




STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE  
GOVERNOR

EUGENE A. CONTI, JR.  
SECRETARY

MEMO TO: Division Engineers  
District Engineers  
R/W & C/A Committee Members

FROM: Thomas C. Terry, Jr.   
Highway Design Staff Engineer  
Committee Coordinator

DATE: July 22, 2010

SUBJECT: Revised Surplus Right of Way Disposal and Control of Access Review Committee Operating Procedures

Attached are the revised and approved Surplus Right of Way Disposal and Control of Access Review Committee Operating Procedures that are now in effect. These procedures were last revised and approved in January of 2006. Please distribute this information to all applicable personnel within your area.

The revisions in the operating procedures are summarized as follows. The committee's purpose has been clarified denoting that it only reviews surplus right of way and control of access revisions on all completed highway projects where the right of way claim is not under condemnation. We have added "Surplus" to the committee name. Also, the committee has expanded its evaluations to include requests for utility maintenance access gates and temporary access breaks along control of access facilities. The committee does not review requests for secondary road abandonment, disposal of residue property or replacement of control of access fence types. A quarterly and yearly report will be generated summarizing the committee's recommendations.

To clarify and simplify different types of DOT owned property being disposed and who is responsible for implementing and executing the disposal, a property history worksheet has been developed. The worksheet identifies resolutions on how best to proceed with secondary road abandonment, disposal of residue property, disposal of surplus right of way and revisions to existing control of access right of way. We have noted that the Property History Worksheet must accompany all requests for property disposals and all requests for control of access revisions and that it is required to be completed by the Division Right of Way Agent.

The procedures are being revised to include the addition of a representative from the Mobility and Safety Field Operations Section of the Traffic Safety Unit as a voting member on the committee. In addition, the State Highway Administrator's Office will have a representative as a liaison between the committee and his office. Also, the Division Engineer's recommendation to the Committee Chairperson will now count as a vote. The Committee Chairperson votes for tie breaker only. We have noted these additions in the Committee Composition section.

In reference to the two-year timeframe for right of way/control of access claim settlement, the State Highway Administrator has delegated approval authority to the Committee Chairperson and the Division Engineer on time extensions. If an extension to the two-year timeframe is requested, the Committee Chairperson and

Division Engineers

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Division Engineer will evaluate and agree on a decision. The decision will be based on the requesting party's efforts to settle the right of way/control of access claim during the two-year timeframe. If the enhancement appraisal fee has not been collected by the Division Right of Way Agent within the two years, an extension will most likely not be granted. We have noted this in the Approvals section.

In the Denials/Appeals section we have noted that the Committee Chairperson will send a memorandum to the appropriate Division Engineer explaining the reason for the denial.

In the Enhancement Value section we have noted that the Department will charge current fair market value on all disposals of surplus right of way and control of access revisions. We have also noted that all requests for exceptions to charging fair market value on totally state funded projects will be forwarded to the State Highway Administrator for approval and will give the reasons for the recommended exception.

Also, we have updated the checklist that is completed within the Division. Added to the checklist is the question of whether or not the requested area is on a Strategic Highway Corridor and if the Property History Worksheet has been included. In addition, alternatives for types of request are shown as well as options for the Division Engineer's recommendation.

In revising these procedures, we have coordinated with the Federal Highway Administration, Preconstruction, Construction, and Operations Staff that are involved in this process. If you have any questions regarding the revised procedures, please contact Art McMillan or me in the Highway Design Branch Office.

TCT/asg

Attachments

cc/att: Terry Gibson, PE  
John Sullivan, III  
Jon Nance, PE  
Ricky Greene, PE  
Debbie Barbour, PE  
Art McMillan, PE  
Lacy Love, PE  
Virgil Pridemore  
Kevin Lacy, PE  
Jay Bennett, PE

# SURPLUS RIGHT OF WAY DISPOSAL AND CONTROL OF ACCESS REVIEW COMMITTEE

## OPERATING PROCEDURES

The Surplus Right of Way Disposal and Control of Access Review Committee acts on recommendations from the Division Engineer for disposals of surplus right of way and control of access revisions on all completed highway projects where the right of way claim is not under condemnation. The committee also reviews requests for utility maintenance access gates and temporary access breaks along control of access facilities. The committee can either deny the request or recommend for approval from the State Highway Administrator and the Federal Highway Administration. The committee does not review requests for secondary road abandonment, disposal of residue property or replacement of control of access fence types.

