

ORDINANCE NO. # 2008-6

AN ORDINANCE OF THE TOWNSHIP OF MAXATAWNY, BERKS COUNTY, PENNSYLVANIA, REGULATING THE EXCAVATION OF TOWNSHIP ROADWAYS AND ROAD CUTS WITHIN THE TOWNSHIP, ADMINISTRATIVE PROCEDURES, PERMIT FEES AND APPLICATIONS FOR EXCAVATION AND ROAD CUTS AND PENALTIES FOR VIOLATIONS OF THIS ORDINANCE

WHEREAS, due to increased development pressures within the Township and the rising cost of road maintenance, the Board of Supervisors has determined that it is necessary to outline a permit procedure for the opening and excavation of Township Roads pursuant to the authority of the Pennsylvania Second Class Township Code; and

NOW THEREFORE, be it enacted and ordained by the Board of Supervisors of the Township of Maxatawny, in the County of Berks, Commonwealth of Pennsylvania, by the authority of the same that follows:

**Section 1. Definitions and Interpretation.**

A. The following words, when used in this Ordinance, shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise:

Applicant. Shall be any firm, person, corporation, including but not limited to municipal corporations, or other entity seeking to make any excavation within the Township right-of-way.

Code Enforcement Officer. The person then serving as the duly appointed Code Enforcement Officer of the Township, or his or her designee.

Excavation. Any activity within the right-of-way of any street, alley or cartway, which involves cutting, breaking or disturbing the surface thereof. In this Ordinance, the term "opening" shall have essentially the same meaning as excavation.

Permittee. Any natural person, partnership, firm, association, corporation or municipal authority applying for and obtaining a permit as specified in this Ordinance.

Person. Any natural person, partnership, firm, association, corporation or municipal authority.

Streets. Any public street, avenue, road, square, alley, highway or other public place located in the Township and established for use of vehicles, including all portions of the right-of-way thereof, but not including state highways.

Township. The Township of Maxatawny, Berks County, Pennsylvania.

Township Road or Township Roadway. Road, highway or other public street that is under the care, custody control of the Township which is designated with a "T-\_\_" reference as part of its official designation or otherwise, defined in Section 102 of the Second Class Township Code as a "Road" or "Public Road".

B. In this Ordinance, the singular shall include the plural and the masculine shall include the feminine and the neuter.

**Section 2. Permit Required to Make Opening or Excavation.** It shall be unlawful for any person to open or make any excavation of any kind in any of the Township Roads without first securing a permit therefore, as hereinafter provided.

**Section 3. Application for Permit.** Any person who shall desire to make any opening or excavation in any of the Township Roads shall make application to the Township Code Enforcement Officer in writing for that purpose. Such application shall be made upon forms to be furnished by the Township and shall set forth the name of the applicant, the exact location of the proposed opening or excavation and the approximate size or depth thereof, and shall contain an agreement on the part of the applicant that the work shall be done in full compliance with the ordinances of the Township and the laws of the Commonwealth of Pennsylvania in relation thereto, and that the applicant shall defend and keep and hold harmless the Township from and indemnify it against any and all actions, suits, demands, payments, costs and charges for or by reason of the proposed opening or excavation, and all damages to persons or property resulting in any manner therefrom, or occurring in the prosecution of the work connected therewith, or from any other matter, cause or thing relating thereto.

**Section 4. Permit Fees and Fee Schedule.**

A. Before any permit shall be issued to open or excavate any Township Road, the applicant shall pay a permit fee in the amount fixed according to the currently adopted schedule of fees for permit issuance and inspection for each requested opening or excavation. The aforementioned schedule of fees may from time to time be amended by the adoption of a Resolution by the Township Board of Supervisors and may, but need not, be based upon the quantity of surface area proposed to be disturbed or time spent during inspection. All fees and charges shall be paid by the Permittee to the Township before the issuance of the requested permit.

B. Where, in the opinion of the Township's Code Enforcement Officer and at his sole discretion, site conditions are such that additional effort is required to protect the integrity of the street(s) of the Township, the Permittee may be required to perform additional work and/or pay (or provide adequate security for the payment of) additional costs. This option could include permanent restoration of the street surface by the Permittee along with payment of all above stipulated fees and charges, or the reconstruction and/or resurfacing of an area of street exceeding the area directly affected by the opening or excavation at the Permittee's expense. Where additional work is required, a legally binding agreement to perform such work, acceptable to the Township in form and substance, shall be executed by the applicant before issuance of the permit.

