

**A
Guideline
For
Highway Improvements Associated
With
Development**

Highway Improvements Associated with Development

FOREWORD

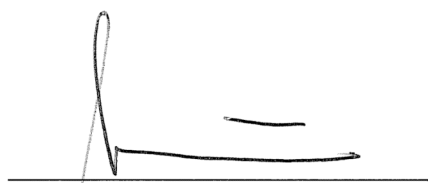
Highway Improvements necessitated by land development (Development) within the Ministry of Transportation's (MTO) permit control area, as specified in the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c.P.50 (PTHIA), will generally be the responsibility, financial and otherwise, of landowners, developers and/or municipalities (Proponents).

This Guideline is written for Proponents and is available on MTO's Internet site. This Guideline will expedite the development review and approvals process by ensuring up front that MTO's requirements are clear and understandable for Proponents.

The purpose of this Guideline is to clarify the respective responsibilities of MTO and Proponents, where Development necessitates Highway Improvements. In addition, this Guideline will clarify the procedure to be followed by Proponents who must directly or indirectly undertake the construction of Highway Improvements on a provincial highway right-of-way. This Guideline is intended to deal with Highway Improvements that are generally more complex than the construction of standard commercial entrances.

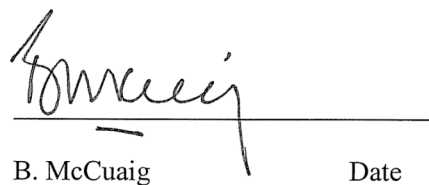
The following additional reference material can be referred to regarding legislation, policy and procedural documents regarding this Guideline:

- *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c.P.50 (PTHIA)
- Corridor Control and Permit Procedures Manual
- Traffic Impact Study Guideline
- Guide to Environmental Assessment Requirements for Development Driven changes within the Highway Right of Way (EA Guideline)
- Commercial Site Access Policy and Standards Manual
- Stormwater Management Requirements for Land Development Proposals (www.mto.gov.on.ca/english/engineering/drainage)
- Class Environmental Assessment for Provincial Transportation Facilities (2000)



C. A. Hennum
Assistant Deputy Minister
Operations

Date
05-05-26



B. McCuaig
Assistant Deputy Minister
Policy, Planning & Standards

Date
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Highway Improvements Associated with Development

SUMMARY

Based upon MTO's review of all relevant information provided by the Proponent, and based on prevailing traffic engineering and highway design practices, MTO will determine if Highway Improvements are needed as a result of a Development, and advise the Proponent of their responsibility (financial and otherwise) accordingly. MTO will use its best efforts to advise the Proponent of their responsibility (financial and otherwise) upfront and well in advance of the actual Development taking place, based on information provided by the Proponent. This typically occurs as part of the overall planning process in the Province of Ontario under the *Planning Act*.

This Guideline reflects MTO's policies and procedures regarding the Proponent's responsibilities where Development-generated Highway Improvements are required. These policies and procedures:

- Require a Proponent to undertake a Traffic Impact Study of the transportation needs and traffic impacts of the Development on the surrounding highway network;
- Require a Proponent to design and construct any required Highway Improvements in accordance with MTO specifications and standards, based on a Traffic Impact Study and the Stormwater Management Report reviewed and approved by MTO.

This Guideline:

- Clarifies the respective responsibilities (financial and otherwise) of a Proponent and MTO; and
- Explains the use of permits and Legal Agreements to control Highway Improvements undertaken by a Proponent.

PROCEDURES

1. Definitions

- a. Development: –
A land-use or activity that requires a permit from MTO under the PTHIA.
- b. Highway Improvements: –
For the purpose of this Guideline, typical Highway Improvements include, but are not limited to:
 - Existing intersection and interchange improvements;
 - New intersections, interchanges and grade separations;
 - Widening and alterations to lane configurations;
 - Signalization and illumination;

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- Drainage works; and
- Other actions designed to enhance the safety and functional integrity of the highway.