## COMMITTEE COMPOSITION

- 9 Voting Members:
- Highway Design Branch Manager (1) – Chairperson (*votes only as tiebreaker*)
  - Operations (1)
  - Project Development and Environmental Analysis (1)
  - Utilities Unit (1)
  - Right of Way Branch (1)
  - Roadway Design Unit (1)
  - Transportation Mobility and Safety
    - Traffic Management Unit (1)
    - Traffic Safety Unit (1)
  - Division Engineer(s) (1) – (*non attending*)
- 4 Non-Voting Members:
- Federal Highway Administration
    - Preconstruction and Environment (1)
    - Realty (1)
  - State Highway Administrator's Office (1) – Liaison
  - Highway Design Branch (1) – Committee Coordinator

The committee meets on the second Tuesday of each month. The Division Engineer shall submit all items requiring committee action to the Committee Chairperson. The Chairperson must receive items at least two weeks in advance of the next monthly meeting in order to be included on the agenda.

The Special Studies Section of the Roadway Design Unit prepares and distributes the agenda to committee members on the first Tuesday of each month. Agenda items that are deferred due to lack of sufficient information will remain on the agenda for a period of four months. If no action occurs within four months, the item will be removed from the active agenda. If activity on that specific agenda item occurs after four months, the Division Engineer must resubmit the request.

Requests for surplus right of way disposals and/or control of access revisions must be initiated through the District Office. To determine if the lands or interest therein are defined as surplus right of way, control of access revisions, residue property or secondary road abandonment, the Property History Worksheet must be completed by the Division Right of Way Agent. If the requested area is determined to be surplus right of way and/or a revision to the control of access, the District Engineer must do the following:

- Make requesting party aware of appraisal fee, enhancement value and all other costs associated with the request.
- Inform the requesting party of the approximate time frame and steps involved in processing the request.

**SURPLUS RIGHT OF WAY DISPOSAL AND CONTROL OF ACCESS REVIEW COMMITTEE  
OPERATING PROCEDURES**

- Determine requesting party's name, address, and phone number.
- Determine if requesting party is the owner of the adjacent property or an agent of the owner. If an agent, obtain the owner's name, address, and phone number.
- Determine exact location of requested action including existing and proposed site conditions.
- Determine if requested area is on a Strategic Highway Corridor. If yes, identify the facility type.
- For control of access revisions, determine if requesting party has another means of access to the property.

After investigation by the District Engineer, the request (with all associated documentation, including plan sheets and aerial & ground view photos of the requested area) will be forwarded to the Division Engineer for submittal to the committee. The Division Engineer's letter of transmittal to the Committee Chairperson should include a recommendation for approval or denial, which will count as a vote. (Note: The District and/or Division Office may deny any request at the local level.) If a request is denied at the local level, a review by the committee is not required. The Roadway Design Unit and the Highway Design Branch Staff Engineer will review the agenda items and, when necessary, will request additional information for the committee's benefit.

**SURPLUS RIGHT OF WAY DISPOSALS**

The committee will review each request as to its effect on the safety and operation of the state highway involved and for compliance with Section 23 CFR 710, Subpart D, and 23 CFR 771.117(d)(6). Specifically, the committee must determine the following:

- The lands or interest therein to be disposed of will not be needed for highway purposes in the foreseeable future.
- The right of way being retained is adequate under present day standards for the highway facility involved.
- The release will not adversely affect the highway facility or traffic thereon.
- The lands or interest therein to be disposed of are not suitable for retention in order to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.
- The lands to be disposed of are not suitable for use for parks, conservation, recreational, and/or similar purposes.
- The lands to be disposed of are not being used for wetland or stream mitigation.
- No adverse environmental effects are associated with the disposal.
- If applicable, approval will be subject to accommodating existing utilities.