C. Upon inspection, if it be determined that the Permittee actually removed, disturbed or damaged, either in the initial or subsequent restoration, an area of yardage greater than that set forth in his or her application, the Permittee shall forthwith pay an additional permit fee proportionate to the amount to be paid to the Township's Code Enforcement Officer within three (3) days after the demand is made in writing.

**Section 5. Computation of Area of Street Pavement or Surface to be Charged.** In computing the square yards of the pavement or surface area to be disturbed as the basis of any fee to be charged which is based upon quantity of surface area disturbed, twelve inches (12") shall be added to all sides of the proposed opening or excavation.

**Section 6. Issuance of Permits Restricted.** Permits shall be issued only to persons or their agents furnishing public utility services or services which may be permitted by the PUC or Municipal Authorities Act of 1944 as amended or the owner or owners of the real property adjoining the location where such opening or excavation is to be made.

**Section 7. Information Contained on Permit.** Any permit issued hereunder shall specify the exact location where the opening or excavation is to be made, the approximate permitted size or depth thereof and the times within which the work for which the permit is granted shall be performed and completed.

**Section 8. Permit Approval or Disapproval.** A permit may be issued to the person named on the application within fourteen (14) days after all of the requirements therefore have been fulfilled. If the application is disapproved for any reason, written notice of disapproval together with reasons therefore shall be given to the applicant.

**Section 9. Responsibility to Contact Utilities.** The work authorized by the permit is subject to all of the provisions of the PA "One Call" Act of December 10, 1974, P.L. 852, No. 287, 1 et seq., as amended or supplemented from time to time. It shall be the Permittee's responsibility to contact the utilities that have recorded their facilities in compliance with said Act.

**Section 10. Compliance with Other Ordinances and Laws.** No permit shall be issued to any person indebted to the Township because of any previous application or permit, or in violation of any previous permit. Any permit is issued subject to all Ordinances of the Township, all state and federal laws, and pursuant to the following conditions:

A. Bore Holes. Bore holes will be considered openings and a restoration charge of Twenty-Five Dollars (\$25.00) will be levied for each bore hole made. A permit will be required for each bore hole grouping. The Permittee shall plug and seal bore holes, in a manner and with materials approved by the Township Code Enforcement Officer, to the street surface within thirty (30) days of boring. If the applicant does not plug and seal these holes within the given time period, the Township reserves the right to take any steps deemed necessary to repair the Township Road, and the associated costs shall then be paid by the Permittee upon the Township's demand.

B. Ahead of Paving Permit. Permits for excavation performed in advance of Township scheduled street improvements at the same location, where the required work is completed in accordance with a schedule approved by the Township Code Enforcement Officer, will be issued at no charge. A detailed construction plan must accompany each application for an "Ahead of Paving Permit". Excavation, backfilling and temporary street opening restoration will be performed by the Permittee at his or her cost as directed by the Township Code Enforcement Officer.

C. Subsurface (As-Built) Plans. Upon completion of work, the Permittee shall furnish to the Township Code Enforcement Officer completely dimensioned plans showing accurately and distinctly, and in such detail as required, the size, depth, shape and kind of pipe, wire or structure the Permittee has installed or altered and its surface location with reference to the street surface and the nearest curb line and curb intersection.

D. Time Limit. In case the work has not been completed on or before the date as shown on the permit, the Township Code Enforcement Officer may, if he deems advisable, take steps to backfill the trench and replace permanent pavement over the opening for which the permit had been issued. Failure to abide by any of these restoration criteria will subject the Permittee to pay the full amount plus 10% of any costs incurred by the Township to repair the street. If an extension of time beyond said date is necessary for the completion of the work, a written application therefore must be filed and approved by the Township Code Enforcement Officer. Said Application shall also be accompanied by the necessary fee payment as established by Township Resolution.

E. Excavation Notice. The Act of Assembly No. 1986 -172 (the "Act") requires those who intend to excavate or demolish to file certain notices (one-call, etc.) before commencing work. Applicants for permits to excavate or open any

public street of the Township shall comply with all of the requirements of this Act. Permits issued by the Township shall be deemed null and void unless the requirements of the Act have been met.

