



**Guidelines for Requesting Alternate Use of  
Limited Access Right-of-Way: Nonmotorized Facilities**

**Effective Date: March 13, 2021**

**Development Services Division  
Utility Coordination, Permits, & Agreements Section**

# Guidelines for Requesting Alternate Use of Limited Access Right-of-Way: Nonmotorized Facilities

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## General Information

The Michigan Department of Transportation (MDOT) manages the operation and use of Limited Access Right-of-Way (LAROW) <sup>1</sup>to ensure the use is in the public interest and does not impair the highway or interfere with the free and safe flow of traffic. Longitudinal nonmotorized facilities are acceptable for arterial or short connector uses within LAROW, except in median areas. Transverse crossings of LAROW may be considered on a case-by-case basis. The location of a nonmotorized facility within LAROW is subject to the specific approval of MDOT and, when in interstate Right-of-Way, the Federal Highway Administration (FHWA) in accordance with 23CFR710, other state and federal applicable laws and is considered a temporary use regardless of duration.

***Only an Act 51 Local Agency, the Michigan Department of Natural Resources, or a sovereign tribal government are eligible Applicants.***

This document defines a nonmotorized facility as a shared-use pathway or trail with associated bridges and culverts in LAROW. The intended users include pedestrians, bicyclists, skaters, wheelchair users, joggers and other nonmotorized users<sup>2</sup>. Most non-motorized facilities are designed for two-way travel. A nonmotorized facility may include access locations such as trailhead sites, and connections to other nonmotorized facilities, etc. MDOT may allow removable/surface mounted fixed objects commonly associated with nonmotorized facilities on a case-by-case basis, such as: benches, trash receptacles, bicycle racks, fix-it stations, kiosk style or wayfinding signage, maps, shelters, and other items. Commercial advertising is prohibited within the LAROW. Recognitions and acknowledgments may be considered in accordance with FHWA Order 5160.1A.

If a nonmotorized facility is allowed in LAROW, it is not protected under Section 4(f) of the Department of Transportation Act 1966 (Section 4(f)). If the LAROW exists before or is established at the same time a nonmotorized facility is constructed, any further reconstruction or widening of the transportation facility (which may affect the nonmotorized facility directly or indirectly) is not considered to cause a Section 4(f) use<sup>3</sup>. Therefore, a nonmotorized facility can be closed during subsequent reconstruction or maintenance of the transportation facility if there are no prudent alternatives to maintain access or to provide a detour. MDOT's discretion to

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<sup>1</sup> Limited Access Right-of-Way (LAROW) is the ROW associated with a "limited access facility" such as a freeway, highway or street especially designed or designated for through traffic, and over, from, or to which owners or occupants of abutting land, or other persons, have no right or easement, or only a limited right or easement of access by reason of the fact that their property abuts upon such limited access facility, or for any other reason to accomplish the purpose of a limited access facility.

<sup>2</sup> See link to Nonmotorized Users in [FHWA Policy and Guidance Center](#).

<sup>3</sup> See links to [23 CFR 774.11 \(h\) and \(i\)](#) and [23 CFR 710.405](#)

close applies regardless, if the proposed nonmotorized facility is intended to be used for either a transportation or a recreation purpose.

If a nonmotorized facility is permitted and allowed to be located in the LAROW, the local agency agrees the facility will be open, available, and accessible to all users, at all times, unless such facility is closed due to subsequent construction, maintenance, or other such operations.

### **Allowable Alternate Use**

Nonmotorized facilities are only allowed within LAROW when no other feasible alternative exists. This alternative must be supported and proven by the eligible Applicant.

Note: Other alternatives which the applicant deems financially infeasible and/or may require acquisition of property does not demonstrate infeasibility.

Nonmotorized facilities are only permitted in the LAROW when consistent with Federal and State law, in the public interest, will not impair the highway and interfere with the free and safe flow of traffic, and considering the following criteria:

- No other feasible alternatives are demonstrated
- Potential modification of the existing vehicular facility (Examples: modifications, bridges, etc.)
- Current and planned construction, or future reconstruction
- Safety
- Operations
- Maintenance
- Drainage
- Environmental (Examples: wetlands, threatened and endangered species, vegetation removal)
- Utilities

### **Allowable Access Locations to Nonmotorized Facilities Proposed in the LAROW**

If an access location is approved, it will breach the LAROW. A breach<sup>4</sup> is considered to be an opening in the LAROW and in many cases this may be delineated by a fence. MDOT reserves the right to relocate the breach based on the highway facility needs and still provide connection to the nonmotorized facility.

