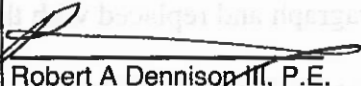


To: SUPERSEDED BY EB 15-031 EFFECTIVE 9/28/15		Modified By EI 14-021 Effective 1/8/15				New York State Department of Transportation ENGINEERING INSTRUCTION		EI 11-010					
Title: RELEASE TO PERFORM CONTRACT WORK ON PRIVATE LAND													
Distribution: ☐ Manufacturers (18) ☒ Local Govt. (31) ☒ Agencies (32)					☐ Surveyors (33) ☒ Consultants (34) ☒ Contractors (39) ☐ _____ ()					Approved:  Robert A. Dennis III, P.E. Chief Engineer		6/2/11 Date	

ADMINISTRATIVE INFORMATION:

- Effective Date: In general, this Engineering Instruction (EI) is effective upon signature. The standard specifications will be effective with projects submitted for the letting of 9/1/11.
- Superseded Issuances: EI 10-040.
- Disposition of Issued Materials: Future updates to *Highway Design Manual* (HDM) Chapters 5 and 21 will include guidance for designers on the use of releases. The Office of Construction will update the *Construction Administration Manual* (CAM), and the Office of Design will update the *Standard Specifications*.

PURPOSE: To issue clarifications associated with the technical information contained in EI 10-040.

TECHNICAL INFORMATION:

Changes. Following are some of the changes from EI 10-040, reflected in the subject EI.

- Title – The title has been changed from “Permission to Perform Contract Work on Private Land” to “Release to Perform Contract Work on Private Land”
- Under Technical Information
 - Added “Design Guidance and Requirements”
Designers shall consult with the Regional Real Estate Officer or designee to ensure that the release to perform contract work on private land is appropriate.”
 - Requirements
 - First bullet – The words “and HDM 5.5.6.7” were deleted. See “HDM Section 5.5.6.7” was added.
 - Second bullet revised. - The words “and HDM 5.5.6.6” were deleted from the first sentence and the sentence was edited. The fourth sentence on grading was revised. See “HDM Section 5.5.6.6” was added at the end of this bullet.
 - Third bullet was split into two bullets, one associated with Highway Law Section 10(24-b), and the other associated with Section 45.
- The “Use of Adjacent Land for Contractor Staging, Access and Office Space” paragraph was deleted (on EI 10-040 page 2 of 4) because the provisions are covered in Standard Specification 107-13.
- Under Plans, first bullet – The first sentence was revised to “Work to be performed outside the highway boundary utilizing a release, should be clearly identified on the general

plans.”

- Under Background – Deleted the phrase - “Releases are to be used for this nonessential work that benefits private property owners and reduces adverse impacts of the project.”
- Release Form – The word “Permission” was replaced with “Release”, and an updated form date assigned. No other changes were made.
- Standard Specifications Section 107-13 – In the title of the section, “Permission” was replaced with “Release” and the word “adverse” was deleted in the second sentence of the first paragraph and replaced with the word “construction”.

Design Guidance and Requirements

Designers shall consult with the Regional Real Estate Officer, or designee, to ensure that the release to perform contract work on private land is appropriate.

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 RELEASE TO PERFORM CONTRACT WORK ON PRIVATE LAND is used for work that is authorized by statute, is considered nonessential to the construction of the transportation project, and minimizes construction impacts to an abutting property. Release forms are used for the following:

- State Highway Law Section 19 allows for the planting of trees and shrubs on private property with the consent of the property owner. See HDM Section 5.5.6.7.
- State Highway Law Section 54-a allows the Department 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. Any grading beyond what the engineer determines is necessary for highway stability and roadside safety can be performed under a release. Improvements to private 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. See HDM Section 5.5.6.6.
- State Highway Law Section 10(24-b) allows for the reconnection of utilities to private properties. See HDM Section 13.5.4.
- 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. It must be stated to the property owner prior to signing the release that the Department has the legal right to enter upon private property to remove hazardous trees without a release and by signing, they are waiving any right to compensation for damages incurred incidental to the entry and work.

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, provide for roadside safety or highway stability, 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.

Local Projects: NYSDOT has been delegated by the Federal Highway Administration to review and approve plans and agreements as discussed in Section 2.6.4 of the Procedures for Locally Administered Federal-Aid Projects Manual (PLAFAP). 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 applies. NYSDOT's *Highway Design Manual* Chapter 5 provides basic design guidance.

Release to Perform Contract Work on Private Land Form: The attached form, RELEASE TO PERFORM CONTRACT WORK ON PRIVATE LAND, is used to obtain the private property owner's consent to non-compensable property improvements or waive any right to compensation for hazardous tree removals. Designers shall consult with the Regional Real Estate Officer or designee to 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, 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 required for work essential to the project. When work on private property is identified during construction, the Engineer in Charge (EIC) or project sponsor (if a local project) will obtain the property owner's signatures on the release forms.

Assessor's records 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 a release and the work was to be performed under Sections 19, 54-a 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 notify the property owner in writing, return-receipt requested, confirming the declination.

If the owner elects not to sign a release and compensation waiver for hazardous tree removal, a letter should be sent with a copy of Section 45 of the Highway Law notifying the property owner of the Department's right to do so. The contractor shall be directed to proceed with the work.

Plans:

- Work to be performed outside the highway boundary utilizing a release should be clearly identified as such on the general plans. 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 or described on the form if the project has no plans.
- The proposal or miscellaneous table section of the plan set shall include a Table of Property Releases identifying the purpose of the release, property address, owner, and date that it was obtained. A professional stamp is not needed for this table.

BACKGROUND: Not all entries onto private property require creating an acquisition map. Releases are utilized to obtain the consent of property owners allowing Department employees or contractors to enter onto private property to make project related improvements deemed non-compensable by law. These non-essential project activities are solely for the benefit of the abutting property owners. For example, simply reestablishing a property owner's access (driveway or walkway) due to a minor elevation change is not essential to a resurfacing project and a release would suffice to smooth the transition from the highway onto the private property. Plantings, flattening grades, and reconnecting private utilities are other routine examples where releases may be appropriate. Although not required, a release may be obtained for hazardous tree removals. Consult the Regional Real Estate Officer for appropriate use.

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:

- HC 90 Walkway Release
- HC 91 Tree & Shrub Release
- HC 92 Seeding & Turf Release
- HC 93 General Use Release
- HC 94 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 RELEASE TO PERFORM CONTRACT WORK ON PRIVATE LAND (NYSDOT Let Projects)

HC 91 RELEASE 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
RELEASE 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

Property Owner(s):

_____	_____	_____
Printed Name	Signature	Date

In the presence of:

Witness(s):

_____	_____	_____
Name/Title	Signature	Date

Witness(s):

_____	_____	_____
Name/Title	Signature	Date

- 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
RELEASE 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
☐ 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 _____ 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

Property Owner(s):

Printed Name

Signature

Date

In the presence of:

Witness(s):

Name/Title

Signature

Date

Witness(s):

Name/Title

Signature

Date

- 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 RELEASE 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 construction 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 RELEASE 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 construction 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.

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