F. Surface Cut. Trenches in paved areas shall be cut to a neat edge using an asphalt/concrete saw.

G. Barricade Cover, Lighting and Traffic Control. All traffic control, lighting, barricade or entry shall be approved by the Township Code Enforcement Officer or Township Road Master. All street openings shall be completely barricaded and protected by the Permittee. Excavations left open or incompletely repaired after dark shall be marked by PennDOT approved flashing lights. Where work is interrupted, the person(s) responsible for the opening shall secure and cover the excavation with an appropriate metal plate. All required traffic control shall be provided by the Permittee in accordance with PennDOT's current publication (Work Zone Traffic Control Plan) or any future PennDOT publication(s) dealing with this subject. Nothing contained in this Ordinance or other legislation of the Township shall release the person opening the street from all liability associated with claims for injury or damage resulting therefrom.

H Traffic Detour. Any necessary traffic detour control or closing of the Township Street must be properly signed and shall be provided by the Permittee on a plan to be attached to the application form in accordance with PennDOT's current publication or any future PennDOT publication(s) dealing with this subject. Three (3) copies shall be provided to the Township (one for the Road Master, one for the Code Enforcement Officer and one for the Township). Closing of the Township Road and detour plan must be reviewed and approved by the Township Road Master and Township Police. Proof of notification to all emergency response operators, Berks County Communications and School District must be provided. Nothing contained in this Ordinance or other legislation of the Township shall release the person opening the street from all liability associated with claims for injury or damage resulting therefrom. This Section of this Ordinance shall not in any way usurp or interfere with PennDOT's regulations concerning detour procedures and processes.

I. Backfilling. All openings made in the improved area shall be backfilled and compacted by the Permittee in accordance with Appendix A attached.

J. Paving Restoration. Immediately following backfilling and compacting, the Permittee shall apply cold patch or hot mix bituminous material to the opening at a depth no less than two inches (2") and compacted to the level of the abutting surface. This temporary restoration may be in place a minimum of two (2) months and no longer than three (3) months. If due to traffic, weather, or other conditions, this temporary material is displaced and the road surface becomes uneven, the Permittee must add additional material to keep the surface

smooth. Permanent restoration must be placed in accordance with Township standards in Appendix A attached, or shall be constructed in compliance with current industry standards and applicable PennDOT Specifications no later than the expiration of such three (3) month period or two (2) weeks after the Permittee is given notice by the Code Enforcement Officer, whichever occurs first. Failure to abide by any of these restoration criteria will subject the Permittee to pay the full amount plus 10% of any costs incurred by the Township to repair the street.

K. Shoulder Restoration.

(1) Paved Shoulders. Existing paved shoulders shall be reconstructed and in accordance with Appendix A or shall be constructed in compliance with current industry standards and applicable PennDOT Specifications. All shoulder restoration shall be the responsibility of the Permittee and approved by the Code Enforcement Officer.

(2) Other Shoulders. Other shoulders shall be restored according to the following:

(i) Suitable material shall be used for the backfill of openings in earth/stone shoulders and approved by the Code Enforcement Officer. And must be permanently restored without settlement three (3) months after installation.

(ii) If the length of the opening exceeds fifty feet (50'), the shoulder shall be graded, rolled and penetrated with MC-30 bituminous material at a minimum rate of twenty-five hundredths (0.25) gallon per square yard and chipped or lightly sanded to prevent tracking of oil onto the pavement or an approved equal.

L. Restoration at Appurtenances. The top of every manhole, valve box or other access to underground facilities shall be of the same elevation as the finished and restored surface in which it is located. The surface surrounding manholes or valve covers located in shoulders shall be paved in such a manner as to prevent washouts. All manholes, including those cast-in-place, shall be constructed in compliance with current industry standards and applicable PennDOT Specifications.

M. Additional Restoration. Upon the following, all disturbed portions of the street, including all appurtenances and structures, such as guiderails, gas, electric, phone, cable, etc. or drain pipes, shall be restored to a condition equal to or better than that which existed before the start of any work authorized by the permit.

1. If the Permittee opens any street pavement having a bituminous surface, whether to install a new facility or to modify an existing facility,

the Permittee shall, in addition to the restoration conditions outlined in the permit and in this Ordinance, must overlay the street pavement if following conditions apply:

(i) When a longitudinal opening longer than fifty feet (50') and wider than four feet (4') is made in the street pavement, the Permittee shall overlay the traffic lanes in which the openings were made for the entire length of the street between such openings, as directed by the Township Code Enforcement Officer.

