The information contained in Chapter Fifteen: Right-of-Way, dated May 2022, has been updated to reflect the **October 2023 Errata**. The errata addresses errors, changes in procedure, changes in NDOT department titles, changes in other Roadway Design Manual chapters and other reference material citations occurring since the latest publication of this chapter.

Chapter Fifteen presents guidance for the design of New, Reconstructed, and 3R projects; additional design guidance for 3R projects is provided in Chapter Seventeen.

Chapter Fifteen
Right-of-Way

This chapter provides general information regarding the design and acquisition of right-of-way. Right-of-way is land, either owned or with a right of usage (easement), utilized for transportation purposes. For additional information refer to the Right-of-Way Manual (Ref. 15.1) (Right-of-Way Manual).

1. RIGHT-OF-WAY SURVEY

A right-of-way survey will be required whenever a proposed highway improvement includes the acquisition of permanent easement rights and/or the purchase of additional land. The need for a right-of-way survey for temporary easements will be determined on a case-by-case basis. The **Right-of-Way Design Engineer** determines which projects require a right-of-way survey; information used to determine the need for a right-of-way survey includes:

- The "Highway Improvement Programming Request" (NDOT Form 73), provided by the **Program Management Division** (**Program Management**)
- The "Planning Document", provided by the **Project Development Division** (**PDD**)
- Additional input from **Roadway Design**
- Additional input from the **District Engineer** (**DE**)

2. RIGHT-OF-WAY DESIGN PLANS

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

2.A Existing Plans

ROW Design maintains an archive of plans of previous projects in OnBase showing existing right-of-way, easements, and control of access. These plans may be found in "Document Types and Groups/NDOT ROW Design/NDOT ROW Archive Plans". They may also be accessed by a custom query for "NDOT All Contract/Project Documents" and a search by Control Number. These plans may be used to determine if right-of-way will be needed on a project and in the creation of Ownership Plans (See Section 2.C of this chapter).

2.B Corridor Protection Plans

Highways in areas which may have residential and/or commercial development occurring prior to a planned highway improvement will be reviewed for corridor protection. Corridor protection is a procedure whereby the **Nebraska Department of Transportation** (**NDOT**) notifies the appropriate local government agencies and the general public of a planned transportation improvement and the intent to acquire right-of-way along a highway corridor. Corridor protection is designed to allow **NDOT** 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.

If corridor protection is needed, a recommendation will be made by **PDD**, **Roadway Design**, **ROW Design**, or the **District**. The **ROW Division** (**ROW**) has the responsibility for establishing corridor protection on state highways and notifying the public that corridor protection has been filed.

The following steps are required before initiating corridor protection on a new alignment:

- A location public hearing
- Approval of the draft NEPA document, if applicable
- A recommendation from the **Highway Commission**
- Approval from the **Governor**

The above steps are not required to initiate corridor protection on an existing alignment.

If corridor protection is needed 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 of this chapter).

Corridor protection for projects on existing alignment will generally consist of a 300-foot-wide strip on both sides of the existing right-of-way. For projects on a new alignment a strip usually 400 feet in width 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 will inform the owner that **NDOT** has filed corridor protection and that the preliminary plat cannot be approved or that the permit cannot be issued until coordination with **NDOT** occurs. After receiving notification by the local authority, **NDOT** has two months to approve or deny the request. If **NDOT** denies the request, it has six months to negotiate and acquire the necessary right-of-way. If **NDOT** 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. For additional information about corridor protection see Nebraska Revised Statute 39-1311.02 (https://nebraskalegislature.gov/laws/statutes.php?statute=39-1311.02) and the Nebraska Dept. of Transportation Operating Instruction 60-9, “Corridor Protection” (Appendix B, “Selected NDOT Operating Instructions”).

2.C Ownership Plans

Ownership Plans are created by **ROW Design** for projects that require new right-of-way. Ownership Plans depict preliminary survey, topography, current ownerships, property lines, and previous right-of-way in the area of the project. Ownership Plans will be prepared prior to the plan-in-hand activity during "Roadway Design" for New and Reconstructed projects (Activity 5300, Clarity Task 5350) (See the Design Process Outline (*DPO*), Ref. 15.2) (Design Process Outline). For Resurfacing, Restoration and Rehabilitation (3R) projects Ownership Plans may be delayed until right-of-way needs are more clearly determined.

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

- The sheet files from **Roadway Design** provide the base plan layout (the roadway designer will coordinate the base plan layout with **ROW Design** at Meeting "A", see the CADD Policy, cadd-coordination-policy.pdf)
- The right-of-way survey (provides section corners, quarter-section corners, and lot corners)
- Title research by **ROW** (provides a five-year record of property ownership)
- Previous right-of-way and controlled access (provided by reviewing old plans, deeds, railroad maps, railroad leases, and city plats)

These plans may be available for use in public meetings.

2.D Preliminary Right-of-Way Plans

The roadway designer notifies **ROW Design** of the availability of the limits of construction (LOCs) from "Design L.O.C.s to ROW" (Activity 5300, Clarity Task 5389). The LOCs denote the extent of grading, culvert extensions, channel changes, driveways, sidewalks, retaining walls, removal of improvements, channel changes, environmental mitigation requirements, and any other construction items. LOCs may be shown for items which may require right-of-way or easements, either permanent or temporary. Examples of such items include temporary roads, channel cleanouts, public frontage roads, private drives, joint use drives, or removal of improvements.

The LOCs are added to the Ownership Plans and right-of-way is designed, along with permanent and/or temporary easements, permanent and/or temporary railroad easements, and rights of entry or occupation as needed.

The roadway designer will notify **ROW Design** when the following items are available:

- Typical sections
- Environmental or Aerial (E) sheets (See Chapter Eleven: Highway Plans Assembly, Section 4.E, of this manual)
- Roadway Design Details (Activity 5500, Clarity Task 5508) (See the *DPO*, Ref. 15.2)
- Roadway cross-sections
- Culvert cross-sections
- Access Control letter, if applicable (See Section 3 of this chapter)
- Discussions between **Roadway Design** and property owners regarding their tract (e.g. right-of-way taking, potential impacts)
- Do not disturb areas (Do Not Disturb notes will be coordinated between **Roadway Design** and **ROW**)

2.D.1 Right-of-Way Design

Right-of-way will generally be designed based on the need for and use of the tract of land (the construction, operation, and/or maintenance of the project). For additional information see Section 2.07B: Determination of Right of Way Boundaries and Types, of the Right-of-Way Design Manual (Ref. 15.1).