**CONTROL OF ACCESS REVISIONS**

The committee studies requests for breaks in control of access, relocation of access, or reduction in control of access very closely. Control of access is the single most important factor affecting the safety and operation of highway facilities and Strategic Highway Corridors. Existing control of access becomes more critical relative to public safety and traffic operation as time passes and traffic volumes grow; therefore, there should be substantial and justifiable reasons for consideration of control of access revisions. Requests for changes in control of access will be evaluated both in terms of the effect on the highway system and the effect on the adjacent and/or nearby property and must be of value to the traveling public. Appropriate capacity analysis

**SURPLUS RIGHT OF WAY DISPOSAL AND CONTROL OF ACCESS REVIEW COMMITTEE  
OPERATING PROCEDURES**

and design studies shall be completed (by the requesting party) to fully evaluate impacts on existing and proposed conditions.

The committee must determine that there will be no adverse environmental effects associated with the proposed control of access revision. To the extent possible, projected land uses will be considered in evaluating the environmental effects. When appropriate, the committee will coordinate its review with local planning jurisdictions for their recommendations.

Revisions to control of access should be in compliance with 23 CFR 710, Subpart D, and 23 CFR 771.117(d)(7).

**DENIALS/APPEALS**

Denials - The Committee Chairperson will send a memorandum to the appropriate Division Engineer explaining the reasons for the denial.

Appeals - If the requesting party has new information that addresses the committee's concerns, the Division Engineer may resubmit the request.

It is the Division Engineer's responsibility to notify the requesting party regarding the denial.

**APPROVALS**

1. The Committee Chairperson will send a memorandum to the State Highway Administrator for approval of the committee's recommendation. On Interstates, Future Designated Interstates, and C/A Associated with Interstates\*, the Committee Chairperson will send a memorandum to the State Highway Administrator and the Federal Highway Administration for approval of the committee's recommendation.
2. Upon receipt of the signed approval(s), a memorandum from the Committee Chairperson will be forwarded to the Manager of the Right of Way Branch. This memorandum will notify the Right of Way Branch of the approval and advise that they proceed with the steps necessary to implement the request as approved. The appropriate Division Engineer and committee members will be copied on this approval memorandum.
3. If the surplus right of way/control of access claim is not settled and recorded within two years of the approval date, the approval is no longer valid. If an extension to the two-year timeframe is requested, the Committee Chairperson and Division Engineer will evaluate and agree on a decision. The decision will be based on the requesting party's efforts to settle the right of way/control of access claim during the two-year timeframe. If the enhancement appraisal fee has not been collected by the Division Right of Way Agent within the two years, an extension will most likely not be granted.
4. If the site plan and/or Traffic Impact Analysis is revised, the approval is no longer valid and the request must be resubmitted.
5. It is the Division Engineer's responsibility to notify the requesting party regarding the approval.

\* Control of access associated with interstates is defined as control of access within the vicinity of interstate interchanges or grade separations (vicinity is defined as approximately 1000 feet for interchanges and approximately 300 feet for grade separations.)

ENHANCEMENT VALUE

*Where federal funds participated in any phase of the project*, Title 23 of the United States Code part 156 requires that the state charge fair market value or rent for the use or disposal of real property interests, including access control. The Department has adopted this requirement and will charge current fair market value on all disposals of surplus right of way and control of access revisions. The current fair market value is determined by a completed certified appraisal of the requested area. The State Highway Administrator and the Federal Highway Administration may approve an exception to this requirement in the following situations:

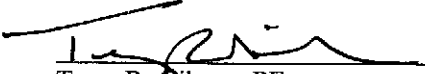
1. When the committee concludes that an exception is in the overall public interest for social, environmental, or economic purposes; nonproprietary governmental use; or uses under 23 U.S.C. 142(f), Public Transportation.
2. Use by public utilities in accordance with 23 CFR part 645.
3. Use by railroads in accordance with 23 CFR part 646.
4. Use for bikeways and pedestrian walkways in accordance with 23 CFR part 652.
5. Use for transportation projects eligible for assistance under Title 23 of the United States Code.


