

## Home Builders Associations of Southeastern Pennsylvania

HBA of Bucks & Montgomery Counties 721 Dresher Road #1200 Horsham, PA 19044 (215) 657-1300	HBA of Chester & Delaware Counties 1502 McDaniel Drive West Chester, PA 19380 (610) 692-7733
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### MEMORANDUM

**To:** HBA PennDOT Sub-Committee

**From:** Mark S. Mitman

**Date:** November 7, 2008

**Subj:** Upcoming HOP Policy Changes

Pennsylvania's Department of Transportation will be revising many of its guidance policies governing the issuance of Highway Occupancy Permits (HOP) under Chapter 441. Depending on the particular policy, their anticipated roll out will occur between September 2008 and mid-2009. While the impact of the proposed policies is mixed – the net result leans generally toward improving the permitting environment for home builders.

In advance of the policy documents, the Department has published a new planning & design document entitled "Smart Transportation Guidebook" available at [www.smart-transportation.com](http://www.smart-transportation.com).

### History

In April 2008, the Department established three "Tiger Teams" which focused on HOP concerns dealing (1) mitigation; (2) timely delivery; and (3) local inclusiveness. PaDOT reached out to the regulated community and received input via validation meetings and surveys.

In October 2008, the Department held outreach programs highlighting the major HOP policy changes and soliciting reaction. The planned action plan includes the following activities:

<u>Team</u>	<u>Action</u>	<u>Date</u>
Mitigation	Link HOP to Smart Transportation	Sep 2008
Mitigation	Releases & Security	2008
Timely	HOP Expedited Reviews	2008
Mitigation	TIS Guidelines	2008
Mitigation	Indemnification	2008
Mitigation	Right of Way Requirements	Early 2009
Mitigation	Design Waiver	Early 2009
Local	Local Inclusiveness	Early 2009
Timely	Consistency	Mid 2009
Timely	HOP Web Site	Mid 2009

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### **Discussion**

#### ***Security:***

The Department envisions utilizing Letters of Credit over bonding as the primary mechanism to secure that improvements are made. The LOC usage is meant to minimize risk with smaller or more risky developments. LOC's allow the Department quicker access to funds versus bonds thereby improving public safety concerns.

The Department offered that there have been no defaults in District 6-0 (and few statewide) making the need for LOC's suspect by the regulated community. The higher costs of LOC's versus bonds to the developer – both in cost to maintain and also tying up of capital – may not be justified the low reward offered to the Department.

While the Department seemed generally unwilling to forgo requiring LOC's, it appeared open to restructuring the amount of the LOC by drawing down the dollar amount over time as improvements are made by the developer.

***Transportation Impact Study (TIS):***                      The Department will limit review times to between 45 and 60 days. Additionally, the Department will be make allowance for specialized trip generation studies – for example, senior housing – and standardize statewide as appropriate.

TIS will include non-vehicular mitigation including bicycle, pedestrian & ADA.

LOS mitigation design year has changed. Design year will be based upon the open-year plus five years (improved from the plus 10-year requirement). Additionally, LOS will be determined by overall intersection versus individual movement and be given a variance tolerance of 10 seconds.

In determining the proposed mitigation, if the intersection is significantly degraded (defined as LOS below C/rural or D/urban), the applicant can develop & fund an Alternative Transportation Plan (“ATP”) in lieu of LOS Waiver Indemnifications. The ATP should all but eliminate the need for LOS Waivers. The value of the ATP should be roughly determined by the costs of construction plus right-of-ways acquisition, and include items such as transit facilities, park & rides, travel demand management, etc.

The Department seeks to better involve impacted municipalities in the communications process by allowing their input during the process. While it is not intended to be a formal “municipal approval”, it is unclear how municipal recommendations will be incorporated into the HOP issuance. And, there is no clock to deem “approval” by the municipality if no input is offered.

MORE...

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***Indemnifications:*** Waiver-specific indemnifications will be required for (1) impacts to other properties; (2) LOS/Design Waivers; and (3) Drainage Releases. The Department is considering personal guarantees/covenant running with the land. However, the Department recognizes that issues will exist particularly with home building; and, that it may need to distinguish between commercial & residential properties. Such issues include concerns when the property is transferred to a HOA/municipality.

The concern over whether the Department has the authority to require indemnifications for LOS waivers still exists. The Department claims the LOS waiver is essentially a design waiver. However, while a design waiver for sight distances, etc. may be necessary to protect the Commonwealth from lawsuits arising from accidents, it is unclear as to why the Department needs protection from suits for delays at an intersection.

***Miscellaneous:*** Detailed specifics on other planned policies including right-of-ways, consistency, local coordination, etc are unavailable at this time.

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