2.D.2 Permanent Easements

Permanent easements allow **NDOT** permanent access to land for specific purposes while the ownership of the land remains in private hands. A permanent easement is attached to the property deed and **NDOT** retains permanent easement rights through any subsequent changes in ownership. Permanent easements are often used in lieu of purchasing land for right-of-way when it is beneficial for the property owner to retain some rights in the acquisition and it does not inhibit **NDOT's** ability to construct, operate, and maintain the highway. Purchasing land for right-of-way should always be preferred however permanent easements may be considered when the benefits of a permanent easement over a land purchase can be determined. Examples of when permanent easements could be used include:

- For areas on one property that are used to provide access to other properties
- For areas that are occasionally or permanently affected by drainage
- To permanently allow **NDOT** access for maintenance
- For areas needed to fulfill environmental permit requirements (e.g. channel changes, buffer zones, access to wetland mitigation sites)
- To minimize impacts on the adjacent property
- For any other areas that are permanently needed for a specific purpose

2.D.3 Temporary Easements

Temporary easements grant **NDOT** the right to use private property for a specific time period and when the time period expires the right reverts to the property owners. Temporary easements are used to permit the use of a specified area by the contractor while building the road improvement. Examples of when temporary easements are used include:

- The construction or reconstruction of a private drive
- Access to an area during construction
- Temporary roads to accommodate traffic during construction
- Crossing rights on Bureau of Reclamation property
- Areas needed to accommodate construction equipment and/or materials
- Areas needed to remove structures and/or improvements
- Culvert, channel, and/or ditch cleanout
- Areas needed to facilitate grading operations
- Shaping (e.g. to blend in fill or cut in urban areas where the slope is 1:4 or flatter)
- Borrow pit or excess material disposal
- Building sewers or inlets that drain water from private property (e.g. an inlet in a private parking lot)
- Any other areas that are temporarily needed to facilitate construction

2.D.4 Railroad Easements, Rights, or Leases

NDOT normally does not acquire land from railroads as right-of-way. Land required at crossings or which is parallel to the highway will normally be acquired in the form of an easement and right of entry. Railroads will typically not grant permanent property rights for roadways running parallel to the railroad, parallel property rights with the railroad will only be pursued after significant coordination with the **Local Assistance Division's Highway Liaison Manager** and **ROW** and may be refused by the railroad. Highway crossings of the railroad may require additional coordination with the **Highway Liaison Manager** and **ROW** to ensure that **NDOT** has the necessary property rights for occupying the railroad's right-of-way.

2.D.5 ROW Design Review

When the preliminary right-of-way design has been finished the right-of-way designer will notify the **Roadway Design Unit Head** (**Unit Head**) that it is available for review and coordination. **ROW Design** then schedules a "R.O.W. Review Meeting" (Activity 5600, Clarity Task 5610) to coordinate the right-of-way design and to identify potential right-of-way impacts (See the *DPO*, Ref. 15.2). After this meeting, the Appraisal Plans are prepared.

2.D.6 Preliminary ROW Estimate

The **Chief Appraiser** of **ROW** will perform a preliminary estimate of the right-of-way costs prior to the appraisal of the project.

2.E Appraisal Plans

The Appraisal Plans are used to initiate the **ROW** appraisal and acquisition process and should be representative of the proposed right-of-way acquisitions needed for construction. The **ROW Appraisal Section** (**Appraisal**), **PDD**, the **Utility Unit** in **Roadway Design** (**Utilities**), and the **Rail Unit** in the **Local Assistance Division** use the Appraisal Plans. The appraiser may request a plan review with the roadway designer using the Appraisal Plans. The roadway designer should not change the alignment after the Appraisal Plan stage.

2.F Negotiation Plans

Negotiation Plans reflect 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 an agreement cannot be reached with a landowner on payment, the **State of Nebraska** (**State**) will file a condemnation to acquire the right-of-way. Right-of-way required for the project will either be acquired and paid for or condemned and paid for prior to advertising a project for bid letting.

2.G PS&E Plans

ROW Design will place the right-of-way plans in ProjectWise for use by **PDU**. When the roadway designer is ready to submit the Plans Package to the **Construction Division Plans, Specifications and Estimates Unit** (**PS&E**) for review (Activity 5700, Clarity Task 5790), he/she should obtain a Right-of-Way Certificate (**ROW** Clarity Task 5666) from the **Property Management Unit** of **ROW** (See Section 6 of this chapter). Changes/revisions to the right-of-way plans following submittal to **PS&E** will be coordinated with the **District**, **Roadway Design**, **PS&E**, **Utilities**, and any other **Divisions**/**Units** impacted by the revision.

2.H Plan Changes/Revisions

Changes to right-of-way plans may be made during any stage of development but most often occur during the appraisal and negotiation stages. The individual requesting a plan change or revision will notify the **ROW Design Engineer** and/or **Roadway Design** of possible conflict and project concerns. The appraiser or negotiator will also report specific suggestions or questions from the landowner and will ask the designer to review and, if practicable, change the design related to the questions. Some change requests and/or revisions may also be brought to **Roadway Design** through the **DE**. Requests from the roadway designer for right-of-way plan changes/revisions must be documented in the project file. Requests for plan changes/revisions will be sent to the **ROW Design Engineer** through the **Unit Head**. Plan changes occurring after the project has been advertised will be processed as a plan revision as outlined in Chapter Eleven: Highway Plans Assembly, Section 7.

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 of the facility. Access rights will typically be acquired on:

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

Access control will be considered on other highways when:

- The 20-year forecast traffic (ADT) is 3,001 or greater, as shown on the current 20 Year Forecast Traffic Map (https://dot.nebraska.gov/travel/map-library/)
- The route is within the present or projected two-mile zoning limits of cities of the first class (population 5,000 to 99,999) and within the present or projected three-mile zoning limits of primary (population 100,000 to 299,999) and metropolitan (population more than 300,000) class cities
- There are three miles or less between the Interstate and the connecting or parallel highway
- The development of a 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
- Motorist safety

As authorized by the Nebraska Revised Statutes, Chapter 39-1327 (Ref. 15.4) (https://nebraskalegislature.gov/laws/statutes.php?statute=39-1327) **NDOT** 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** 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 (Ref. 15.5) (https://dot.nebraska.gov/media/v45nhanu/access-control-policy.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 will be designated as future access). Access should be provided for each property along a project to allow 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. Access control may need to be acquired for an urban tract where an existing driveway is closed. **NDOT** will be responsible for constructing the entrances at the designed access locations as a part of the project. **NDOT** will not construct the access locations referred to as future access. Driveways which serve multiple properties will be classified as "joint drives". EXHIBIT 15.1 is an example of the typical permanent easement acquired for a driveway serving multiple properties.

