

Frequently Asked Questions – Releases

Updated 7/25/2011

Use of Releases

- 1. What is nonessential work?*

Nonessential work is work that can be omitted from the contract while still enabling the project to achieve the transportation purpose. For example: plantings on private property; reconnecting private driveways; flattening slopes beyond what is needed for the highway stability and outside the clear zone; and reconnecting private walkways could be omitted from a project and the project would still achieve the overall transportation purpose (e.g., restore the riding surface, reduce delay, reduce crash severity, and extend service life).
- 2. Who determines the essential work?*

The professional stamping the plans based on the project objectives approved by the Regional Director.
- 3. Who determines the amount of space needed for a contractor to complete the construction activities?*

The decision is made by the professional stamping the plans. The decision must be based on the accuracy of the highway boundary information, the terrain data, the work zone traffic control, the construction equipment and the proposed construction technique. Survey, Construction and ROW groups should all be consulted as necessary.
- 4. Who determines if a release can be used?*

The decision is ultimately that of the Regional Real Estate Officer. While the professional stamping the plans determines whether or not certain work is essential to the project objective, the RREO determines the applicability of releases, the adequacy of acquired real property rights to perform essential work, and the necessity of any essential supplemental work necessary to mitigate property damages.
- 5. Should releases be obtained during construction?*

There may be circumstances where it's necessary and appropriate to obtain releases during construction; however, releases should be obtained prior to or during final design. Securing them in final design enables the contractor to consider the additional work in their bid and allows more time to contact the property owners to ensure equitable treatment.
- 6. How are the property boundaries defined?*

A highway boundary is determined by the professional land surveyor. An approximate highway boundary may be determined by a professional engineer based on record plans, previous surveys, reliable and generally accepted historical data, etc.
- 7. Can releases be used for federal-aid local projects?*

Yes. The use of releases in accordance with state law and has been approved by FHWA. A release form was developed specifically for local projects.
- 8. Who signs ROW Clearance Certificates?*

The Regional Real Estate Officer executes all ROW Clearance Certificates. Certificates for local projects are also signed by the Responsible Local Official.

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Driveways

9. *If a driveway's sight distance or grade is non-conforming or will become non-conforming as part of the project, can a release be used?*
Yes. A benefit/cost (B/C) analysis based on crash probability, crash severity, and the cost of developing a TE should be performed. Nonconforming driveway grades and sight distance may be retained for low B/C ratios. Releases are not appropriate in instances where functional utility has been significantly degraded.
10. *Should a Temporary Easement (TE) be used instead of a release for reconnecting driveways?*
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, slopes flattened, etc.; however, sponsors/owners must pay for and appropriately use public funds to avoid damage to the reasonable uses of the abutting properties. Project designers are advised to consult the Regional Real Estate Officer or his designee regarding which instruments are appropriate for specific applications.
11. *When should a Temporary Easement (TE) be used instead of a release for driveway work?*
Examples include when a driveway is being substantially relocated for access control near an intersection or where a B/C analysis based on crash probability, crash severity, and the cost of developing a TE show the work to be prudent or when property access and/or overall property utility would be substantially impaired.

Sidewalks and Walkways

12. *Can releases be used to place or replace an existing sidewalk on private property?*
No. Releases shall not be used for new or replacement impervious surfaces on private property or any adjacent work areas extending beyond the highway boundary. This, includes, but is not limited to: shoulders, headwalls, wingwalls, sidewalk, parking areas.
13. *What is the difference between a sidewalk and a walkway?*
A sidewalk is for public use, normally parallel to the highway. A walkway is a private path to a business or residence, normally perpendicular to the highway.
14. *Along a highway that was determined by use, should releases be used to replace sidewalks built with public funds that have been in place for 10 years or more under a prescriptive easement?*
No. The use of a release may undermine any prescriptive rights the Department and or municipality may have. See the ROW Mapping Procedure Manual Chapter 4 for a discussion of establishing a highway by use.
15. *Can releases be used to remove impervious surfaces and other features from private property?*
Sidewalk, fences, walkways, etc. on private property may be removed using a release only when deemed nonessential to the project, the removal is beneficial to the property owner, and the removal is beneficial to the project.

ADA

16. *Does ADA require walkways on private property to be replaced if the new sidewalk elevation creates a non-ADA compliant step?*
No. The Department is not required to fix ADA issues on private property. A release can be used to correct ADA issues on private property created by the project.

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Plantings

17. *Are tree plantings for soil erosion and aesthetic purposes only?*

No, the powers of the commissioner are much broader, but plantings on private property should be placed in proximity to the roadside edge. It should be recognized that without public acquisition of permanent rights, private property owners are not obligated to allow enhancements to remain.

Grading

18. *How much grading can be performed under a release?*

Any grading beyond what the engineer determines is necessary for highway stability and roadside safety. In most cases, unstabilized slopes of 1:2 are used to maintain the integrity of the highway, which includes the travel lanes, shoulders, sidewalks and drainage ditches.

Tree Removals

19. *Are releases required for work performed under Section 45 of the Highway Law?*

No. The release is a best practice to notify the property owner. The release is also used to waive compensation for the removal.

20. *What if the property owner does not sign the form?*

The necessary work shall proceed to protect public safety. A right of entry notification and a copy of Section 45 should be provided to the property owner.

