



State of New Jersey

DEPARTMENT OF TRANSPORTATION

P.O. Box 600

Trenton, New Jersey 08625-0600

PHILIP D. MURPHY

Governor

FRANCIS K. O'CONNOR

Commissioner

TAHESHA L. WAY

Lt. Governor

August 27, 2025

Michael V. Dowgin, Esq.
2413 Highway 130
Dayton, NJ 08810

Re: Route 130 Georges Road / Wheeling Road (CR 679), Modification of Access Appeal,
Block 11, Lot 11.021, South Brunswick Township, Middlesex County (Dowgin Landing
LLC)

Dear Mr. Dowgin:

This is the final agency decision for an appeal of a determination of the Office of Access Design (“OAD”) of the New Jersey Department of Transportation (“NJDOT”), modifying access between State Highway Route 130 (“Route 130”), and a property owned by Dowgin Landing LLC (“Owner”) located at 2413 U.S. Route 130, South Brunswick, New Jersey (“Property”). The Property is identified as Block 11, Lot 11.021 in the local tax map.

Previously, I presided over a formal hearing on November 30, 2023 and remanded this case on February 1, 2024 (“Remand Decision”) (attached) for the OAD (1) to conduct a weave study and (2) to study the potential signalization of the intersection of Georges Road eastbound and Route 130 southbound (“Intersection”). Remand Decision at 5. These studies were conducted by the traffic subconsultant (WSP) for the NJDOT’s design consultant (French & Parrello Associates (“FPA”)) in March 2024 and July 2024 and submitted to me (and the Owner) in February 2025. DOT-6; DOT-7.¹ The Owner submitted a response to these studies from its expert (Klein Traffic Consulting, LLC) to me in May 2025. Owner-3. I presided over a continuation hearing on July

¹ The OAD did not explain the considerable delay between the completion of the WSP studies and the provision of the studies to the Owner and me. This matter dates back to June 2022, when the OAD informed the Owner of the proposed modification of access. See Remand Decision at 1. I note the Owner’s frustration with the length of this proceeding (which has not been to the Owner’s prejudice, because the NJDOT’s Route 130 project has not progressed and the Property’s driveways have not changed).

17, 2025 and closed the administrative record as of August 13, 2025, rendering this decision timely pursuant to N.J.A.C. 16:47-11.3(g).

As a threshold matter, I note that the OAD did not present the author of the WSP studies (Christopher Jakway, PE, PTOE) as an expert witness at the continuation hearing. Instead, the OAD presented Michael J. Drobny, PE, CME, of FPA, who testified as the OAD's expert witness at the 2023 hearing, see 1T57:23-147:25,² to testify about Jakway's studies. I overruled the Owner's objection to Drobny's testimony but noted that I would consider (1) the fact that Drobny did not author Jakway's studies and (2) the fact that Jakway could not be cross-examined in determining how much weight to give to Drobny's expert opinion. 2T12:23-13:5. I now find that Drobny's expert opinion is entitled to minimal weight for the following reasons.

First, Drobny testified about a non-testifying expert's studies, which is hearsay. See Hayes v. Delamotte, 231 N.J. 373, 392 (2018); see also Agha v. Feiner, 198 N.J. 50, 64 (2009) ("under N.J.R.E. 703, an expert may give the reasons for his opinion and the sources on which he relies, but that testimony does not establish the substance of the report of a non-testifying [expert]"). I cannot find based on Drobny's testimony that Jakway's studies are reliable. Drobny is a licensed Professional Engineer in three states but not a Professional Traffic Operations Engineer like Jakway and the Owner's expert, Lee D. Klein, PE, PTOE. See 1T59:21-23; DOT-6; Owner-3. Drobny deferred to Jakway six times during his testimony,³ when Jakway was not present to answer questions or to be cross-examined by the Owner. See, e.g., 2T61:3-6 (Owner unable to cross-examine Jakway regarding phasing of traffic signal). Given these facts, I cannot credit Drobny's opinion regarding Jakway's studies or make findings of fact regarding the potential signalization of the Intersection.