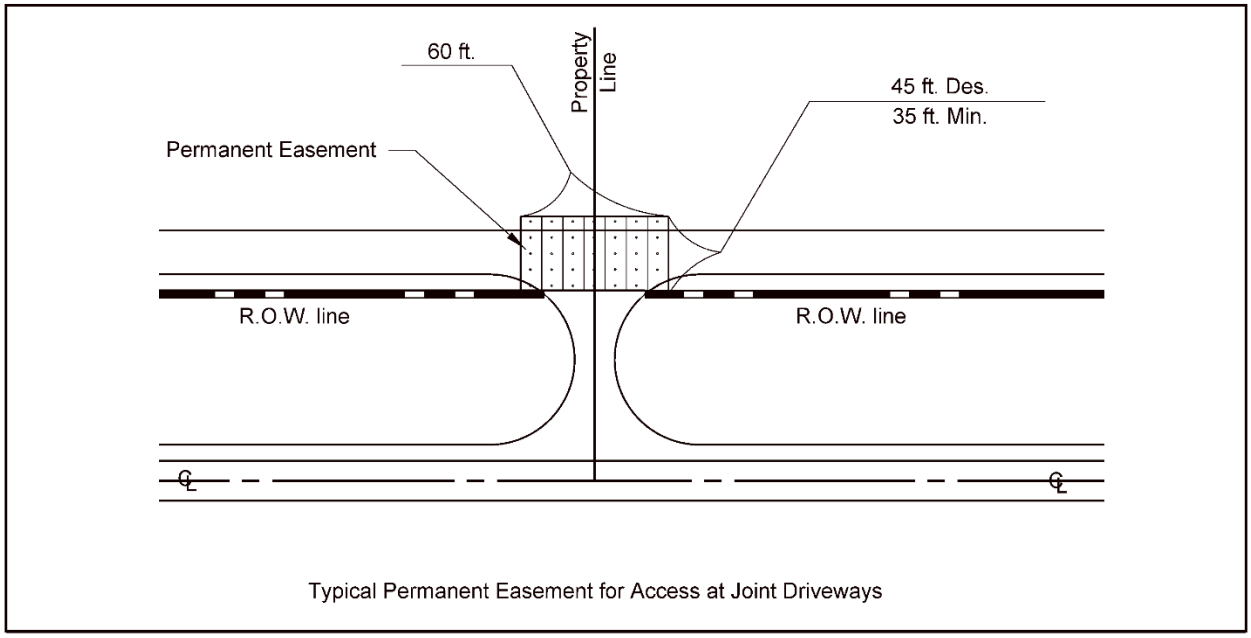

Exhibit 15.1 Typical Access Control at Joint Driveways

The roadway designer will designate access locations for a project during “Roadway Design” (Activity 5300, Clarity Task 5350) (See the *DPO*, Ref. 15.2). Information used in determining access locations includes:

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

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

Items to consider when a roadway has existing controlled access and access is being revised as part of a current project include:

- When providing an unrestricted access to a property that previously had restricted access, the property may be considered as enhanced. The potential for enhancement will be considered during appraisal. Typically, **NDOT** has no obligation to provide access rights other than what presently exists. A decision to provide enhanced access should be justified.
- When access is restricted to a property that previously had unrestricted access, it is likely that the value of the property has changed. **NDOT** appraisers will consider these factors during the appraisal process.

Once the roadway designer is prepared to make recommendations about acquiring access control, the roadway designer should contact the **Property Management Section** of **ROW** and request to be placed on the agenda for the next available access control meeting. The roadway designer will present recommendations for or against acquiring access rights to the **Access Control Team** and must be able to support the recommendations. The roadway designer's presentation should include an aerial photo showing property lines and the access locations which meet the Access Control Policy to the State Highway System (Ref. 15.5) for the **Access Control Team's** review and approval.

At the meeting, the **Access Control Team** will review the project as part of the functional design review to determine access control. The **Access Control Team's** decision is based on many factors, including the following:

- Traffic counts
- 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 the extent to which improvement to the highway facilities by the persons requesting access will mitigate the 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 will be responsible for preparing the CA (control access) Letter, which indicates the decisions made by the **Access Control Team** (See EXHIBIT 15.2).

NEBRASKA
Good Life. Great Journey.
DEPARTMENT OF TRANSPORTATION

Pete Ricketts, Governor

DATE: September 28, 2015

TO: Project File

FROM: Consulting Firm Representative _____

THRU: NDOT Consultant Coordinator _____ NDOT Assistant Design Engineer _____

SUBJECT: Access Control
Project S 30-6(1046), US Schuyler to Rogers, C.N. 32033

Access Control for the above mentioned project was reviewed on August 23, 2017 .A small amount of existing controlled access is summarized below. Access control will be acquired for US-30 as part of th.is project, except as noted below.Access control will be acquired for 220 ft. along intersecting public roads, except as noted below on County Road 15. This distance shall be measured from the closest edge of the nearest through lane.

Existing controlled access was documented in the following locations:

- Project 30-6(126), Schuyler East & West, Station 300+50 to 313+23, left and right.
- Project F-213(3) Station 576+93 to 584+24, right, within a segment of US-30 that will be relinquished near Rogers, NE.

CA on County Roads

Sta. 339+62.05	County Road 14	220' on both sides of County Road 14
Sta. 392+34.88	County Road 15	220' on south side of County Road 15 203' on north side to line up with existing driveway to east
Sta. 444+50.00	County Road 16	220' on both sides of County Road 16
Sta. 497+85.00	County Road 17	220' on both sides of County Road 17
Sta. 550+37.11	County Road 18	220' on both sides of County Road 18
Sta. 576+94.03	Center Street	220' on both sides of Center Street South
Sta. 603+66.70	County Road 19	220' on both sides of County Road 19 North

Kyle Schneweis, P.E., Director
Department of Transportation
1500 Highway 2
PO Box 94759
Lincoln, NE 68509-4759
OFFICE 402-471-4567 FAX 402-479-4325
NDOT.ContactUs@nebraska.gov
dot.nebraska.gov