(ii) When two (2) or more transverse trench openings are made in the street pavement less than fifty feet (50') apart, the Permittee shall overlay all traffic lanes in which the openings were made for the entire length of street between such openings, as directed by the Township Code Enforcement Officer.

(iii) When five (5) or more emergency openings have been made by the same Permittee in the street pavement less than two hundred feet (200') apart within five (5) years of the last resurfacing by the Township, the Permittee shall overlay all traffic lanes in which the openings were made, in accordance with Township regulations, for the entire length of street between such openings, as directed by the Township Code Enforcement Officer.

(iv) Where disturbed lanes adjacent to shoulders are overlaid, the shoulder shall be raised so that the overlaid pavement and shoulder edges are at the same elevation.

2. Regardless of the age of the wearing course:

(i) When both longitudinal and transverse trench openings are made in the street pavement, the Township Code Enforcement Officer may require the Permittee to overlay all traffic lanes in which such openings are made for the entire length of the street that was opened if the Township Code Enforcement Officer determines that the present condition has been impaired by the opening; or

(ii) When five (5) or more openings are made by the same Permittee in the street pavement less than one hundred feet (100') apart, the Township Code Enforcement Officer may require the Permittee to overlay the entire disturbed area.

N. Notice to Township Code Enforcement Officer. The Township Code Enforcement Officer shall be notified at the Township Offices telephone number (a copy of said number and additional information can be found on the Permit) at least twenty-four (24) hours prior to the time when the opening in the

pavement is to be made, and shall be further notified at least twenty-four (24) hours prior to the time when an opening is to be backfilled and completed, so that the proper instructions may be issued for permanent pavement replacement.

O. Work for Township of Maxatawny. Contractors, not deemed Township employees, doing work of this nature for the Township shall be required to obtain a permit, however said permit shall be issued without charge.

P. Work to Conform to Township Standards. All work shall be done at such a time and in such a manner as shall be consistent with the safety of the public and shall conform to all requirements and standards of the Township. If the Township discovers that the work has been discontinued or has not been properly performed, the Permittee, upon being notified thereof in writing by the Township, shall immediately take all necessary steps, at his or its expense, to place the work in such condition as to conform to the Township's requirements or standards. If a dispute arises between the Permittee and any Township employee charged with the responsibility to inspect such work, the employee shall have the authority to suspend work until the matter can be referred to and be decided by the Township consulting engineer.

Q. Additional Inspection Fees. If the Township determines that the permitted work is of sufficient magnitude or the importance to warrant assignment of one (1) or more Township employees or the Township Engineer to inspect the permitted work on a more than spot inspection basis, the permit shall so indicate, and the Permittee shall be charged for all salary, overhead and expenses incurred by the Township for inspection.

**Section 11. Permittee Responsibility for Defects Occurring Within Two (2) Years.** If within two (2) years after the restoration of the surface as herein provided, defects appear therein, resulting from defective work by the Permittee, the Permittee shall reimburse the Township for the cost of all necessary repairs to the permanent paving. Failure to abide by any of these restoration criteria will subject the Permittee to pay the full amount plus 10% of any costs incurred by the Township to repair the street.

**Section 12. Responsibility of Permittee for Certain Work; Right of Township to Do Certain Work; Charge Allocation.** All other work in connection with openings in any street, including excavation, protection, refilling and temporary paving, shall be done by or for the person to whom or for which the permit has been issued, at such person's expense, and all such work shall be subject to the provisions of this Ordinance and to the supervision and approval of the Township Code Enforcement Officer, provided that the Township Code Enforcement Officer may, if he deems it necessary to the proper performance of the work, require that cutting of the surface of streets and the backfilling of all excavations therein shall be done by the Township, in which event the applicant shall pay the actual cost of the work to be performed by the Township.



**Section 13. Emergency Openings.** In the case of any leak, explosion or other accident in any subsurface pipe, line, structure, construction or apparatus, it shall be lawful for the person owning or responsible for such pipe, line, structure, construction or apparatus to commence an excavation to remedy such condition before securing a permit, provided that application for a permit shall be made immediately and not later than the next business day thereafter, and that such person shall comply with all other provisions of this Ordinance. If an emergency condition exists, the Township Police Department shall be notified immediately at telephone number 911. If any such emergency condition shall not be immediately attended to by the owner or person responsible for such pipe, line, structure, construction or apparatus, the Township Code Enforcement Officer, after such notice as he shall deem necessary under the circumstances of the particular case, shall proceed to cause the Township to do the work necessary and required by such emergency, and charge the same on the basis of cost plus twenty percent (20%) to such owner or person.