21. *Is Section 45 for emergency work only?*

No. Section 45 does not use the word emergency and is not restricted to emergencies. Section 45 allows removal of trees that constitute a danger to the users of the adjacent highway.

22. *Can Section 45 work be performed by a contractor?*

Yes. Section 45 does not restrict the Department to its' own forces. Contractors perform a substantial portion of the highway maintenance.

23. *Is Section 45 work in a capital project eligible for federal-aid?*

Yes. Hazardous and unsound (dead or dying) tree removal is listed in the FHWA approved Element-Specific list in PDM Appendix 7, Exhibit 7-4.

24. *Who identifies hazardous or unsound trees?*

Landscape architects and tree arborists are qualified to identify hazardous or unsound trees to the professional stamping the plans.

25. *Tree roots are causing damage to the existing sidewalk, highway or drainage system. Can Section 45 be used to remove the tree?*

Section 45 allows removal of trees that constitute a danger to the users of the adjacent highway. If the tree roots have damaged the sidewalk and created a tripping hazard or the roots have impaired the drainage system and created a flooding problem, Section 45 can be used to remove the tree if removal of the problem roots will create an unsound tree.

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26. *Are releases needed to remove trees on the highway boundary?*

No. A release is not needed for line trees on the highway boundary that must be removed for highway improvement, maintenance or safety purposes.

Process

27. *When should releases be obtained?*

Ideally in final design after identification of the potential for a release. Obtaining releases early is beneficial to the property owners so they have a chance to discuss issues with the designer. It also benefits the Department by allowing the contractor to provide a more accurate bid. In certain circumstances it may be necessary to obtain releases during construction.

28. *Who obtains the releases?*

The designer, project manager, or ROW personnel should obtain the release signatures during design and the EIC should obtain the release signatures during construction. For local projects, the consultant, local Department of Public Works, or sponsor may obtain the release. Under no circumstances are construction contractors to obtain releases for improvements shown in project plans.

29. *What should be done with the signed releases?*

The signed releases should be used to create or update the table of releases in the plans and should be transferred to construction after letting (bid opening).

Property Owner

30. *How is the property owner identified?*

A title search is not necessary for minor work associated with releases. Tax assessor information or GIS property information can be used to identify the owner; however, ownership is to be confirmed with the release signatory. If the property has been sold and a different person claims ownership, their claim should be confirmed.

31. *Can releases be rescinded?*

Yes. The property owner can rescind the release at any time by contacting the contact person on the release form.

32. *What if the work performed under the release is not acceptable to the property owner?*

The EIC is to ensure the contractor's work is performed to acceptable practices. Section 107-08 of the NYSDOT Standard Specifications requires the contractor to restore disturbed areas to a pleasing and acceptable condition. Under Section 107-09 of the NYSDOT Standard Specifications, the contractor is responsible for all damage, direct or indirect, of whatever nature resulting from the performance of the work. The contractor is required to respond promptly to written damage claims. Releases should be sufficiently descriptive to obviate misconceptions about proposed work.

33. *In addition to describing the work, what information should be shown or given to the property owner prior to them signing the release?*

Plans or the limits of work should be provided as part of the release to help show the property owner the proposed work limits.

34. *Is the contractor insured?*

The contractor is fully insured.

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Plans

35. *Are plans required for the work to be performed under a release?*
No. When plans are not provided, the limits of disturbance should be provided in a sketch or described in the release form (e.g., grading within X' of the existing edge of pavement, repave driveway within Y' of the outside edge of shoulder).
36. *Can plans show nonessential work?*
Yes. Nonessential work outside the highway boundary should be clearly identified on the plans.
37. *What information should be shown in the contract documents where a release has been obtained?*
The contract documents should include a table of releases that contains the purpose(s) of the release, the address, the owner, and the date it was obtained. If plans are prepared, they should reference the table of property releases and should show the approximate limits of disturbance
38. *Can work outside the highway boundary be shown on the final plans where a release has not yet been obtained?*
Yes. However, a note must be shown on the plan sheet restricting the contractor from working off the highway boundary unless a release has been obtained. Advance detail plans (75% - 90% plans) may show releases in progress.
39. *Can contract plan or proposal notes be added to restrict contractor access?*
Yes. In restricted areas, a plan note referring to Section 105-15 and 107-13 can be added. Sections 105-15 and 107-13 of the NYSDOT Standard Specifications Book contain the requirements for contractors working on private land. Special notes in the plans or proposal that modify Section 100 should not be included.

Contractor

40. *Can the contractor enter into private arrangements with local property owners?*
Yes. The Standard Specifications allow the contractor to enter into agreements with local property owners to rent or buy land for staging, material supplies, alternate site access, etc.
41. *Can releases be used to provide access to the contractor?*
No. Releases can not be used to provide access for the contractor to build stormwater management practices, install a closed drainage system, install sidewalk, or install new signal. The Work Zone Traffic Control must be designed as if no releases have been obtained.
42. *If a release has been obtained, can the contractor perform nonessential and essential work at the same time?*
Yes. The contractor does not have to perform the work separately. For example, while grading for the benefit of a private property owner, the contractor may also grade the highway portion. The contractor should not use the grading release to stock pile materials, store equipment, etc.