All requests for exceptions to charging fair market value where federal funds participated in any phase of the project will be forwarded to the State Highway Administrator and the Federal Highway Administration for approval and will give the reasons for the recommended exception.

All requests for exceptions to charging fair market value on totally state funded projects will be forwarded to the State Highway Administrator for approval and will give the reasons for the recommended exception.

The deed transferring the property to other agencies at less than fair market value shall provide for reversion of the property for failure to continue public ownership and use.

**APPROVALS:**

  
Terry R. Gibson, PE  
State Highway Administrator

  
John F. Sullivan, III  
FHWA Division Administrator

**SURPLUS RIGHT OF WAY DISPOSAL AND CONTROL OF ACCESS REVIEW COMMITTEE**

**CHECKLIST**

**Committee meets second Tuesday of each month – Agenda deadline: 2 weeks prior to meeting.**

1. Name and address of requesting party

\_\_\_\_\_  
\_\_\_\_\_

2. Is requesting party the adjacent property owner?  Yes  No

3. Name of adjacent property owner(s) (if other than requesting party)

\_\_\_\_\_

4. Is requested area on a Strategic Highway Corridor?  Yes  No  
*(if yes, what facility type?)*  Freeway  Expressway  Boulevard  Thoroughfare

5. Types of request:  Surplus R/W Disposal  New Access Break  C/A Revision  
 Utility Maintenance Gate  Temporary Access Break

6. Intended Land Use: \_\_\_\_\_

7. County: \_\_\_\_\_ City/Town: \_\_\_\_\_

8. Route: \_\_\_\_\_ At/Near: \_\_\_\_\_

**Project Information**

9. Project Phase:  Planning  Design  Construction  Completed

10. Has R/W claim for the requested area been settled?  Yes  No

T.I. P. No. \_\_\_\_\_ Station(s) \_\_\_\_\_  
State Project No. \_\_\_\_\_  
F. A. Project No. \_\_\_\_\_

11. Has Property History Worksheet been included?  Yes  No

12. Posted Speed (mph) \_\_\_\_\_ Average Daily Traffic \_\_\_\_\_ Year *(if available)* \_\_\_\_\_

13. Do you anticipate problems with/or are the following involved?  
 Wetlands  Sight Distance  Traffic Signals  Bridges/Culverts

14. Division's Recommendations (counts as a vote)  Approved  Denied

15. Is municipality involved?  Yes  No

*(If yes, municipality recommendations)*

\_\_\_\_\_

16. Provide aerial and ground view photos of the requested area.

17. Show station(s) and offset(s) for requested area on plan sheet. *(Please do not send a partial copy of plan sheet.)*

# PROPERTY HISTORY WORKSHEET

**Instructions:** The purpose of the worksheet is to determine how best to proceed with Secondary Road Abandonment, Residue Property, Surplus Right of Way and Control of Access Revisions. The Worksheet must be completed by the Division Right of Way Agent and then returned to the Requesting District Engineer. The completed worksheet must accompany all requests for property disposals and all requests for control of access revisions.