Access locations to nonmotorized facilities within the LAROW are only allowed from:

- properties which are publicly accessible and are publicly owned
- privately owned commercial properties which provide services to nonmotorized facility users
- commercial or industrial properties with origin/destination components (commuting)

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<sup>4</sup> Breach definition from the [MDOT Real Estate Procedures Manual Glossary](#).

Access locations from private properties such as but not limited to agricultural, gated neighborhoods, and residential properties are prohibited.

Trailhead sites are prohibited from being constructed in the LAROW.

Access locations will only be allowed where ADA compliant public parking exists<sup>5</sup>. Public parking spaces complying with van accessible handicap parking spot requirements are required. Accessible parking will be located on the shortest accessible route of travel to the access location from the trailhead.

### **Procedure for Applying for Permit to Construct a Nonmotorized Facility within a Limited Access Right-of-Way**

MDOT utilizes the following two-step permit application process to allow nonmotorized facilities to be constructed within the LAROW:

- An eligible Applicant submits a request for conceptual feasibility determination (**Step 1** below). The purpose of this step is to determine whether a permit is feasible, without the local agency having to invest significant resources in developing a plan that can't be permitted.
- If no unresolvable issues are identified during the conceptual feasibility determination, the eligible Applicant may proceed and submit a formal permit application to MDOT (See **Step 2** below). A feasible concept does **not** guarantee approval of a formal permit. See **Exhibit A: Flow Chart**.

### **Process Evaluation Steps (Exhibit A)**

#### ***Step 1) Conceptual Feasibility Submittals and MDOT Determination***

Eligible Applicant contacts the Permit Staff at the local Transportation Service Center (TSC) for requests involving LAROW under the jurisdiction of MDOT, for review of the conceptual feasibility.

Note: TSC staff provides applicable guidance to eligible Applicant for the nonmotorized facility consideration.

1. Eligible Applicant must submit an online application and packet for a Conceptual Feasibility Review through the Construction Permit System (CPS).
  - a) The following items are required:
    - Contact information for the person in responsible charge of the eligible Applicant.

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<sup>5</sup> See [ADA Guidelines for Public Rights-of-Way](#).

- Statement declaring why it is in the public's interest to allow the proposed nonmotorized facility within the LAROW, and why alternative alignments are not feasible.
- Documentation of all of the other alternatives considered and rejected, and the reasons these alternatives were rejected.

Note: Cost effectiveness cannot be the primary reason for rejecting other alternatives.

Example: The cost of acquiring ROW for other alignments would not be considered a justified reason for using LAROW.

- Site Map

Examples: current aerial photograph or a current Google map

- Site Plan - a conceptual drawing of the work proposed for permitting, such as:
  - i. Relative locations and dimensions of the work
  - ii. Locations and dimensions of existing features such as roads, ditches, drainage structures, surface improvements, utilities, and the Trunkline Right-of-Way location
  - iii. Locations of improvements that this proposed work will connect to

Examples: Applicable long range planning documents illustrating existing and planned nonmotorized facilities, cross streets, and identify known wetlands, potential vegetation removal, drainage issues, similar features, and access locations.

- Proposed Project Description general description of proposed work or use of the ROW including permanent or temporary facilities, drainage, grading activities, and any grants being considered).

b) MDOT TSC will host conceptual review meetings with all parties as necessary, to discuss the conceptual plan. This meeting will address additional information necessary to determine if the proposed work is permissible. After meeting with eligible Applicant for the conceptual proposal, MDOT Development Services Division may consult with the FHWA Michigan Division on the proposed nonmotorized facility concept.

2. The staff at the MDOT TSC, Region Office, Central Office (Utility Coordination, Permits and Agreements Unit and Pedestrian and Bicycle Coordinator), and appropriate FHWA Area Engineer will discuss the application for feasibility.
3. The MDOT staff and the FHWA Area Engineer will determine if the concept is feasible or infeasible. If the concept is determined feasible, then the MDOT TSC Permit Staff will notify the eligible Applicant and continue to the next step of the process. If it is determined **not**

feasible then the application will be denied, and the eligible Applicant will be notified on why it was denied.