Second, Drobny contradicted Jakway's unsupported statement that a stop sign at the Intersection "would most likely begin to be ignored by the public." DOT-6.⁴ Drobny opined to the contrary "that a stop sign inherently would be obeyed more" than a yield sign, because "obviously the intent is for [motorists] to come to a complete stop, whereas . . . the yield sign is meant for [motorists] to

² "1T" refers to the November 30, 2023 hearing transcript; "2T" refers to the July 17, 2025 hearing transcript.

³ See 2T21:13-15 ("The density, unfortunately some of that Mr. Jakway would have to get into, but the density I believe is the number of interactions that occur."); 2T30:11-15 (Drobny was "not familiar with" NCHRP 284 Decision Making Guide for Traffic Signal Phasing cited in DOT-7); 2T42:11-16 (Drobny "would have to defer to Mr. Jakway" regarding whether motorists ignore stop signs); 2T46:13-47:24 (Drobny did not know if Jakway "started with an analysis of a single lane and then went to a double as he updated it"); 2T48:10-19 ("Again, unfortunately Mr. Jakway would have to, you know, further explain his phasing that he put on here."); 2T49:13-14 ("it is a bit of an opinion statement from Mr. Jakway [that a stop sign would not be appropriate at the Intersection because it would most likely begin to be ignored by the public]. It's not a quantifiable [statement]."). Drobny also deferred to WSP's recommendations as to the speed reduction markings at the proposed yield sign. 2T40:6-41:13.

⁴ If that were the case, the public would be just as likely to ignore the proposed yield sign.

slow down and observe.” 2T53:7-12. I agree with Drobny. I further note the basic legal principle that everyone is “presumed to know the law and [is] obliged to follow it.” Paragon Contractors, Inc. v. Peachtree Condo. Ass’n, 202 N.J. 415, 424 (2010). If motorists do not obey a stop sign (or a yield sign), police officers have “the pressing duty of enforcing the criminal law.” Rehberg v. Paulk, 566 U.S. 356, 369 (2012) (quotation omitted). I therefore reject the OAD’s rationale for changing the current stop sign to the proposed yield sign.

Third, Jakway’s weave study was half-complete. It considered “the potential weaving movement [of a motorist traveling southbound on Route 130 and entering the Property] with somebody that’s entering Route 130 from [the] Georges Road ramp,” 2T10:23-11:3; 2T16:14-18; 2T54:21-22 (Jakway “focused on vehicles entering the property”), but it did not consider the movement of motorists exiting the Property. See 2T57:12-13 (“there doesn’t appear to be a separate analysis for exiting traffic”). The Remand Decision specified that the OAD should study motorists entering and exiting the Property. Id. at 5. The OAD’s failure to do so means that the record is undeveloped regarding weaving.

Regarding safety, Drobny opined that he “[did not] know how [he] could say” whether a stop sign or a yield sign at the Intersection would be “safer” because “the [current] stop sign is leading to crashes that happen today.” 2T44:10-12. Klein opined that it would be “unsafe . . . to have the acceleration [lane] across the frontage of [the Property]” and that the problem was “the speed” of motor vehicles entering and exiting the Property “more than . . . the volume.” 2T62:8-24. I agree with Klein.

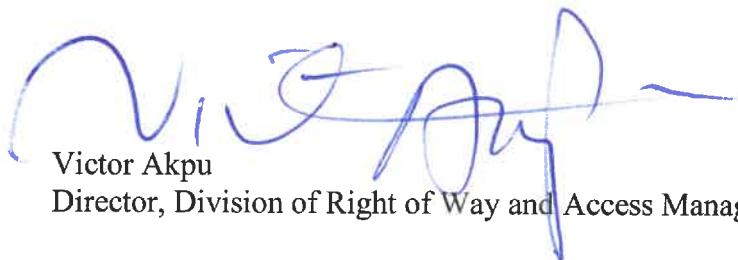
The standard for a proposed modification of a driveway under the State Highway Access Management Act, N.J.S.A. 27:7-89 to -98, is whether the property owner would continue to have “reasonable access to the general system of streets and highways in the State.” N.J.S.A. 27:7-90(e). Reasonable access is safe access.