Requesting District Engineer: \_\_\_\_\_

Division: \_\_\_\_\_ County: \_\_\_\_\_ City/Town: \_\_\_\_\_ Route: \_\_\_\_\_

TIP No. \_\_\_\_\_

State Project No. \_\_\_\_\_

F.A. Project No. \_\_\_\_\_

Station(s) \_\_\_\_\_

Requesting Party or Agent for Requesting Party \_\_\_\_\_

Property location: \_\_\_\_\_

## PROPERTY RESEARCH:

Is property within existing right of way or outside existing right of way? \_\_\_\_\_

Has the claim been settled? \_\_\_\_ Yes \_\_\_\_ No

Was Right of Way claim settled by Deed, Easement, Agreement, Consent Judgment, or other?  
\_\_\_\_\_

Was it recorded? \_\_\_\_ Yes \_\_\_\_ No If yes, Book \_\_\_\_\_, Page \_\_\_\_\_, (attach copy)

Is there controlled access? \_\_\_\_ Yes \_\_\_\_ No Is the area landlocked? \_\_\_\_ Yes \_\_\_\_ No

Are plans from the acquisition available? \_\_\_\_ Yes \_\_\_\_ No (if yes, attach copy)

Who owns the underlying fee to the property? \_\_\_\_\_

## DETERMINATION:

\_\_\_\_\_ **SECONDARY ROAD ABANDONMENT:** Area is located inside the existing right of way and was acquired by a secondary road agreement or by maintenance only. To be handled by the District Engineer as secondary road abandonment.

\_\_\_\_\_ **RESIDUE PROPERTY:** Area is beyond the originally proposed right of way limits. The area was purchased in conjunction with settlement of the right of way acquisition claim. To be handled by the District Engineer, Division Engineer and the Right of Way Branch.

\_\_\_\_\_ **SURPLUS RIGHT OF WAY:** Area is Department owned property that is within the originally proposed right of way limits. Area was acquired by recorded plat or right of way deed and is not a secondary road. To be handled by the District Engineer, Division Engineer, Right of Way Disposal and Control of Access Review Committee and State Highway Administrator.

\_\_\_\_\_ **CONTROL OF ACCESS REVISION:** Area is control of access on all completed highway projects and highway projects under construction. To be handled by the District Engineer, Division Engineer, Right of Way Disposal and Control of Access Review Committee and State Highway Administrator.

\_\_\_\_\_  
Division Right of Way Agent

\_\_\_\_\_  
Date

cc: Secondary Roads Program Manager  
Right of Way Branch Manager  
Division Engineer

