



TRANSPORTATION CABINET

Andy Beshear
GOVERNOR

200 Mero Street
Frankfort, Kentucky 40601

Rebecca Goodman
SECRETARY

HIGHWAY DESIGN MEMORANDUM NO. 02-26

TO: Project Development Branch Managers
Active Consultants

FROM: Tim Layson, P.E., Director *WTL*
Division of Highway Design

DATE: June 26, 2026

SUBJECT: House Bill 542 Design and Property Access Ramifications

This memorandum is to provide guidance relative to the newly enacted law (HB542), effective on 13 April 2026. This law modifies both design and how we access property under eminent domain authority.

Design

Special consideration is required for impacts to parcels subject to Conservation Easements or located in an Agricultural District.

The condemnor shall provide a sworn written report to the court justifying the condemnation of the specific property at issue due to the lack of feasible alternative locations to satisfy the purposes of the project.

Feasible alternative location is defined in the KRS as a location that:

Impacts the same property but does not impact the conservation easement or agricultural district on the property and does not materially increase the cost of the project.

The Design Executive Summary has been modified to require discussion of the affected parcels in the Preliminary Line and Grade minutes. This will facilitate production of the sworn statement required for condemnation. See attached example Design Sworn Statement.

The new law also requires in cases where only a portion of the property has been condemned, that the condemnor take appropriate measures to ensure reasonable, direct access to the property for the duration of the on-site work for the project. Maintenance of Traffic notes and/or plans will need to indicate locations where access is to be maintained during the project construction.

Property Access

If access is not granted voluntarily, specific notifications are required to comply with KRS 416.560. Failure to comply provides a path to condemnation suits being dismissed by the court system.

During project development, KYTC may require access to private property to perform activities such as survey, environmental investigations, geotechnical investigations, utility coordination, drainage evaluations, and other engineering data collection efforts necessary to evaluate potential project alternatives. At the time these activities are initiated, KYTC has not identified a preferred alternative or determined whether right-of-way acquisition will ultimately be necessary, and the law does not provide a right of entry to parcels that are not needed for the project.

For initial coordination with property owners, KYTC may utilize an Initial Letter of Access Notification requesting voluntary permission to enter property for data collection purposes. This notification is intended to facilitate preliminary engineering and environmental investigations through voluntary cooperation with the property owner. The notification clarifies that no determination regarding future property acquisition has been made and that granting or denying access will not affect any future right-of-way negotiations. This notification consists of the following two items: an Initial Letter of Access Notification and an accompanying Voluntary Access Form. Note: Verbal permission is still acceptable and is documented in the contact log which includes names, addresses, and telephone numbers of persons contacted; dates contacted; and a synopsis of each discussion (HDM 305.1).

As the project progresses and a parcel has been identified as needed for the project, if voluntary access has not been granted, KYTC may proceed under the authority provided by KRS 416.560(4), which permits entry onto property for studies, surveys, tests, soundings, and appraisals by KYTC or its employees or agents prior to the filing of a petition to condemn. In these situations, KYTC shall utilize a Letter of Access 10 Day Notification which incorporates the notification requirements contained within KRS 416.560(4)(b)(2). It is anticipated that all Letter of Access 10 Day Notification letters will be delivered via Certified mail, return receipt requested to meet the requirements of HB542. Letter of Access 10 Day Notification consists of the following four items: Letter of Access 10 Day, 10 Day Notifications Form (must be filled out specific to the project), a copy of KRS 177.081 and the 10 Day Access Type Form (to indicate what information is needed).

The utilization of the KRS 416.560 notification indicates that a property has been identified for acquisition and on-site data acquisition is needed, not that condemnation will ultimately occur.

Project managers and project teams should maintain documentation of all property access coordination efforts associated with project development activities in the project file. This documentation should include a log identifying property owners who voluntarily granted access following issuance of the Initial Letter of Access Notification, as well as a separate log identifying properties where voluntary access was not obtained and the Letter of Access 10 Day Notification was subsequently issued pursuant to KRS 416.560. This documentation needs to be given to the right of way staff to prepare for any potential condemnation proceedings.

Maintaining this distinction and associated documentation helps ensure property owners receive information appropriate to the circumstances of the requested access while also ensuring compliance with applicable statutory notification requirements.

Attachments:

2026 Initial Letter of Access Notification.docx

2026 Voluntary Access Form.docx

2026 Letter of Access 10 Day.docx

2026 10 Day Notifications.docx

2026 KRS177.081.docx

2026 10 Day Access Type.docx

2026 Design Sworn Statement.docx

Forms will be maintained on the Division website.

If you have any questions, contact the Division of Highway Design at 502-564-3280.