Exhibit 15.2 Example Control Access Letter

C.N. 32033
September 28, 2015
Page 2

Drives

	Side	Type	Notes
Main line			
319+80	LT	Existing Farm Drive	Existing drive relocated 175' east
319+80	RT		New Access Location. Joint Field Entrance
318+37.71	RT	Existing Field Entrance	Close (move to 318+00)
326+32.94	RT	Existing Field Entrance	Close (move to 318+00)
341+45.44	LT	Existing Drive	Close (move to County Road 14)
342+45.04	LT	Existing Drive	Close (move to County Road 14)
342+76.80	RT	Exiting Drive	Close (move to County Road 14)
343+76.75	LT	Exiting Field Entrance	Close (move to County Road 14)
346+25.63	RT	Existing Field Entrance	Close (move to Sta. 352+75)
352+77.14	LT	Joint Field Entrance	New Access Location
352+77.14	RT	Field Entrance	New Access Location
364+00	LT		New Access Location
364+00	RT		New Access Location
364+86.41	RT	Existing Field Entrance	Close (move to Sta 364+00)
375+49.10	LT	Existing Join Access/Drive	Keep Open
375+49.10	RT	Field Entrance	New Access Location
387+71.30	RT	Existing Drive	Close (move to County Road 15)
397+80.50	LT	Existing Entrance	Close (move to County Road 15)
397+87.43	LT	Existing Field Entrance	Close (move to County Road 15)
398+62.74	LT	Existing Farm Drive	Close (move to County Road 15)
418+00	LT	Existing Farm Entrance	Keep Open
418+00	RT	Existing Field Entrance	Keep open
431+46.07	LT	Existing Field Entrance	Close (move to County Road 16)
432+19.39	RT	Existing Field Entrance	Close (move to County Road 16)
444+72.74	RT	Existing Field Entrance	Close (move to County Road 16)
470+83.64	LT	Existing Field Entrance	Close
471+00	LT	Existing Joint Field Entrance	Keep Open, Slightly shifted east
471+00	RT	Existing Field Entrance	New Access Location
487+26.39	LT		New Access Location, Driveway
487+26.39	RT		New Access Location, Field Entrance
490+60.15	LT	Existing Farm Entrance	Close (move to Sta 487+25)
499+27.40	LT	Existing Farm Drive	Close (move to County Road 17)
504+35.86	LT	Existing Field Entrance	Close
517+99.97	RT	Existing Field Entrance	Close
523+99.38	LT	Existing Field Entrance	Keep Open, Slightly shifted west
523+99.38	RT		New Joint Access Location, Field Entrance
525+12.54	RT	Existing Field Entrance	Close (move to Sta 523+99.38)
548+33.58	LT	Existing Residential Entrance	Close (move to County Road 18)
576+94.18	LT		New joint access location, Field Entrance
590+14.56	LT	Existing farm drive/entrance	Keep Open
590+14.56	RT	Existing farm drive/entrance	Keep Open
603+62.10	RT	Existing Field Entrance	Keep Open
641+96.78	RT	Existing farm drive/entrance	Close (move to Sta 644+00). Coordinate Rogers to North Bend
644+00	LT		New Access Location. Coordinate Rogers to North Bend
644+00	RT	Existing Field Entrance	Keep Open. Joint Access. Coordinate Rogers to North Bend

Other Items that were discussed:
Locations along US-30 provide access to wells/pivots and new/relocated accesses are proposed some distance away possibly making it more difficult to access wells/pivots (Example: 505+00 Lt is moving to 524+00 Lt). During PIH it was thought that several locations along the project were not access locations but a location where an owner drives down the foreslope / ditch to access wells.

CC:

Project Development Division - Division Head
District 3 Engineer
Right of Way Division - R.O.W. Design Engineer
Right of Way Division - Property Management
Right of Way Division - Chief Appraiser
FHWA
Consultant

Exhibit 15.2 Example Control Access Letter (Continued)

3.B Access Control on the Interstate, Freeways and Expressways (Access Only at Interchanges)

The Interstate, freeway and expressway (access only at interchanges) systems are multi-lane 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 typically be acquired a minimum of 660 feet beyond the interchange ramp terminal (See EXHIBIT 15.4).

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

An expressway highway is, or will ultimately be, a four-lane divided highway with full or partial control of access, 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 (Ref. 15.5). See EXHIBIT 15.3 for access spacing.

The desirable access spacing for expressways in developed urban areas should consolidate access locations. Access locations should be no closer than two blocks. The maximum allowable access spacing should also consolidate 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 the access on the other side of the highway.

3.D Access Control on Other Highways

In rural areas the spacing of access locations on other access controlled highways will take into consideration access to the property involved, including that from adjacent county roads or streets. Access locations required to provide reasonable access will be provided by **NDOT** (See EXHIBIT 15.3).

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. Future access openings should be provided for each property, where warranted, to allow for possible future development.

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

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 will be located a sufficient distance from the intersection to avoid conflicts and to improve the efficiency of the highway intersection. Access control will be extended along these intercepting roads so that the proper distance from the intersection remains clear of intersections, driveways, and field entrances.

Access control will be purchased for a minimum distance of 220 feet along intercepting public roads and for 660 feet along intercepting highways (See EXHIBIT 15.5). To account for multiple through lanes, turning lanes, and variable median widths this distance will be measured from the closest edge of the nearest through lane of the mainline (See EXHIBIT 15.6). **Roadway Design** will calculate these distances in relation to the project centerline and provide the necessary information to **ROW 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 15.7). The access control limits will be offset to left and/or right of the intercepting road at this station. Intersections of greater than 15º 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 should be placed so that the driveway throat is beyond the access control limits. Exceptions to this policy must have approval of the **Access Control Team**.

Specific or unusual intersections will be evaluated on a case-by-case basis, with recommendations brought before the **Access Control Team** for approval.

3.F Public Notification

If access control is being purchased a public meeting should be considered. If held, the public meeting will follow the normal public notification and public hearing process. This meeting should be coordinated with **ROW**.

The Nebraska Revised Statutes, Chapter 39-1327 (Ref. 15.4), states that projects which establish access control on any segment of a project will require the written advice of the **State Highway Commission** and the consent of the **Governor**. A Highway Commission Statement will be prepared for projects that include new access control.

There are instances when, even though access control is not changed, access to individual properties may be affected, such as when islands are installed. When access is changed a public meeting is not usually required, it is sufficient to inform the impacted property owners of the changes.

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	**Spacing Between Access Pts.**	**Number of Access Locations per Mile**	**Minimum Spacing Between Access Points**
Rural and Undeveloped Urban	1	2,000 feet	3	1,000 feet
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 feet 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				
Other Controlled Highways				
Area Type	**Desirable Access**		**Maximum Allowable Access**	
	Number of Access Locations per Mile	**Spacing Between Access Points**	**Number of Access Locations per Mile**	**Minimum Spacing Between Access Points**
Rural and Undeveloped Urban	3**	1,000 feet	Provide access to all properties **	Consider consolidation of drives
Undeveloped Urban	7**	600 feet	Provide access to all 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 15.3 Desirable and Minimum Access Locations