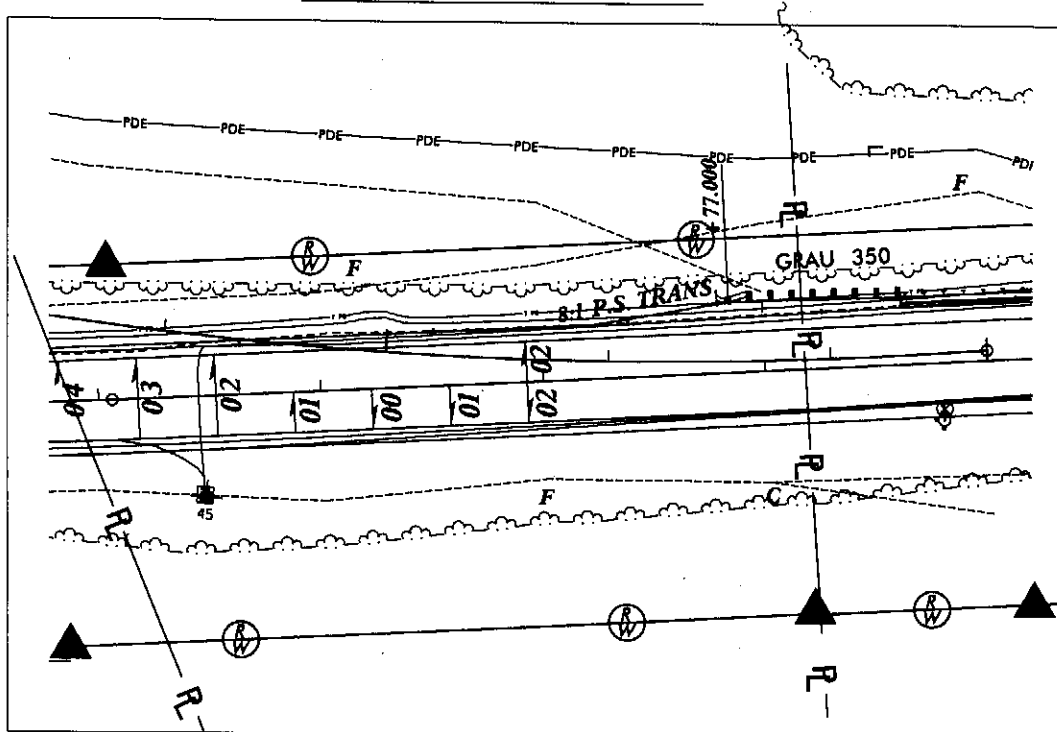
Effective August 4, 2009



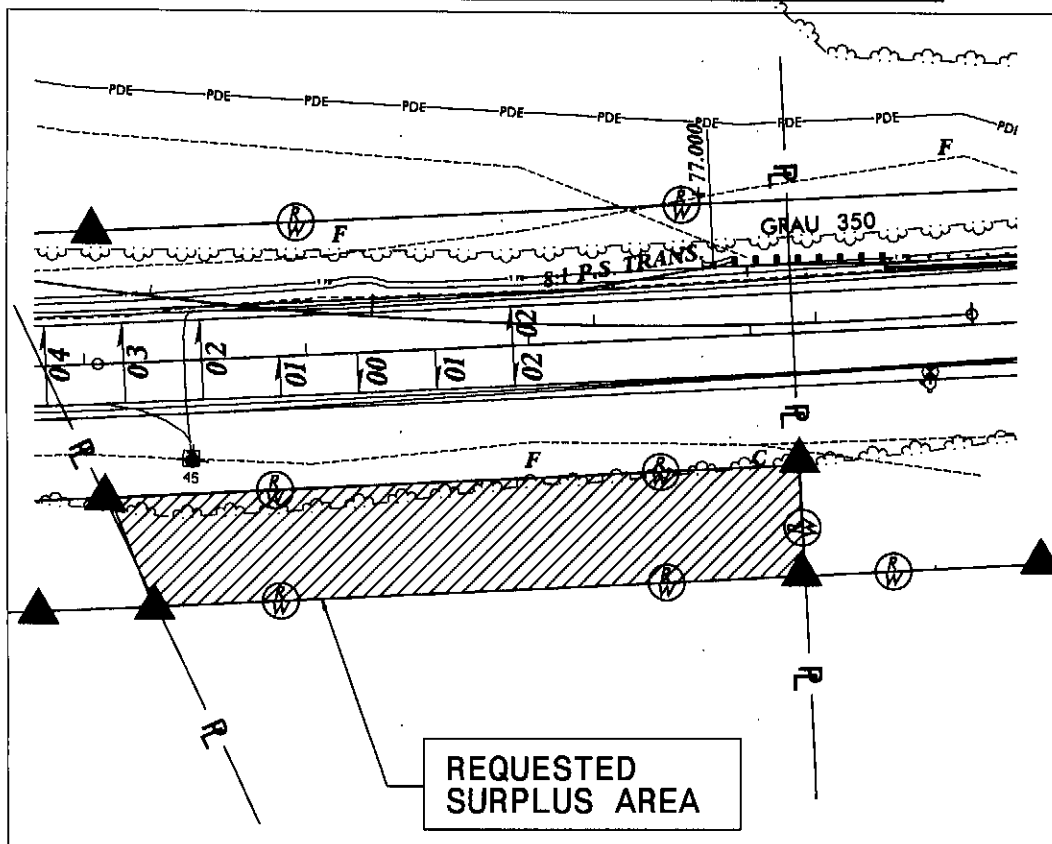
# SURPLUS RIGHT OF WAY AREA

SURPLUS RIGHT OF WAY AREA IS DEFINED AS DOT OWNED PROPERTY THAT IS WITHIN THE ORIGINALLY PROPOSED RIGHT OF WAY LIMITS. REQUESTS FOR DISPOSAL OF SURPLUS RIGHT OF WAY MUST BE SUBMITTED BY THE DIVISION ENGINEER TO THE SURPLUS RIGHT OF WAY DISPOSAL AND CONTROL OF ACCESS REVIEW COMMITTEE CHAIRPERSON FOR REVIEW.