Note: Feasible concept determination is **not** a guarantee of final permit application approval.

4. The MDOT staff and FHWA Area Engineer will determine the items for the “Requirements Packet”, as noted in Exhibit A, which the eligible Applicant will need to prepare for the Formal Permit Application Submittal.
5. MDOT TSC Permit Staff will coordinate with the MDOT Lansing Permit Coordinator and FHWA Area Engineer to organize a time and date to meet with the eligible Applicant to communicate the “Requirements Packet” as noted in Exhibit A.
6. The eligible Applicant will prepare and electronically submit the Formal Permit Application “Requirements Packet” to the MDOT TSC Permit Staff in CPS.

### ***Step 2) Formal Permit Application Submittal***

7. MDOT TSC Staff receives the “Requirements Packet” from the eligible Applicant in CPS.
8. MDOT TSC Permit Staff reviews the “Requirements Packet”. It should consist of the following information:

a) An Access Location Management Plan (ALMP) - Document that establishes criteria to control access between all individual access locations and the nonmotorized facility within LAROW and, removable/surface mounted fixed objects. For all access locations and removable/surface mounted fixed objects, the ALMP will include:

- The method used for routinely monitoring, controlling, ensuring operation/maintenance, and permit compliance; and the specific designee(s) responsible for carrying out these activities.

Example: Director of County Parks (agency, title, and position)

- A description of the proposed design elements between the nonmotorized facility at each access location.

Example: Access Location 1 will be accessible via a 6’ wide concrete sidewalk connecting to the northeast corner of the existing hotel parking lot.

- A description of the connectivity of the nonmotorized facility to all other state, regional, tribal, or local nonmotorized facilities and consistency with approved long range planning documents from agencies with state and/or federal planning jurisdiction.

b) A site plan, profiles, and cross sections will be created to depict the following elements:

- The construction area
- Applicable Act 51 Local Agency jurisdictional boundaries
- Nonmotorized facility route
- Separation feature between traffic and the proposed nonmotorized facility
- Removable/surface mounted fixed objects (if included)
- Kiosk style or Wayfinding signs (if included)
- Project phasing
- Access locations
- Distances between access locations
- Structures, outside of the ROW, that serve to connect the proposed trail
- Culverts
- Drainage modifications
- Earthwork/Grading areas
- Aerial photograph with overlay of site plan

c) Design elements will conform to the following:

- General design elements will conform with the provisions of the following sources:
  - MDOT Standard Specifications for Construction
  - MDOT Context Sensitive Solutions requirements
  - Michigan Manual on Uniform Traffic Control Devices (MMUTCD)
  - American Association of State Highway Transportation Officials (AASHTO) for the development of bicycle facilities
  - AASHTO Roadside Design Guide
  - MDOT Road Design Manual
  - Americans with Disabilities Act (ADA)
  - U.S. Access Board and/or PROWAG
  - Grant funding requirements
  - Others as necessary
- Specific design elements will conform with the following conditions:
  - The placement of any longitudinal nonmotorized facility in a highway median area is prohibited.
  - A nonmotorized facility will meet all safety requirements.

Example: Located outside the clearzone or protected by crash compliant guardrail or barrier.

- A nonmotorized facility will require the installation, or repair and maintenance of a positive separation feature at the existing LAROW border, such as a ROW fence, to separate the nonmotorized facility from the highway road surface.

Note: If a fence separates two or more compatible transportation uses, such as a service drive or a local road, a safety review may occasionally conclude that this fencing requirement is unnecessary.

- Removable/surface mounted fixed objects, such as benches, trash receptacles, bicycle racks, fix-it stations, kiosk style or wayfinding signage, maps, shelters, and other items (if included) will be located as close to the LAROW border line as possible and according to the ALMP.
- No structures are allowed in the LAROW for longitudinal pathways, only culverts without rails will be allowed. (Exceptions may be justified; however, coordination is required with FHWA Area Engineer prior to submitting to FHWA for approval of the use.)

Note: All bridges, boardwalks, or culverts with railings, planned for enabling the efficient use of a nonmotorized facility, will be located outside of the LAROW and will require the approval of breaches into the LAROW for each enabling structure.