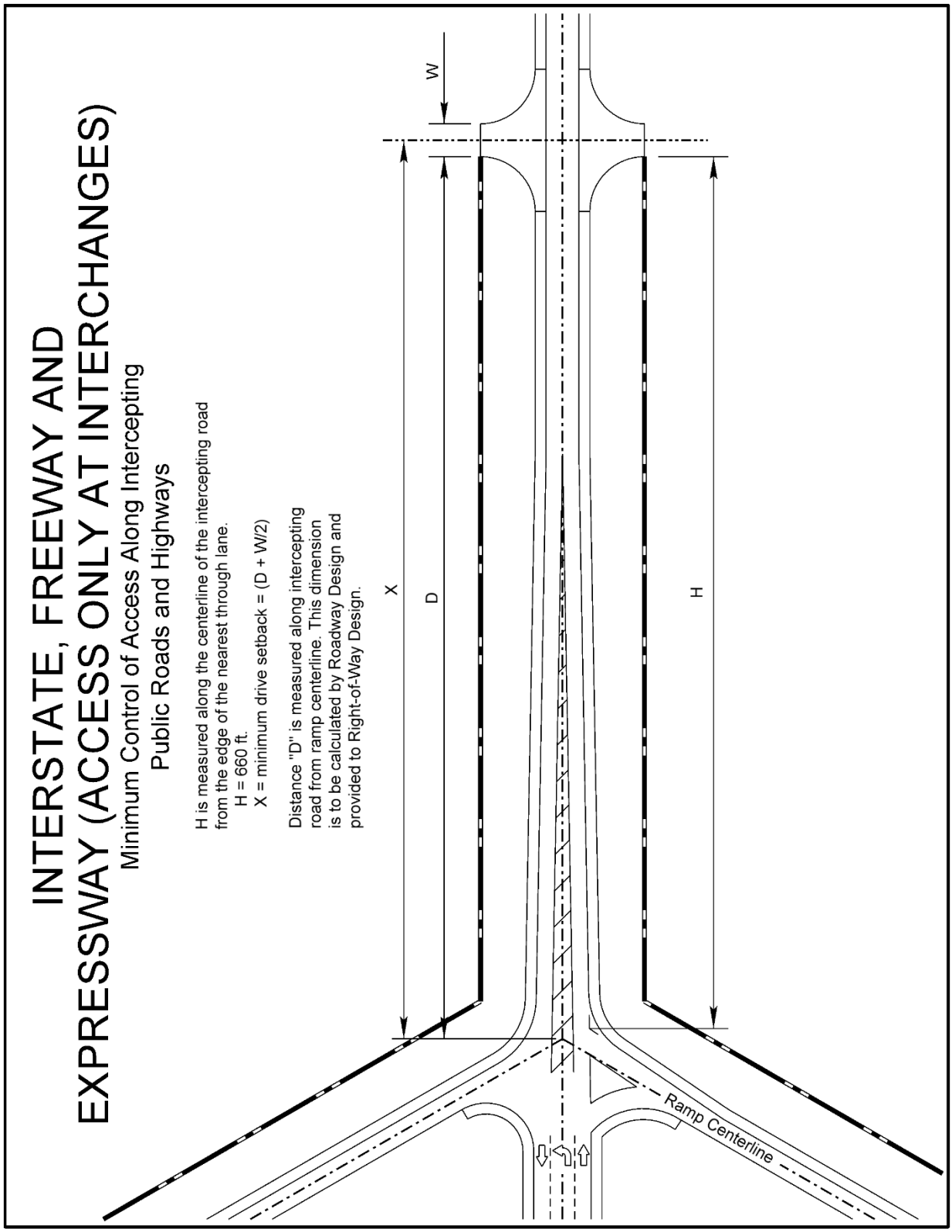

Exhibit 15.4 Control of Access Along Intercepting Public Roads and Highways Interstate, Freeway and Expressway (Access only at Interchanges)

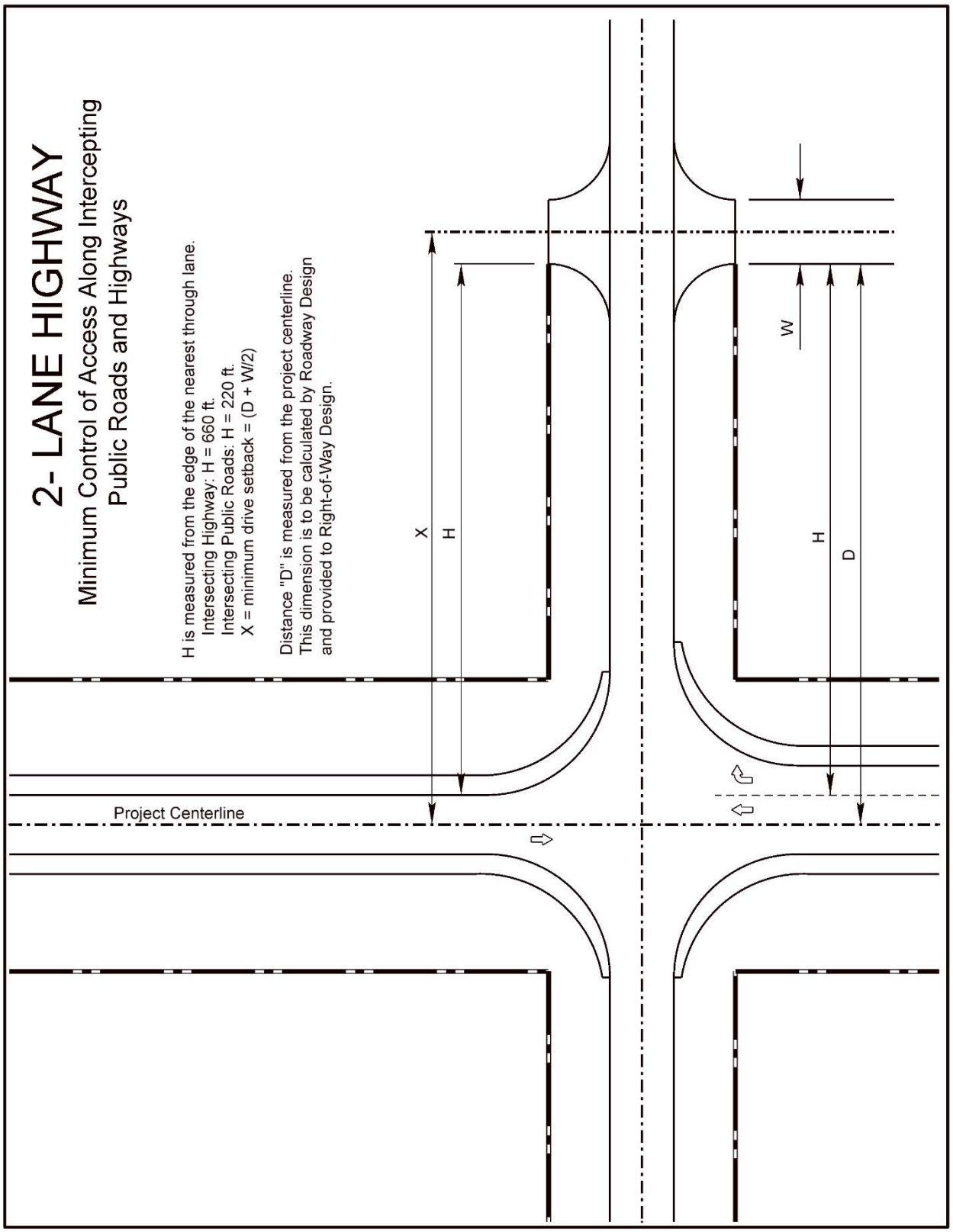

Exhibit 15.5 Control of Access Along Intercepting Public Roads and Highways
2-Lane Highway