**Section 14. Restrictions Regarding Trees and Shrubbery.** The permission herein granted does not confer upon the Permittee or its contractors the right to cut, remove or destroy trees or shrubbery within the legal right-of-way, except under specifications, regulations and conditions as the Township Code Enforcement Officer may prescribe or as otherwise permitted by the laws of the Commonwealth of Pennsylvania.

**Section 15. Conditions for Laying and Extending Utility Lines.** No new water, sewer, steam or gas main or electric, etc. shall hereafter be laid or constructed, and no such existing main or line shall be extended in any of the streets of the Township until the plan therefor shall have been first filed with the Township Code Enforcement Officer and such plan and the exact location of such main or line approved by him. The Township Code Enforcement Officer shall not approve the locating of any such main or line at a depth of less than thirty inches (30") from the surface of the street unless he shall be convinced that locating the same at a depth of more than thirty inches (30") from the surface is impossible or impractical. Within ninety (90) days of completion of the construction project, an "as-built" plan, as designated by the Township, establishing the exact location where such main or line was installed shall be filed with the Township Code Enforcement Officer.

**Section 16. Financial Security and Insurance Required.** No person shall dig up any street or alley without first giving to the Township:

A. **Financial Security.** A bond with an acceptable trust or surety company as surety (having a place of business in Berks County, Pennsylvania) or a letter of credit with an acceptable bank as issuer, in the sum determined by the schedule of fees, conditioned for the faithful performance of these provisions and also for any and all damages, claims, demands, suits, costs, engineering and counsel fees occasioned or arising from the digging up, opening or closing of said streets and alleys. Such bond or letter of credit shall be valid without need of renewal for a period of two (2) years from the date of completion.

B. Permittee's Liability Insurance. The Permittee shall purchase and maintain insurance that will afford the following protection from claims:

(1) Coverage. For damages because of bodily injury, sickness or disease, or death of any person other than employees including claims insured by usual personal injury liability coverage; property damages and loss of use resulting therefrom; any or all of which may arise out of or result from the operations and completed operations of the contractor, whether such operations and completed operations be by the contractor or by any subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable. Before starting the work, the contractor will file with the Township a certificate of such insurance, acceptable to the Township. Insurance covering comprehensive general liability shall be maintained by the contractor for the duration of the work.

(2) Limits of Insurance. The Permittee shall provide insurance in the following minimum amounts:

FORM	MINIMUM LIMITS
Comprehensive General Liability	\$2,000,000
Bodily Injury	\$2,000,000
Property Damage	\$2,000,000
Personal Injury	\$2,000,000
Workers' Compensation	Statutory Limits

Including premises operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, independent contractors and personal injury, including employees.

(3) Additional Insureds. This policy shall name the Township, Township Solicitor and Township Engineer as "additional insured."

**Section 17. Payment for Work Done by Township.** Payment for all work done by the Township under the provisions hereof, including but not limited to all expenses incurred by the Township as a result of delay to the completion of the street reconstruction project which is attributable to the repair or relocation of the utility line, shall be paid by the person liable therefor under the provisions hereof within thirty (30) days after a bill therefor is sent to such person by the Township. Upon failure to pay such charges within such time, the same shall be collectible by the Township by an action at law or in the manner provided by law for the collection of municipal claims.

**Section 18. Penalties.** Any person who opens or excavates in any manner the pavement or surface of any public street of the Township without first having obtained the proper permit and paid the application fees and charges hereinbefore set forth, including any extension fee, or who violates any of the other provisions of this Ordinance shall, upon conviction thereof, be sentenced to pay a fine not exceeding One Thousand Dollars (\$1000.00) for each offense, plus costs, and in default of the payment of such fine and costs, said person and/or the responsible agents or officer of firms and corporations violating the provisions of this Ordinance, shall be imprisoned for a period not exceeding thirty (30) days. Every day that a violation of this Ordinance continues shall constitute a separate offense.

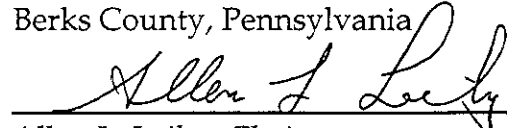
**Section 19. Applicability.** The provisions of the Ordinance shall not apply to laying sidewalks or curbs.