## ORIGINAL PLAN SHEET



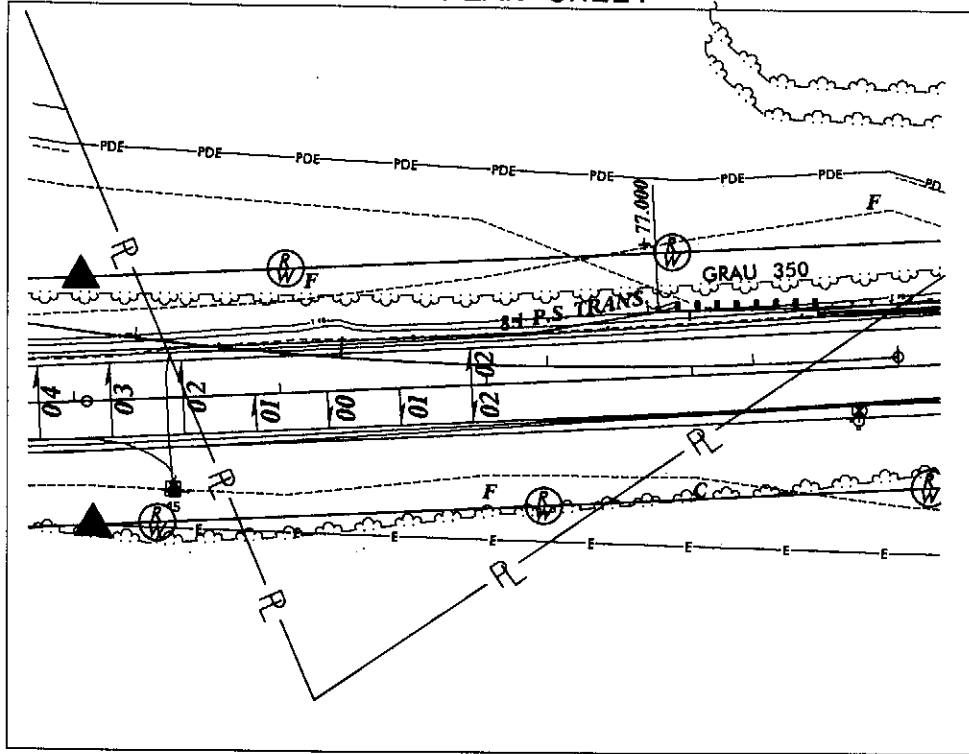
## PROPOSED PLAN SHEET WITH SURPLUS R/W AREA