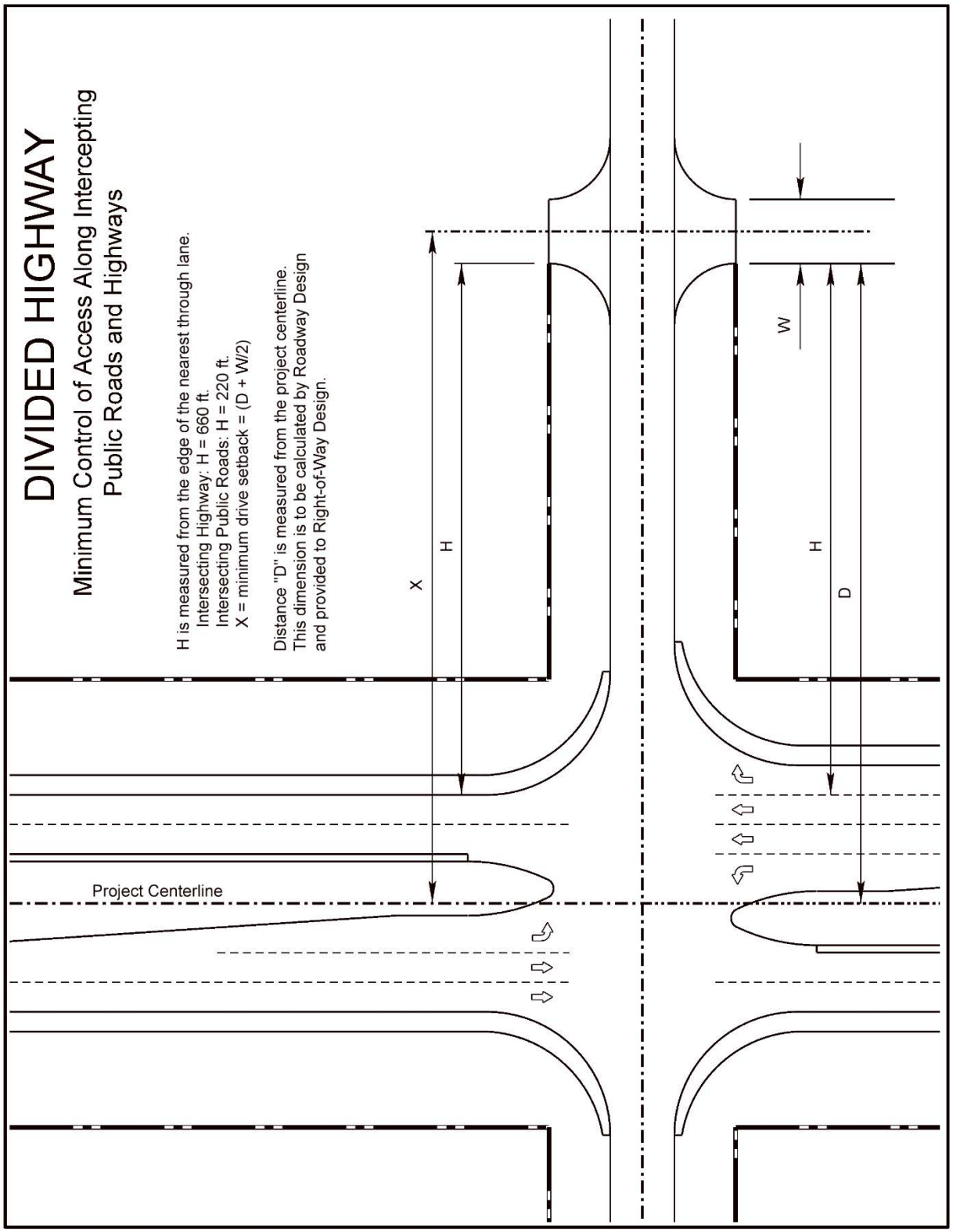

Exhibit 15.6 Control of Access Along Intercepting Public Roads and Highways
Divided Highway

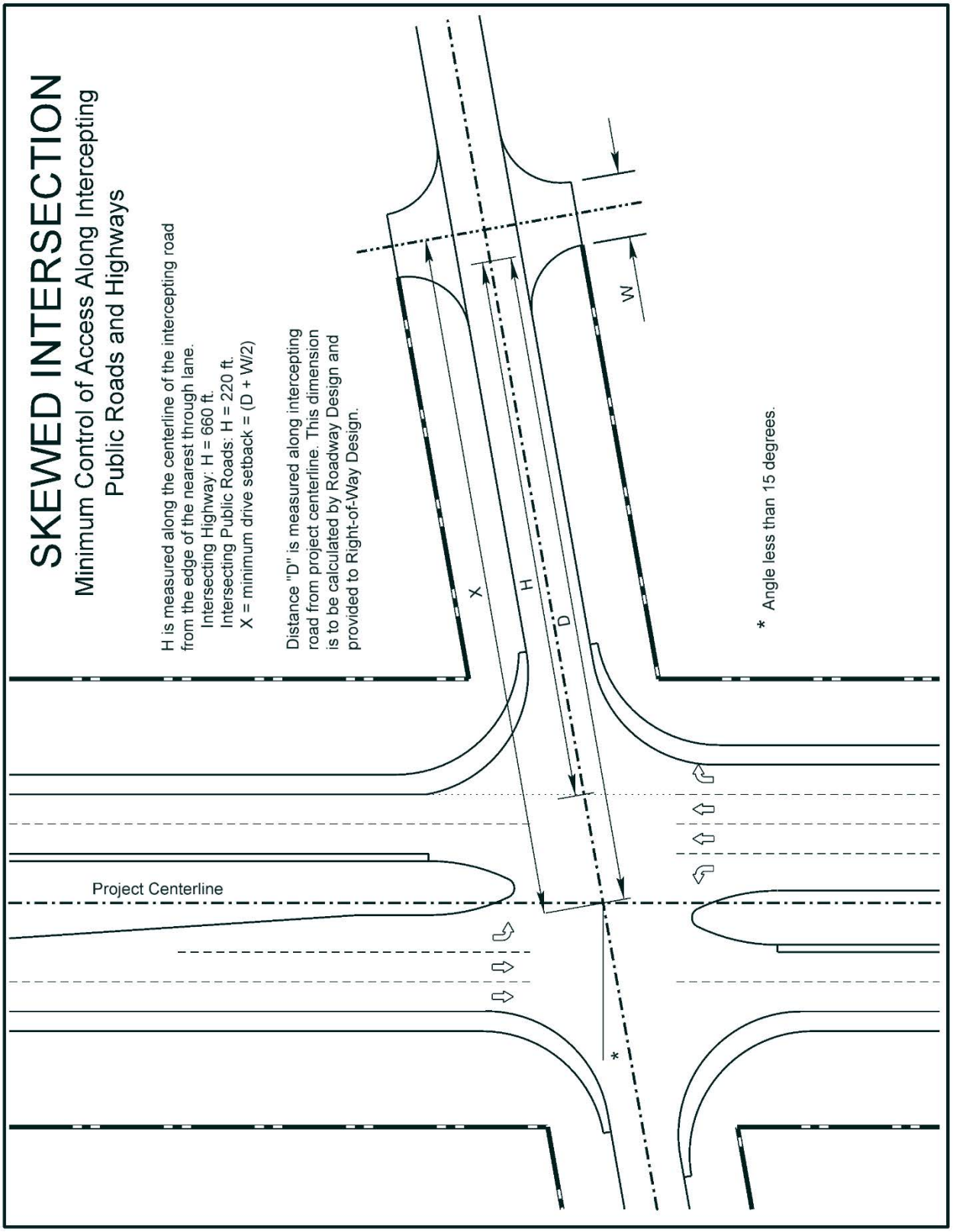

Exhibit 15.7 Control of Access Along Intercepting Public Roads and Highways
Skewed Intersection

4. APPRAISAL

Right-of-way appraisal begins with the Appraisal Plan distribution; appraisers may request a pre-appraisal meeting with the roadway designer to discuss the project. On some projects **Roadway Design** will hold a Public Information Meeting prior to appraisal and acquisition which may be attended by appraisers from **ROW**. This is a meeting to present project information, preliminary right-of-way needs, and the appraisal and negotiation process to the public. Public input and suggestions will be reviewed for consideration.

