the maintenance of such improvement, nor liable for damages in connection therewith after the completion of the work. The undersigned property owner(s) waives any right to compensation for tree removals in consideration of the property improvements performed on the private property. The undersigned property owner(s) agree to release and hold harmless New York State Department of Transportation or its contractors or designees from any liability or damages which may arise after the completion of the work performed.

Property Owner(s):

Printed Name	Signature	Date
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Property Owner(s):

Printed Name	Signature	Date
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In the presence of:

Witness(s):

Name/Title	Signature	Date
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Witness(s):

Name/Title	Signature	Date
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- NOTES: 1. Per Section 54-A of the State Highway Law
2. Per Sections 19 and 45 of the State Highway Law
3. Per Section 10 of the State Highway Law

**FEDERAL-AID LOCAL PROJECT
PERMISSION TO PERFORM CONTRACT WORK ON PRIVATE LAND**

PROJECT IDENTIFICATION NUMBER: _____

FROM: _____ **TO:** _____

LOCATION: _____ **New York County of:** _____

The undersigned owner(s) of private land(s) that is/are located at the address(es) listed below:

Property owners address (include mailing address if different)

hereby grant permission and give consent to _____ or its contractors or designees, to enter onto the property identified above in connection with the above referenced contract for the purpose(s) identified below. This permission is granted with the understanding that such work shall be limited to as shown in the attached or an area within ____ Feet of the public right of way line to:

- | | |
|--|---|
| ☐ RE-ESTABLISH APPROACHES TO PRIVATE LAND (DRIVEWAYS/WALKWAYS) ¹ | ☐ REPLACE ELECTRICAL, GAS, TELEPHONE, WATER, OR SEWER UTILITY CONNECTIONS TO PRIVATE PROPERTY ³ |
| ☐ PLANT TREES & SHRUBS ² | ☐ REMOVE UNSOUND OR HAZARDOUS TREES ² |
| ☐ GRADE AND RE-ESTABLISH TURF ¹ | |

The work is scheduled to occur between the months of _____, 20__ and _____, 20__.
The Engineer will contact the property owner before entering the private property if these dates change.
The property owner may revoke permission at any time by contacting the Engineer, _____ at _____.

The property owner(s) are responsible for maintaining the improvements to be constructed. The undersigned property owner(s) agree that _____ or its contractors or designees, shall not be liable for the maintenance of such improvement, nor liable for damages in connection therewith after the completion of the work. The undersigned property owner(s) waives any right to compensation for tree removals in consideration of the property improvements performed on the private property. The undersigned property owner(s) agree to release and hold harmless _____ or its contractors or designees from any liability or damages which may arise after the completion of the work performed.

Property Owner(s):

Printed Name	Signature	Date
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Property Owner(s):

Printed Name	Signature	Date
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In the presence of:

Witness(s):

Name/Title	Signature	Date
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Witness(s):

Name/Title	Signature	Date
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- NOTES:**
1. Per Section 54-A of the State Highway Law
 2. Per Sections 19 and 45 of the State Highway Law
 3. Per Section 10 of the State Highway Law

Make the following changes to the Standard Specifications of May 1, 2008:

Page 125 Add:

SECTION 107-13 PERMISSION TO PERFORM CONTRACT WORK ON PRIVATE LAND

Use of Adjacent Land for Contract Work: The contractor shall not enter upon any parcel until the proper rights of entry have been obtained as stated in §105-15. Releases may be used for contract work outside of the existing right-of-way that minimizes the adverse impacts of the project on a property owner and is not essential for the construction of the project. Work performed under a release may include: plantings; unsound and hazardous tree removal; minor grading; and reconnection of private driveways, walkways and utilities.

The Department will secure all releases prior to the contractor performing contract work on private parcels. The contractor may not secure releases for contract work. If a release is not obtained, the contractor shall not enter upon the parcel and the work will be removed from the contract.

Any damage resulting from the contractor's work on private property shall be satisfactorily repaired or items replaced at the contractor's expense.

The engineer will coordinate with the property owner to determine the disposition of removed trees in accordance with state and federal requirements and guidelines, which may require chipping or other disposal in accordance with §201.

Use of Adjacent Land for Contractor Staging, Access and Office Space: A release letter is not used for property rights acquired by the contractor (e.g., rental of property for equipment staging, office space or material storage). The contractor is responsible to the landowner and the contractor shall provide the Department with a copy of the lease, rental agreement, deed, contract to perform private work in trade for property rights, etc. prior to entering private land.

Make the following changes to the Standard Specifications of May 4, 2006:

Page 126 Add:

SECTION 107-13 PERMISSION TO PERFORM CONTRACT WORK ON PRIVATE LAND

Use of Adjacent Land for Contract Work: The contractor shall not enter upon any parcel until the proper rights of entry have been obtained as stated in §105-15. Releases may be used for contract work outside of the existing right-of-way that minimizes the adverse impacts of the project on a property owner and is not essential for the construction of the project. Work performed under a release may include: plantings; unsound and hazardous tree removal; minor grading; and reconnection of private driveways, walkways and utilities.

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