Other Works: –

Other works initiated by a Proponent may include, but are not limited to: bus bays, sidewalks, curbs and gutters, non-MTO signs, landscaping, removal of material, culverts for walkways, storm sewers, stream diversions, watermains, sanitary sewers, underground cable or hydro lines, gas lines, telephone cables, television cable, bicycle paths, and field surveys.

c. **Traffic Impact Study: -**

A Traffic Impact Study is a special study of the transportation needs and traffic impacts that Development(s) will have on the surrounding highway network. A Traffic Impact Study is used to identify needed transportation improvements, and to determine a Proponent's responsibility (financial and otherwise) towards warranted Highway Improvements. A Traffic Impact Study is to be prepared by a qualified consulting firm, in accordance with MTO's Traffic Impact Study Guidelines. All submissions must be signed and stamped by a licensed professional engineer qualified to practice in the Province of Ontario.

d. **Irrevocable Standby Letter of Credit (Letter of Credit): –**

A financial guarantee from a major Canadian financial institution to provide monies in the event of default for the performance and the timely completion of a contract in accordance with an issued permit or executed Legal Agreement between MTO and a Proponent, for the construction of Highway Improvements warranted as a result of a Development. At the discretion of the applicable MTO Regional Office, MTO may accept other means of financial security (e.g. certified cheque) in lieu of a Letter of Credit.

2. Responsibilities for Design and Construction

A Proponent will be responsible (financially and otherwise) for the design, construction and contract administration of all Highway Improvements necessitated by the Development, based upon MTO's review of the Traffic Impact Study and the Stormwater Management Report.

a. Prior to the commencement of any Highway Improvements, a Proponent must obtain a permit from MTO, under the PTHIA. The completion of any or all of the following, to the satisfaction of MTO, may be required:

- Enter into a Legal Agreement, secured by a Letter of Credit, where applicable;

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- Engage professional expertise to prepare the engineering design drawings and the contract package according to current MTO standards and specifications. All submissions must be signed and stamped by a licensed professional engineer qualified to practice in the Province of Ontario;
 - Engage a qualified contractor to be responsible for the efficient and safe execution of the Highway Improvements and its completion in strict compliance with the permit conditions, the Legal Agreement, the approved engineering drawings and any other relevant ministry specifications and standards. In all cases, the Proponent must obtain MTO endorsement to award the tender to a qualified contractor, prior to awarding the contract. Failure to do so could result in cancellation of the permit and/or Legal Agreement and forfeiture of the Proponent's Letter of Credit. MTO will not be liable, financial or otherwise, should a Proponent award a tender to a contractor whom MTO did not endorse to undertake Highway Improvements within the highway right-of-way.
 - Provide proof of liability insurance for the duration of the contract. The value of insurance required will be determined by the applicable MTO Regional Office;
 - Meet MTO's requirements under the Class Environmental Assessment for Provincial Transportation Facilities (2000) (MTO's Class EA); and
 - Provide written proof that the Highway Improvements to be constructed comply with all other environmental legislation, regulations and policies, to the satisfaction of the regulatory agencies (e.g. MNR permit, MOE certificate of approval, etc).
- b. MTO may complete the Highway Improvements using the Proponent's Letter of Credit if the Proponent:
- Fails to observe or perform any provision of an MTO permit and/or Legal Agreement;
 - Fails to commence or execute the Highway Improvements within the required time frame;
 - Fails to observe or perform any provision of the contract;
 - Defaults in the completion of the Highway Improvements; and/or
 - Becomes bankrupt or insolvent.

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- c. MTO may undertake Highway Improvements for a Proponent, at the Proponent's cost, where the Highway Improvements can be conveniently and economically scheduled with highway improvements programmed by MTO. The terms of carrying out the Proponent's Highway Improvements must be established in a Legal Agreement and secured by a Letter of Credit for the full amount of the Proponent's share of the Highway Improvements.