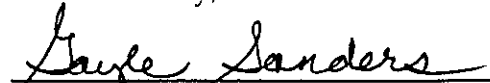
**Section 20. Severability.** If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared to be the intent of the Township Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.


**Section 21. Effective Date.** This Ordinance shall become effective five (5) days after adoption thereof.

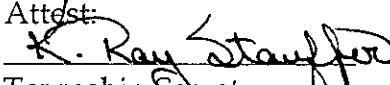
ENACTED AND ORDAINED as an Ordinance, this 2<sup>nd</sup> day of July, 2008.

TOWNSHIP OF MAXATAWNY  
Berks County, Pennsylvania

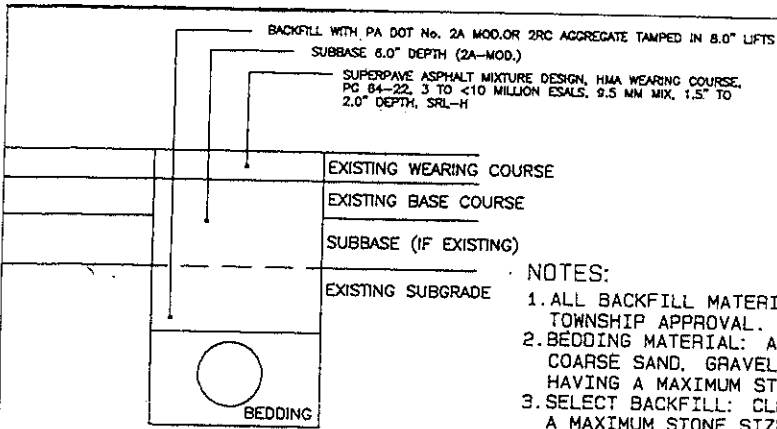
  
Allen L. Leiby, Chair

  
Gayle Sanders, Vice Chair

  
David Hoffman, Supervisor

Attest:  
  
Township Secretary

5.5.08/6.2.08/6.3.08/6.9.08/7.7.08/6.9.08

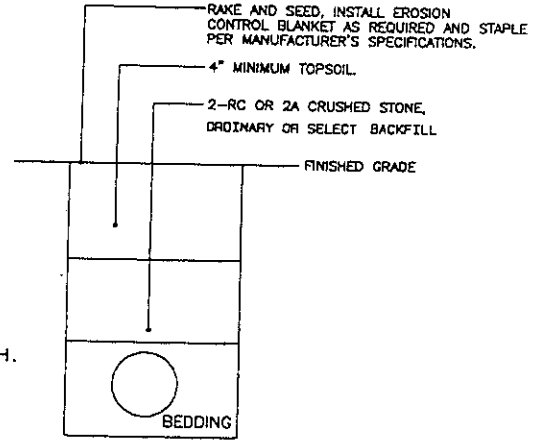


TEMPORARY RESTORATION WITHIN RIGHT-OF-WAY

N.T.S.

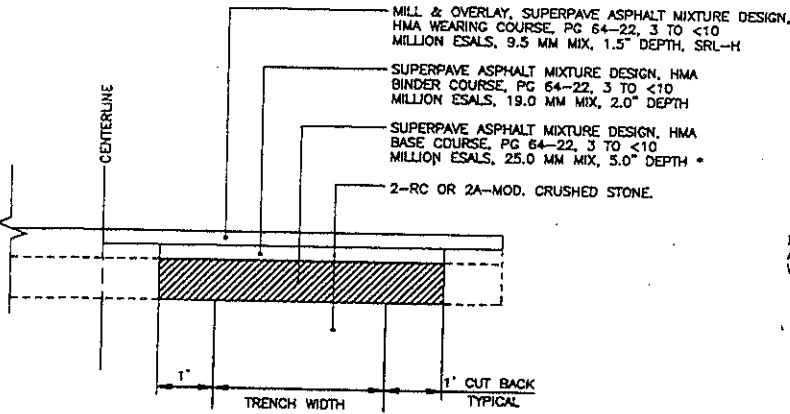
NOTES:

1. ALL BACKFILL MATERIAL IS SUBJECT TO TOWNSHIP APPROVAL.
2. BEDDING MATERIAL: APPROVED TAMPED COARSE SAND, GRAVEL, OR CRUSHED STONE, HAVING A MAXIMUM STONE SIZE OF 1/2-INCH.
3. SELECT BACKFILL: CLEAN DRY EARTH WITH A MAXIMUM STONE SIZE OF 2-INCHES TAMP IN MAXIMUM 8 INCH LIFTS.
4. ORDINARY BACKFILL: CLEAN DRY EARTH WITH A MAXIMUM STONE SIZE OF 6-INCHES TAMP IN MAXIMUM 8 INCH LIFTS.