Following this Public Information Meeting, if held, the appraisal process begins. Appraisers generally meet with landowners where the acquisition and property damages are estimated to be more than an established dollar amount. Appraisers will notify the roadway designer and/or the right-of-way designer of questions, concerns, or suggestions from the landowners.

5. ACQUISITION

ROW Negotiators may request a pre-negotiation meeting with the roadway designer to discuss the project at this time. The Pre-Negotiation meeting is the opportunity for the **ROW Negotiator** to gain an understanding of the roadway design details, any commitments the roadway designer has made, receive a description of the project phasing, and any background information the **ROW Negotiator** will need to be successful. Attendance by the roadway designer and their **Unit Head** *is required*. 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 have been prepared and reviewed, they are sent to the **ROW 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 **ROW Design**. **ROW Design** makes the 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 **ROW Design**.

5.C Relocation Assistance

A person or business displaced by a construction project is eligible to participate in the Relocation Assistance Program. This program is designed to help pay the expenses for relocating residential occupants, businesses, farm/ranch buildings, and non-profit organizations if they are displaced because of a highway improvement. For additional information see Chapter Seven of the Right-of-Way Manual (Ref. 15.1).

6. RIGHT-OF-WAY CERTIFICATION

Prior to the advertising of the letting date of a project, **ROW** will furnish a certificate stating either that the right-of-way is available to the contractor and clear of improvements or stating the estimated date when the right-of-way will be clear and available. The **Property Management Supervisor** will furnish the Right-of-Way Certificate, which will be signed by the **Right-of-Way Manager**. This certificate is sent to **Roadway Design**, and on PS&E Risk Based Projects (RBPs) and federally funded projects the **Construction Division** will transmit a certificate to **FHWA**.

ROW Design should provide the roadway designer with a listing of removal items which will appear on the Right-of-Way Certificate (**ROW** Clarity Task 5666) during the Review Appraisal Process, approximately three months prior the project letting.

6.A Public Interest Letters

The right-of-way should be acquired prior to the project letting date but sometimes right-of-way acquisition is delayed (e.g. through condemnation proceedings). To maintain construction schedules for projects on the NHS 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 (PIL) (See EXHIBIT 15.8) that includes:

- Information about the project
- The status of right-of-way acquisitions
- How would construction proceed based on the limited right-of-way availability
- The benefit/cost to the public

This PIL shall conform to the requirements of Title 23 CFR 635.309 https://www.govinfo.gov/content/pkg/CFR-2005-title23-vol1/pdf/CFR-2005-title23-vol1-sec635-309.pdf and a "Memorandum of Understanding" with **FHWA** (See Appendix C, "Public Interest Letters"). It is very important that the pertinent information be included in this request to avoid additional delay and the letter should assert that one of the following conditions pertains to the project.

1. Although full legal possession of all necessary rights-of-way have not been acquired, the right of entry to and occupation of the property for the construction of the project has been obtained.
2. The acquisition or right of occupancy and use of a few parcels on the project is not complete but all occupants have had replacement housing made available. This request should only be made by **NDOT** under unusual circumstances. Work may be authorized if **FHWA** finds that it will be in the public interest.

The roadway designer should contact **ROW Negotiation** for the latest right-of-way status. Roadway designers should use this report when developing a PIL. Upon completion of the PIL:

1. The **Assistant Design Engineer** (**ADE**) will coordinate the PIL with **FHWA** and then send the PIL, through the **Roadway Design Engineer**, to the **Deputy-Director of Engineering** for approval (with a cc to the **Program Management Engineer**).
2. When the letter has been approved by the **Deputy-Director of Engineering** and **FHWA**, the **Deputy–Director of Engineering** will notify the **Roadway Design Engineer**, with a cc to:

    - The **Highway Contracts Manager**
    - The **ADE**
    - The **Program Management Engineer**
    - The **DE**
    - The **District Construction Engineer** (**DCE**)
    - The **Right-of-Way Manager**

Under the terms of the current **FHWA Nebraska Division** guidance, **NDOT** has approval authority for RBP projects which are not on the NHS. If a RBP project which is not on the NHS requires a PIL, a copy of the PIL will be sent to **FHWA** for information only (See Chapter One: Roadway Design Standards, Section 11.A.2, of this manual).

The same procedure as outlined above will be followed for a PIL on a project which is neither on the NHS or RBP, with the exception that **FHWA** coordination and approval will not be required.

NEBRASKA
Good Life. Great Journey.
DEPARTMENT OF TRANSPORTATION

Pete Ricketts, Governor

July 31, 2017

Deputy Director – Engineering
Nebraska Department of Transportation
1500 Highway 2
Lincoln, NE 68509-4759

RE: Project No. S-6-3(1026); CN 71059; US-6/34 & US-183 East & West, Holdrege
Project No. MISC-6-3(1030); CN 71059A; Sidewalk Vaults in Holdrege

Dear Deputy Director:

We request authorization to let the above-mentioned projects on August 31, 2017. This would accelerate the letting of Project S-6-3(1026) from the current scheduled letting on October 5, 2017 in order to hard tie this project to Project MISC-6-3(1030) US-6/34 Sidewalk Vaults in Holdrege (CN 71059a). The two projects overlap in the core business district in Holdrege. Letting both projects together in a single contract in August will enhance the coordination of work, lower the prospective bids, reduce the overall time to complete the work, and benefit the general public.

The property rights acquisitions for these projects includes 73 contracts on 47 tracts. As of today, 9 contracts on 9 tracts remain unsigned. The following describes the status of the remaining contracts to be acquired:

Tract 4 – NDOT met with the landowner on July 25, 2017. The landowner will discuss further with agent on July 31, 2017.

Tract 9L – NDOT's agent has not been able to make contact with this property owner. Contact was attempted on July 24 and July 25, 2017. Contact will be attempted again on July 31, 2017.

Tract 11 – NDOT's agent has not been able to make contact with this property owner. Contact was attempted on July 24 and July 25, 2017. Contact will be attempted again on July 31, 2017.