3. Financial Responsibilities

- a. Direct Private Entrance or new Municipal Road to Provincial Highways

Where a proposed Development will gain access to a provincial highway either directly by private entrance or by a new municipal road, the Proponent is responsible (financially or otherwise) for all warranted Highway Improvements, identified in the approved Traffic Impact Study. The Proponent is also responsible for any Highway Improvements that are not required immediately but that have been identified as being warranted in the future as a result of the Development. Any such future Highway Improvements are the responsibility (financially or otherwise) of the Proponent and must be addressed to MTO's satisfaction before MTO permits will be issued.

- b. Indirect Access

Where a Development is within the permit control area of MTO and gains access from a municipal road that intersects with a provincial highway, and the Development will warrant Highway Improvements at the intersection, based upon a MTO approved Traffic Impact Study, MTO will not be responsible (financially or otherwise) for the Highway Improvements.

The municipality as the local road authority, or the Proponent, is responsible (financially or otherwise) for such Highway Improvements. MTO permits will not be issued to the Proponent of the Development until satisfactory arrangements have been made for the Highway Improvements. Where more than one Development is involved, MTO will deal with the municipality, who in turn will deal with the Proponents.

- c. MTO Cost-Sharing of Highway Improvements

The cost-sharing arrangements for a specific Highway Improvement project are dependent on the degree that the improvements are warranted by projected Development traffic versus existing/projected background traffic and by the timing of the construction. Cost-sharing arrangements are project-specific and may vary from project to project.

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Consideration for a cost-sharing Legal Agreement will be dependent on the existing highway capacity deficiencies and on MTO's plans and capital construction program to improve the provincial highway through the affected section.

MTO may agree to cost-share Highway Improvements where:

- MTO agrees to advance the construction of otherwise needed Highway Improvements on its capital construction program, and include the Highway Improvements that the Proponent is responsible for (financially or otherwise); and
- Based upon MTO's review of a Proponent's Traffic Impact Study, it identifies a warrant for Highway Improvements based on existing and/or projected background traffic volumes. The Proponent would be responsible (financially or otherwise) for any additional Highway Improvements required over and above the existing and/or projected background traffic volumes, in order to accommodate the proposed Development traffic.

4. MTO Permits and Legal Agreements

- a. All Development and Highway Improvements are controlled by MTO permits, under authority of the PTHIA. Where appropriate, a Legal Agreement, executed by the Minister or a delegated authority, may be required in addition to the permit.
- b. The respective MTO Regional Office will determine when a Legal Agreement is required in addition to the permit. Typically, a Legal Agreement is required when Highway Improvements or Other Works exceed \$50,000.00 in value.
- c. A Legal Agreement must be secured by a Letter of Credit. Where a municipality is the Proponent, the MTO does not generally require a Letter of Credit, except in exceptional circumstances. Permits may be similarly secured, depending on the circumstances.
- d. In addition to Development and Highway Improvements, Other Works may require MTO permits. In such circumstances, the provisions of this Guideline pertaining to Highway Improvements will apply to such Other Works.

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5. Items to be addressed in permits and Legal Agreements

Where a Proponent undertakes Highway Improvements within the highway right-of-way, the following will be addressed in the permit and/or the Legal Agreement:

a. Engineering Services:

- Surveying;
- Geotechnical investigations;
- Relocation of utilities;
- Review and approval of design work;
- Review of contract package, contract award and administration; and
- Construction monitoring and inspection.

b. Quality of Work:

- MTO specifications and standards;
- Special provisions and techniques;
- Refurbishing, repairs and maintenance;
- Performance and quality assurance testing; and
- Liability for faulty construction.

c. Traffic flow:

- Construction timing and staging;
- Proximity to driving lanes;
- Detours, temporary signals and traffic control; and
- MTO monitoring.

d. Safety:

- Flagpersons, hazard protection, signing and policing;
- Speed zones;
- Ontario Occupational Health and Safety Act (OHSA) and Ministry of Labour (MOL) requirements; and
- MTO monitoring.

e. Costs:

- Engineering and administrative services;
- Overheads and surcharges;
- Construction, future maintenance (e.g. traffic signals and illumination) and future Highway Improvements (e.g. future phases of development); and
- Cost-sharing Agreements.