- The nonmotorized facility in LAROW will consist of either an asphalt or concrete surface.

d) Supporting documentation will be created that addresses the following concepts:

- All other feasible alternative locations considered
- Specific public benefits
- Stakeholder engagement results or plan

Note: The eligible Applicant will follow the existing MDOT Context Sensitive Solutions (CSS) policy or solicit comments from stakeholders in accordance with the requirements of MDOT's [CSS for Multi-Use Nonmotorized Facility in MDOT Right-of-Way](#) (Form 0525). Regardless of the method used, submittal of Form 0525 is required.

- Applicable project specific cost sharing agreement or operation and maintenance agreement.
- Supporting resolutions from all impacted Local Agencies
- Environmental Review, MDOT Form 2242

e) Correspondence from Act 51 local agency providing a supporting recommendation to MDOT staff specifically addressing their commitment to the eligible Applicant's plan for the operation and maintenance of the nonmotorized facility.

- This recommendation should include reference to any ordinances, agreements, plans, enforcement, and adequate property rights for access to the connecting facilities.



Note: The plan for operation and maintenance of the facility must address keeping it in a condition that serves the original purpose for which it was permitted.

9. MDOT TSC Permit Staff will determine if the “Requirements Package” is complete. If complete, they will distribute in CPS the application “Requirements Package” for review to the appropriate Region and Central Office support areas (Traffic & Safety, Geotechnical, Structures, etc.). If incomplete, they will communicate to the eligible Applicant any revisions that are necessary.
10. Once all necessary reviews are complete, the MDOT TSC Permit Staff will route the application “Requirements Package” for review in CPS to the MDOT Central Office ROW Permit Staff representative, who will consult with the FHWA Area Engineer for Draft review.