I understand that the NJDOT wants to reduce accidents at the Intersection. See 2T22:22-25; 2T42:1-3; 2T44:10-11. The Legislature has found “that the toll of deaths and injuries resulting from highway accidents is a matter of State concern,” N.J.S.A. 27:5F-19, and improving highway traffic safety is good public policy. However, as I have previously noted, the accidents at the Intersection are not highway accidents; they are at low speeds and on Georges Road, which is a county road. Remand Decision at 2 & footnote 2. Therefore, as important as it is to reduce accidents on Georges Road, the OAD’s proposed modification prioritizes improving safety at the Intersection despite the increased risks to the safety of motorists entering and exiting the Property. These risks are not acceptable. I therefore conclude that the OAD has not carried its burden of proving that the Owner would have reasonable access to Route 130 southbound under the proposed modification of the Property’s driveways and reject the proposed modification.

This is the final agency decision rendered on behalf of the NJDOT, which may be appealed, if desired, to the Appellate Division of the Superior Court of New Jersey.

Should you have any questions, please feel free to contact my office at (609) 963-1180.

Sincerely,



Victor Akpu

Director, Division of Right of Way and Access Management

cc: Dennis J. Mikolay, II, Deputy Attorney General
Eric Handelman, Executive Manager, Office of Access Design

Attachment

ATTACHMENT



State of New Jersey

DEPARTMENT OF TRANSPORTATION

P.O. Box 600

Trenton, New Jersey 08625-0600

PHILIP D. MURPHY
Governor

DIANE GUTIERREZ-SCACCHETTI
Commissioner

TAHESHA L. WAY
Lt. Governor

BY REGULAR AND ELECTRONIC MAIL

February 1, 2024

Michael V. Dowgin, Esq.
2413 Highway 130
Dayton, NJ 08810

Re: Route 130 Georges Road / Wheeling Road (CR 679), Modification of Access Appeal, Block 11, Lot 11.021, South Brunswick Township, Middlesex County (Dowgin Landing LLC)

Dear Mr. Dowgin:

This appeal is from a determination of the Office of Access Design (“OAD”) of the New Jersey Department of Transportation (“NJDOT”), modifying access between State Highway Route 130 (“Route 130”), and a property owned by Dowgin Landing LLC (“Owner”) located at 2413 U.S. Route 130, South Brunswick, New Jersey (“Property”). The Property is identified as Block 11, Lot 11.021 in the local tax map.

On June 6, 2022, the OAD sent a letter informing the Owner of a modification of access plan. The Owner requested this appeal on July 14, 2022. A formal hearing was scheduled for three different days in 2022 and 2023 and adjourned at the Owner’s or the OAD’s request. The formal hearing was finally held on November 30, 2023, pursuant to N.J.A.C. 16:47-11.3(f).

I presided over the formal hearing and considered the pre-hearing submissions, testimony, documents presented, and arguments proffered by the parties, which were both represented by counsel. At the conclusion of the hearing, I announced that I would hold the record open pending the receipt of the transcripts and written closing arguments. The administrative record was closed as of January 30, 2024, rendering this decision timely pursuant to N.J.A.C. 16:47-11.3(g). My findings on the basis of the record are as follows.

The modification of access at issue is being undertaken in conjunction with an NJDOT project “to improve traffic operations and address safety” and motor vehicle crash concerns at the currently unsignalized intersection of Route 130 and Georges Road in the Dayton community of South Brunswick Township. T136:17-21.¹ Route 130 is a four-lane divided State highway that runs roughly north-south; the posted speed limit on Route 130 is 55 miles per hour. T62:20-22. Georges Road is a two-lane county road that runs roughly northwest to southeast; the posted speed limit on Georges Road is 45 miles per hour. T76:19-20.