NON-PAVEMENT RESTORATION

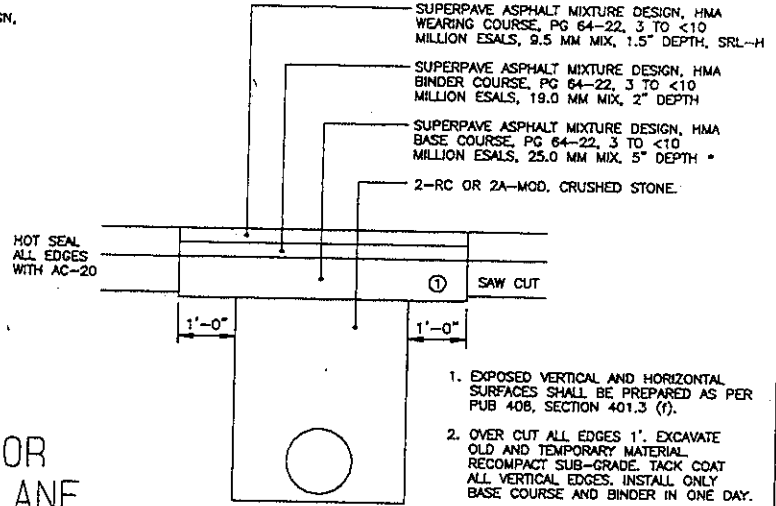
N.T.S.



ROAD PAVING RESTORATION DETAIL FOR PARALLEL TRENCHING WITHIN TRAVEL LANE

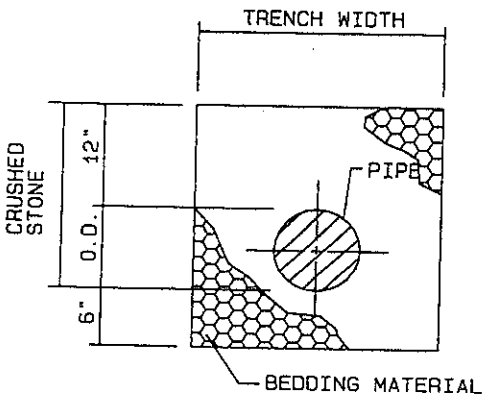
N.T.S.

1. REPLACE PAVEMENT MARKINGS
  2. ALL PAVEMENT MARKINGS ARE DURABLE (i. e. EPOXY RESIN, HOT THERMOPLASTIC)
- \* MATCH EXISTING OR WHICHEVER IS GREATER



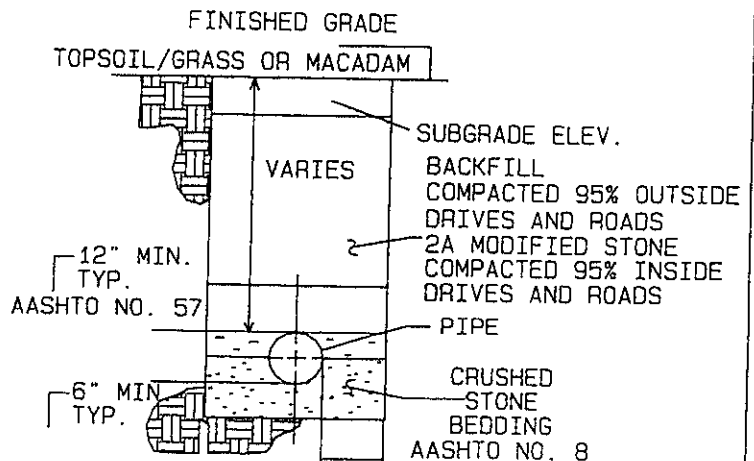
FINAL PERMANENT PAVING FLEXIBLE PAVEMENT RESTORATION WITHIN RIGHT-OF-WAY

N.T.S.



TYPICAL PIPE BEDDING

N.T.S.



TRENCH DETAIL

N.T.S.

EXHIBIT

a