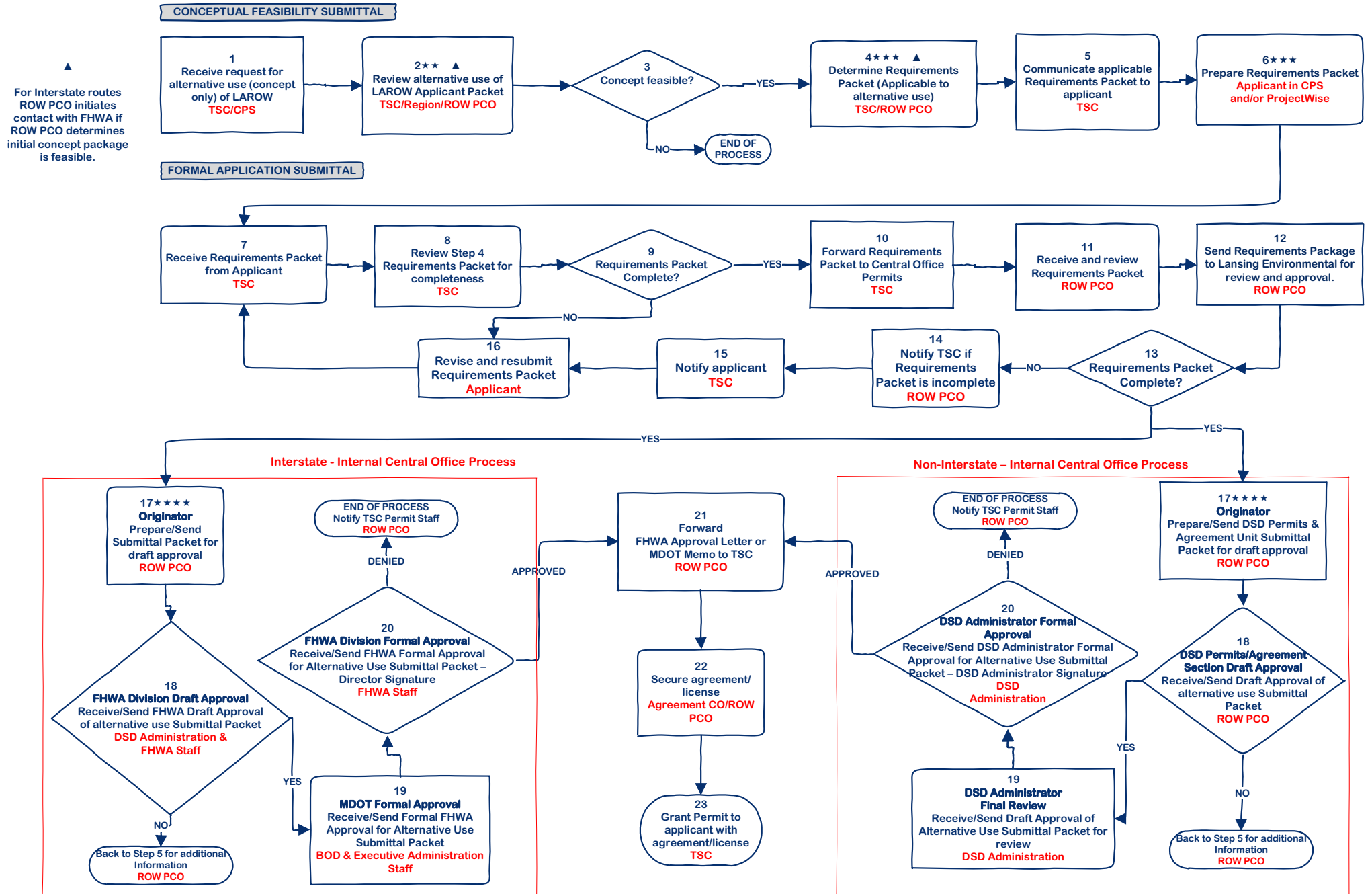
### **MDOT Internal Process**

#### **Steps 11 – 20 per Exhibit A**

Note: No action required from the eligible Applicant.

21. If approved, the MDOT Central Office ROW Permit Staff representative will send FHWA Approval Letter to MDOT TSC Permit Staff in CPS.
22. MDOT TSC Permit Staff will request an operation and maintenance agreement from the MDOT Central Office Agreement Staff for permit only applications. Projects that are processed through the MDOT Local Agency Program (LAP) the MDOT LAP Staff Engineer will request the project specific cost sharing agreement through the MDOT LAP processes.
23. MDOT TSC Permit Staff will issue permit to eligible Applicant.

★ ALTERNATIVE USE OF LIMITED ACCESS RIGHT OF WAY (LAROW)  
(No Property Rights)



# Key

## Acronyms:

BOD – Bureau of Development  
CPS – Construction Permit System  
DSD – Development Services Division  
FHWA – Federal Highway Administration  
LAROW - Limited Access Right-of-Way  
MDOT – Michigan Department of Transportation  
ROW PCO - Right of Way Permits Central Office  
TSC – Transportation Service Center

★ Alternative Use encompasses any non-permanent transfer of real property interest in the highway right of way and covers use agreements/license for the use of real property interest in the LAROW short of a permanent conveyance.

## ★ Alternative Uses:

- Non-motorized paths and access locations
- Sidewalks
- Breaches – temporary drive & storage
- Wireless cellular equipment
- Grading
- Drainage connections
- Adaptive landscape
- Gateways
- Murals
- Other Aesthetic Elements

## ★★ #2 – Applicant Packet (concept only)

Site map (Aerial/Google Map)  
Site plan (Conceptual Drawing)  
Proposal Statement (description of proposed work or use of MDOT ROW) including permanent or temporary facility  
Drainage and grading activities  
Statement declaring why alternative locations are not feasible

## ★★★ #4 and #6 - Requirements Packet:

Engineering site plans and profile  
Aerial map showing ROW lines and project  
Environmental Review – Form 2242  
Signals (if applicable)  
Traffic Study and/or analysis (if applicable)  
Drainage Review – Form 2484 (if applicable)  
Region and TSC memo of recommendation and approval  
Local unit of government review and approval (if applicable)  
Operation and Maintenance Agreement (if applicable)  
License Agreement (if applicable)  
Access Location Management Plan (ALMP) (if applicable)  
Structural Analysis and Calculations (if applicable)

## ★★★★ #17 Formal Approval Submittal Packet

Boiler plate agreement/license  
Region/TSC support correspondence including review and approval of Requirements Packet  
Aerial map (site plans and ROW lines)  
Site plan  
Environmental Review – Form 2242  
ROW Sheet  
Supporting documentation from governmental agency (if applicable)