Route 130 intersects with Georges Road at three points. See DOT-2. The one at issue is where motorists driving east on Georges Road stop at a stop sign (“Stop Sign”) before merging directly into Route 130 southbound. T62:16-20. This eastbound traffic “is heavy” and has “the highest number of crashes at the intersection by far” due to rear-end accidents that happen at the Stop Sign when motorists “try[] to pick a gap in the 55 mile an hour traffic [on Route 130 southbound] to get out and maybe they start going and then realize they don’t have the gap and stop again and then the car behind them . . . rear-ends them.” T37:4-5; T92:16-93:2.² The crashes at the Stop Sign occur at low speeds. T98:12-25. Reducing the number of crashes at the Stop Sign is “one of the main focuses of the [NJDOT] project for the intersection.” T135:25-136:6. The other two points where Route 130 intersects with Georges Road (north of the Stop Sign intersection) are a left turn from Route 130 northbound (to get on Georges Road westbound) and a right turn from Route 130 southbound (also to get on Georges Road westbound). DOT-2.³ The Route 130-Georges Road intersection was constructed in the 1940s and the level of service “is below acceptable levels” given significant warehouse and residential development in the area. T64:25-65:25.

The NJDOT project will install a new traffic signal at the middle intersection (*i.e.*, the left turn from Route 130 northbound to Georges Road westbound, which is north of the Stop Sign intersection). DOT-3. This signal will “create . . . gaps in the through traffic on Route 130”; it will not “create . . . gaps in the traffic coming from Georges Road.” T116:6-9. The project also will add new left-turn lanes on Route 130 and Georges Road, widen Route 130 for new auxiliary lanes, and replace the Stop Sign with a yield sign (“Yield Sign”), which will “direct those drivers [on Georges Road eastbound] to yield to anybody that’s on Route 130 [southbound].” T27:16-19; T60:20-61:4; T69:2-6; T136:24-137:4; T138:19-21; DOT-3.⁴ The Yield Sign will be the starting point of an approximately 650’ long auxiliary lane that will function like a highway entrance ramp

¹ “T” refers to the November 30, 2023 hearing transcript.

² The OAD’s expert witness testified that between 2014 and 2016 there were 17 crashes at the Stop Sign. T125:13-18. I note that these crashes were on a county road, not a State highway.

³ Motorists driving north on Route 130 pull into a waiting area in the grass median between the northbound and the southbound lanes of Route 130 and wait for a gap in the southbound traffic to proceed to Georges Road westbound. T62:11-15; DOT-2.

⁴ The NJDOT Roadway Design Manual defines “Auxiliary Lane” as “[t]he portion of the roadway adjoining the traveled way intended for speed change, storage, weaving, turning, climbing lane, and for other purposes supplementary to through traffic movement.” Id. § 3:3. Acceleration lanes and deceleration lanes are types of auxiliary lanes. Ibid.

and allow motorists driving on Georges Road eastbound “to accelerate up to the speed of traffic [on Route 130 southbound] before pulling in.” T73:21-74:22; T93:21-22; T99:16-18; T100:7-8.⁵ The length of the auxiliary lane was “determined based on the change in speed that a vehicle has to make to accelerate . . . up to the full speed of the adjacent road.” T135:11-15. The auxiliary lane will function as a deceleration lane for motorists on Route 130 southbound traveling to the Property. T29:12-23; T34:4-35:6.

The Property, which is located approximately 500-600’ south of where the new traffic signal will be located, is zoned for commercial use and currently improved with a two-story office building, which houses a law office. T23:12-14; T62:25-63:3; T68:18-24; T70:12-15; T83:7-9; DOT-2. The Property has a one-way bifurcated driveway off an 8-10’ shoulder on Route 130 southbound. T79:7-8; T112:16-19; DOT-1. The northern entrance driveway (“Driveway 1”) is approximately 350’ from the proposed Yield Sign. T85:24-86:16. Motorists entering the Property from the highway may use the shoulder to turn into Driveway 1 (the safe maneuver) or slow down in the travel lane and turn into Driveway 1 directly (which could result in a rear-end accident). T80:3-81:8. Motorists exiting the Property through the southern exit driveway (“Driveway 2”) may use the shoulder to enter the highway. T56:3-8.⁶