Tract 22 – The property owner's attorney is reviewing the documents. NDOT will be able to meet with owner's attorney July 27 or July 28, 2017.

Tract 23L (lessee) – Initial offer has been made with no indication of issues with offer. Meeting with lessee scheduled for July 27, 2017.

Tract 29 – Initial contact has been made. Follow-up contact will occur this week.

Tract 31 – Initial contact has been made. A meeting to discuss offer is scheduled July 27, 2017.

Tract 35 – The property owner has been contacted several times by email and phone and NDOT has been answering questions. NDOT will contact the owner July 27, 2017 to arrange time to obtain signatures.

Kyle Schneweis, P.E., Director
Department of Transportation
1500 Highway 2
PO Box 94759
Lincoln, NE 68509-4759
OFFICE 402-471-4567 FAX 402-479-4325
NDOT.ContactUs@nebraska.gov
dot.nebraska.gov

Exhibit 15.8 Example Public Interest Letter

Deputy Director - Engineering
July 31, 2017
Page 2

Tract 46L (lessee) – The offer packet has been mailed to lessee. Follow-up will be made by agent July 28, 2017.

Tract 46L is required for construction of Project MISC-6-3(1030). All other unsigned tracts are required for Project S-6-3(1026).

Ten day notice letters will be sent on August 1, 2017 for any of the contracts that remain unsigned on that date. If the contracts from the parties of the unsigned tracts are not received by August 11, 2017 condemnation proceedings will be initiated with those parties. This will provide time to acquire the land rights prior to the start of the vault construction currently scheduled for October 9, 2017 and for the roadway construction currently scheduled for March 26, 2018.

Project Details
Project S-6-3(1026) is a new and reconstruct project that will reconstruct 0.69 miles of US-6/34 located in Phelps County, beginning just west of the junction of US-6/34 and US-183 at mile marker (MM) 158+23, and extending east to approximately MM 158+90, just east of the East Avenue business center in Holdrege.

The improvements on this project comprise of removing the existing pavement consisting of asphalt, concrete, and brick, and reconstructing with 9-inch-thick, doweled concrete pavement on a foundation course with prepared subgrade. The project also includes installation of storm sewer, underdrains, sidewalks, curb ramps, lighting, traffic signals, and permanent pavement markings. Water main and sanitary sewer relocations will also be performed as a part of the project.

Moving the bid to August will allow us to tie the project bid to project MISC-6-3(1030) US-6/34 Sidewalk Vaults in Holdrege (CN 71059a). The Sidewalk Vault project will fill basements that extend under the sidewalk at two building locations along the project corridor and is being bid in August to allow time for the basement work to be completed prior to the roadway construction. This work is necessary for proper construction of the new roadway and storm sewer system being constructed under S-6-3(1026). Having the two projects tied for bid will greatly enhance the project coordination by having all the work performed under one general contractor.

Additionally, letting the project in August provides the best opportunity to receive lower bids as contractors try to line up work for the following construction season. Bid prices typically rise as bid lettings get closer to the construction season and contractor's workloads become established.

Therefore, I believe it to be in the public's interest to let this project in the August 31, 2017 letting because of the benefits described above. I request approval of this Public Interest Letter under the condition that NDOR will not allow the contractor to perform work on the unsecured tracts until legal and physical possession of them have been obtained. The contractor will be informed of the right-of-way status and our requirements through the bid proposal.

Sincerely,

_____

Roadway Design Engineer

Approved by:

_____

Deputy Director - Engineering

Attachments: Location Map

xc: Project File
Highway Contracts Manager
Assistant Design Engineer
Program Management Engineer
District 7 Engineer
District 7 Construction Engineer
Right of Way Division Manager

Exhibit 15.8 Example Public Interest Letter (Continued)

7. MISCELLANEOUS

7.A 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 (10 per mile per side)

Where it is undesirable to set right-of-way markers, such as on lot or block lines in an urban area, the markers will be omitted and authorized **NDOT** personnel will place iron pipes or pins. Markers should be located so that it is possible for a person standing at one marker to see either adjacent marker. 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.

7.B 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 **DE**, the new lot corners and the new right-of-way breaks will be re-established under the construction contract by a licensed land surveyor hired by the contractor. This work will consist of establishing new right-of-way breaks where **NDOT** 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.C Fencing

See Chapter Ten: Miscellaneous Design Issues, Section 6, of this manual.

7.D Relinquishment and Abandonment

When a segment of highway is relocated the functional classification of the old highway will be changed. **NDOT** shall offer to relinquish to the political or governmental subdivision(s) or public corporation(s) the portion of the old state highway that has been relocated. **NDOT** will relinquish the highway to the local agency after following the approved policy for relinquishment of highways. 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. Properties shall not be land-locked; access to properties must be preserved.

Before the highway is relinquished the surfacing will 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 which are 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.

For additional information see Dept. of Transportation Operating Instruction 60-13, “Relinquishment of Roads from the Highway System” (Appendix B, “Selected NDOT Operating Instructions”), Nebraska Revised Statutes, Chapter 39-1313 (Ref. 15.7) (https://nebraskalegislature.gov/laws/statutes.php?statute=39-1313)
Nebraska Revised Statutes, Chapter 39-1314 (Ref. 15.8) (https://nebraskalegislature.gov/laws/statutes.php?statute=39-1314) and
Nebraska Revised Statutes, Chapter 39-1315 (Ref. 15.9) (https://nebraskalegislature.gov/laws/statutes.php?statute=39-1315).

8. REFERENCES

15.1 Nebraska Department of Transportation, Right-of-Way Manual, Current Edition. (Right-of-Way Manual)

15.2 Nebraska Department of Transportation, Design Process Outline (*DPO*), Current Edition. (Design Process Outline)

15.3 Board of Public Roads Classifications and Standards, Nebraska Minimum Design Standards (*MDS*), Current Edition. (nac-428-rules-regs-nbcs.pdf)

15.4 Nebraska Revised Statutes, Chapter 39-1327 (https://nebraskalegislature.gov/laws/statutes.php?statute=39-1327)

15.5 Nebraska Department of Transportation, Access Control Policy to the State Highway System, Current Edition. (https://dot.nebraska.gov/media/v45nhanu/access-control-policy.pdf)

15.6 State of Nebraska Department of Transportation, Standard Specifications for Highway Construction (*Spec Book*), 2017 (https://dot.nebraska.gov/media/g4qp4y0d/2017-specbook.pdf)

15.7 Nebraska Revised Statutes, Chapter 39-1313 (https://nebraskalegislature.gov/laws/statutes.php?statute=39-1313)

15.8 Nebraska Revised Statutes, Chapter 39-1314 (https://nebraskalegislature.gov/laws/statutes.php?statute=39-1314)

15.9 Nebraska Revised Statutes, Chapter 39-1315 (https://nebraskalegislature.gov/laws/statutes.php?statute=39-1315)