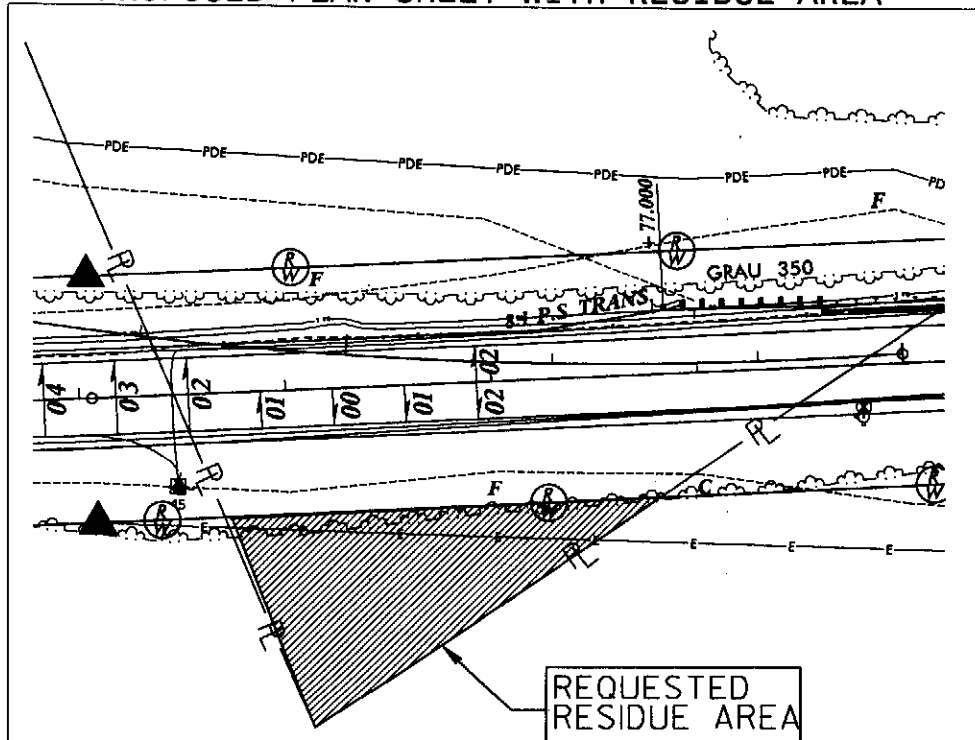
# RESIDUE AREA

RESIDUE AREA IS DEFINED AS DOT OWNED PROPERTY THAT IS BEYOND THE ORIGINALLY PROPOSED RIGHT OF WAY LIMITS. THE RESIDUE AREA WAS PURCHASED IN CONJUNCTION WITH SETTLEMENT OF THE RIGHT OF WAY ACQUISITION CLAIM. REQUESTS FOR DISPOSAL OF RESIDUE PROPERTY MUST BE SUBMITTED BY THE DIVISION ENGINEER DIRECTLY TO THE RIGHT OF WAY BRANCH MANAGER FOR PROCESSING.

## ORIGINAL PLAN SHEET



## PROPOSED PLAN SHEET WITH RESIDUE AREA



**Denial Memo from  
Division Engineer to  
Requesting Party  
Revised 7/09/2010**



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE  
GOVERNOR

EUGENE A. CONTI, JR.  
SECRETARY

Date

Name & Address of  
Requesting Party

Dear \_\_\_\_\_:

The North Carolina Department of Transportation (NCDOT) has completed its review of your request to \_\_\_\_\_

\_\_\_\_\_. The NCDOT has determined that your request is denied due to \_\_\_\_\_  
(Insert details from the Committee Chairperson's denial memo to the Division Engineer)

I regret the NCDOT could not give a favorable response to your request. If you would like additional information regarding our decision, please contact me.

Sincerely,

\_\_\_\_\_, P.E.  
Division Engineer

cc: Chief Engineer-Operations  
State Highway Design Engineer  
District Engineer  
Division Right of Way Agent

Approval Memo from  
Division Engineer to  
Requesting Party  
Revised 7/09/2010



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE  
GOVERNOR

EUGENE A. CONTI, JR.  
SECRETARY

Date

Name & Address of  
Requesting Party

Dear \_\_\_\_\_:

The North Carolina Department of Transportation (NCDOT) has completed its review of your request to \_\_\_\_\_

\_\_\_\_\_ The NCDOT has granted approval for \_\_\_\_\_ subject to the following:

- If the surplus right of way/control of access claim is not settled and recorded within two years of the **(insert approval date)**, the approval is no longer valid.
- If the site plan and/or Traffic Impact Analysis is revised, the approval is no longer valid and the request must be resubmitted.

•

**(Insert conditions from Committee Chairperson's approval memo to the Right of Way Branch Manager).**

•

Please let me know if you have questions or need further information.

Sincerely,

\_\_\_\_\_, P.E.  
Division Engineer

cc: Chief Engineer - Operations  
State Highway Design Engineer  
District Engineer  
Division Right of Way Agent