The Property’s driveways do not comply with the State Highway Access Management Code, N.J.A.C. 16:47-1.1 to -14.1 (“Access Code”), for three reasons. See DOT-1. First, the curbline openings of Driveway 1 (37’) and Driveway 2 (35’) exceed the maximum 34’ for non-residential driveways. T23:1-24:9; DOT-1. Second, the driveway widths of Driveway 1 and Driveway 2 are too wide. T78:23-79:8; DOT-1. Third, Driveway 2 has insufficient edge clearance. T22:5-13; DOT-1.⁷

The OAD proposes (1) to correct the driveways’ curbline opening and driveway width violations, T24:10-15; T79:8-9; (2) to add the auxiliary lane in front of the Property, T27:19; and (3) to narrow the shoulder to 8’, T112:11-15; DOT-1. Adding the auxiliary lane would violate the Access Code; however, the OAD intends to waive this violation, as well as the edge clearance violation, under N.J.A.C. 16:47-9.9. T27:6-12; T28:2-9. Waiver requests are made by the NJDOT’s designer for

⁵ The Owner has questioned why the OAD’s proposal refers to an “ACCELERATION LANE” but its witnesses at the hearing referred to an “auxiliary lane.” Compare DOT-1 with T27:21-22; see T110:19-20 (“Is it supposed to sound better if it’s an auxiliary lane instead of an acceleration lane?”). Acceleration lanes are auxiliary lanes. See supra note 4. I therefore reject any suggestion that referring to the acceleration lane as an auxiliary lane is “disingenuous.”

⁶ As the OAD’s expert witness noted, a shoulder is “meant to be a pull-off area for traffic, not really to serve as . . . an acceleration or a deceleration area. That being said, . . . in real life that’s what happens.” T87:25-88:4.

⁷ The OAD does not consider the edge clearance violation to be a “significant safety concern under the existing condition” and will waive the edge clearance requirement under N.J.A.C. 16:47-9.9. T26:2-4.

a particular highway project and reviewed by the OAD. T26:5-13.⁸ In this case, the OAD determined that “[t]he amount of traffic that is expected to enter the [P]roperty as well as exit the [P]roperty would have enough gaps to basically enter the highway system safely.” T45:21-24.

“Modification of driveway” as defined at N.J.A.C. 16:47-2.1 covers “changes to driveways in conjunction with the implementation of a State highway improvement advanced by the Department . . . , which changes the . . . width of the curbline opening of a driveway by more than five feet.” Ibid. N.J.A.C. 16:47-11.3(g) provides that review of a modification decision is to be heard on the basis of criteria set forth in the State Highway Access Management Act, N.J.S.A. 27:7-89 to -98 (“Access Act”), the Access Code, and the evidence presented at the hearing.

The only question for me to decide here is whether the Property would have “reasonable access to the general system of streets and highways in the State” under the OAD’s proposed plan. N.J.S.A. 27:7-90(e). The Property’s driveways can be modified “to further the purposes of [the Access Code].” N.J.A.C. 16:47-1.2(d). Those purposes are “to provide a system of access management to protect and enhance the safety and efficiency of the State highway system and the public investment in that system.” N.J.A.C. 16:47-1.1(a).

It is somewhat unusual that in this case the OAD’s proposed modification, absent a waiver, would violate the Access Code’s prohibition of non-residential driveways along auxiliary lanes. See N.J.A.C. 16:47, Appx. D-2(b)(3) (“No driveway shall be located along an acceleration [or] deceleration . . . lane where the lane is at its full width.”);⁹ id. D-2(b)(3)(iv) (regulation does not apply “[t]o access to a lot zoned or used for a single family residential unit”). It is undisputed that “it’s dangerous to have people pulling out of [a] driveway into [an] acceleration lane,” because “it adds a conflict point, meaning the traffic that is trying to enter the property as well as exit the property with this conflict could have a crash.” T45:2-11. A waiver of an Access Code provision may be granted only if the waiver will not (1) cause “substantial detriment to the safety and operation of the State highway system” and (2) “substantially impair[] the intent and purpose of the [Access Act] and [the Access Code].” N.J.A.C. 16:47-9.9(a).