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f. Environmental Protection:

- Clearances required under MTO's Class EA; and
- Permits, authorization and approval required by other environmental legislation.

The above items should be considered as a guide only and are by no means inclusive of all possible items to be considered.

6. Securities and Payments

a. When a Proponent Constructs the Highway Improvements

Where a Proponent is responsible for the construction of Highway Improvements, a guarantee in the form of a Letter of Credit must be provided to ensure that construction is completed in accordance with the terms of the permit and/or the Legal Agreement. The value of the Letter of Credit will be based upon the estimated value of construction, including any applicable surcharges and contingency costs that MTO may apply. The Letter of Credit will only be returned to the Proponent once their obligations under the terms of the permit and/or the Legal Agreement have been met.

If a municipality is the Proponent constructing the Highway Improvements, and the Highway Improvements will not be completed within the term of a municipal council, a by-law must be passed by the municipality to authorize the Highway Improvements and the future expenditure of funds. It is recommended that a draft of the by-law be reviewed and endorsed by the applicable MTO Regional Office prior to its passing by municipal council.

Where MTO requests a Proponent to include highway improvements in addition to the warranted Highway Improvements directly necessitated by the Development, MTO will be responsible (financial and otherwise) for the additional Highway Improvements. MTO's contribution towards the overall Highway Improvements will be based on an estimate, and the method of calculation of MTO's contribution must be stipulated in the Legal Agreement. MTO may negotiate and specify an upset limit for MTO's contribution. Upon completion of construction of the overall Highway Improvements, the Proponent will invoice MTO for the actual cost of the additional Highway Improvements, subject to any upset limit stated in the Legal Agreement. In circumstances, where the construction involves unforeseen additional costs, the Ministry's share may be renegotiated.

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b. When MTO Constructs the Highway Improvements

When MTO constructs the Highway Improvements, the method of payment will be defined in the Legal Agreement.

- Where MTO performs Highway Improvements on behalf of a Proponent, surcharges and contingency costs for such items as design, engineering, construction supervision, and administration overheads must be added to the estimated cost of the Highway Improvements. Details of the application and calculation of the surcharges will be provided to the Proponent.
- Where MTO constructs Highway Improvements on behalf of a Proponent, the Proponent must provide a Letter of Credit or certified cheque for the estimated value of their share of the Highway Improvements prior to MTO advertising the contract. If the actual construction costs are different than the estimate, the Proponent will be invoiced or refunded a portion of the difference, in accordance with the Legal Agreement. If a fixed cost has been negotiated for the Proponent's share, as outlined in the Legal Agreement, no adjustment will be made.
- Where the Proponent is responsible for any future Highway Improvements, they must guarantee the future Highway Improvements by a Letter of Credit based on the estimated future construction costs. In rare situations, a Proponent may pay for future Highway Improvements upfront, upon the execution of the Legal Agreement. In these cases, payment will be based on present construction costs of the required Highway Improvements or net present value of the future Highway Improvements. The applicable MTO Regional Office will determine the appropriate payment method, based on the Development in question.

7. Administration

- a. MTO Regional Offices are responsible for the administration of Legal Agreements and Letters of Credit.
- b. The Proponent will receive an original copy of the executed Legal Agreement.

8. Multiple Party Legal Agreements

As a rule, MTO does not generally endorse the use of multiple party Legal Agreements. MTO prefers to deal with a lead Proponent who may in turn have separate agreements with other Proponents.