The crux of the parties’ dispute is the proposed change from the Stop Sign to the Yield Sign. I recognize that the Route 130 project will improve safety for motorists on Georges Road eastbound, who in the current condition must stop at the Stop Sign and then accelerate rapidly to enter Route 130 southbound, and who under the proposed design will travel along the auxiliary lane and accelerate gradually to enter Route 130 southbound. However, motorists on Route 130 southbound

⁸ The Owner alleges that the waiver process has been “tainted by a lack of independent review,” because the OAD case manager for the Route 130 project who oversaw the project’s design by the NJDOT’s design consultant also “oversaw the waiver request [submitted by the NJDOT’s design consultant] and reviewed it and approved it,” along with the supervising engineer in charge of the OAD. T42:23-44:9; see also T18:11-12; T28:17-20; T29:2-11; T53:7-12; T106:10-108:15. I note the fact that the OAD reviews waiver requests but make no finding at this time regarding the Owner’s allegation.

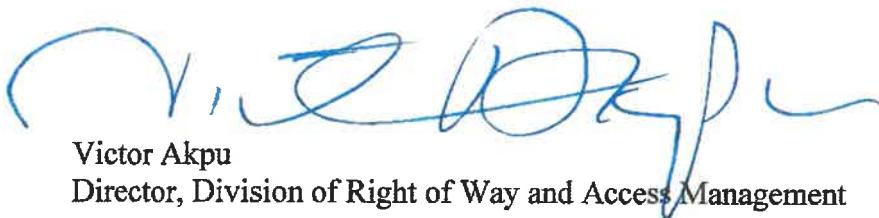
⁹ This regulation, which refers to both an acceleration and a deceleration lane, could have referred simply to an auxiliary lane. See supra note 4.

that want to enter the Property and motorists exiting the Property will have to contend with the fact that the “flow of traffic that’s coming from Georges Road to go southbound on Route 130 [will] never stop[]” with the Yield Sign. T156:20-22.¹⁰ The Stop Sign helps these motorists by stopping incoming traffic from Georges Road eastbound, leaving gaps. These gaps will not occur under the OAD’s proposal. Motorists entering/exiting the Property will have to decelerate/accelerate and weave through the motorists in the auxiliary lane that are accelerating to enter the highway. This weaving maneuver could result in serious crashes, with motor vehicles traveling at 45 miles per hour, 55 miles per hour, or potentially even higher speeds.

I find that the OAD’s failure to conduct a traffic study of motorists (1) entering the Property from Route 130 southbound that have to slow down and weave around the motorists in the auxiliary lane beginning on Georges Road that are accelerating to enter the highway, and (2) exiting the Property was not reasonable and remand for the OAD to conduct a weave study. The OAD also should study whether the potential signalization of the intersection of Georges Road eastbound and Route 130 southbound would mitigate weaving in front of the Property. The OAD should explore all viable and appropriate engineering options.

Should you have any questions, please feel free to contact my office at (609) 963-1180.

Sincerely,

A handwritten signature in blue ink, appearing to read "V. Akpu".

Victor Akpu
Director, Division of Right of Way and Access Management

cc: Dennis J. Mikolay, II, Deputy Attorney General
Nirav Shah, Principal Engineer

¹⁰ One estimate of this traffic in the year 2040 is 425 cars in the morning peak hour (“that’s seven cars per minute, a car every eight or nine seconds that’s going to be coming down Georges Road [eastbound to Route 130 southbound] on average”) and 250 cars in the afternoon peak hour (four cars per minute, a car every 15 seconds). T158:13-159:2.